

**U.S. TAX SHELTER INDUSTRY: THE ROLE OF
ACCOUNTANTS, LAWYERS, AND FINANCIAL
PROFESSIONALS**

HEARINGS

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

NOVEMBER 18 AND 20, 2003

VOLUME 3 OF 4

Printed for the use of the Committee on Governmental Affairs



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91. KPMG Memoranda, August 1998, re: <i>Tax Products Practice</i> (<i>I was responsible for KPMG's position that we should not register OPIS as a tax shelter and insisted that we make the business case with DPP. This was of significant benefit in marketing the OPIS product and will establish the direction with respect to KPMG's position on future tax products.</i>)	857
92. KPMG email, September 1998, re: <i>OPIS</i> (<i>These fees relate to approximately \$1.2 billion in notional losses for approximately 25 clients.</i>)	865
93. Email, June 1998, re: <i>OPIS</i> (<i>Not only will this unduely (sic) harm our ability to keep the product confidential, it will DESTROY any chance the client may have to avoid the step transaction doctrine.</i>)	866
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101. Quadra Capital Management, LP. facsimile, August 1996, <i>attaching Memorandum on UBS' involvement in U.S. Capital Loss Generation Scheme (the "CLG Scheme") (As I mentioned, KPMG approached us as to whether we could affect the security trades necessary to achieve the desired tax results.)</i>	2607
102. Deutsche Bank Memorandum, July 1999, re: <i>GCI Risk and Resources Committee—BLIPS Transaction</i>	2612
103. Deutsche Bank email, July 1999, re: <i>Risk & Resources Committee Paper—BLIPS and Comments on Blips Collateral and Credit Terms (I would have thought you could still ensure that the issues are highlighted by ensuring that the papers are prepared, and all discussion held, in a way which makes them legally privileged.)</i>	2615
104. Deutsche Bank email, July 1999, re: <i>Risk & Resources Committee Paper—BLIPS (Our approach is as follows: STRUCTURE: . . . Privilege (sic): This is not easy to achieve and therefore a more detailed description of the tax issues is not advisable. REPUTATION RISK: . . . we have been asked by the Tax Department not to create an audit trail in respect of the Bank's tax affairs.)</i>	2618
105. Deutsche Bank email, February 2002, re: <i>Updated Presidio/KPMG trades (I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. * * * . . . we would like to lend an amount of money to Hypovereinsbank equal to the amount of money Hypovereinsbank lends to the client.)</i>	2619
106. Deutsche Bank email, April 2002, re: <i>US GROUP 1 Pres, attaching Structured Transactions Group North America Presentation, November 15, 1999</i>	2622
107. HVB Document, undated, re: <i>Presidio (7% -> fee (equity) paid by investor for tax sheltering)</i>	2646
108. HVB email, September 1999, re: <i>Presidio</i>	2647
109. Deutsche Bank email, April 1999, re: <i>presidio—w. revisions (. . . The holding period/life of the LLC will typically be 45 to 60 days. At the end of this time period, the LLC will unwind all transactions, repay the loan par amount and premium amount. For tax and accounting purposes, repaying the premium amount will "count" like a loss for tax and accounting purposes.)</i>	2649
110. KPMG email, March 2000, re: <i>Bank representation (The bank has pushed back the loan again and said they simply will not represent that the large premium loan is consistent with industry standards.)</i>	2657
111. HVB credit request for BLIPS transaction by Presidio personnel, September 1999. (<i>HVB will earn a very attractive return if the deal runs to term. If, however, the advances are prepaid within 60 days (and there is a reasonable prospect that they will be), HVB will earn a return of 2.84% p.a. on the average balance of funds advanced.</i>)	2660
112. KPMG Memoranda, March 1998, re: <i>OPIS (The attached went to the entire working group. . . . I believe that the OPIS product ("Son of Flip") is a stripped down version of the LLC (partnership) structure.)</i>	2678

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113. Deutsche Bank email, October 1999, re: <i>BLIPS (PKS reports that a meeting with John Ross was held on August 3, 1999 in order to discuss the BLIPS product. PKS represented PB Management's views on reputational risk and client suitability. John Ross approved the product, however insisted that any customer found to be in litigation be excluded from the product, the product be limited to 25 customers and that a low profile be kept on these transactions.)</i>	2679
114. Deutsche Bank New Product Committee Overview Memo: <i>BLIPS Transaction (11-DB will have the right to approve/disapprove all trading activity in the Company. This will allow DB to effectively force the closure of the company and repayment of its loan to DB.)</i> [Note: An alternative version of this document was previously entered into the Permanent Subcommittee on Investigations' hearing record as Exhibit No. 70.]	2681
115. KPMG Minutes of Assurance/Tax Professional Practice Meeting, September 28, 1998	2686
116. Brown & Wood email, December 1997, re: <i>joint projects (This morning my managing partner, Tom Smith, approved Brown & Wood LLP working with the newly conformed tax products group at KPMG on a joint basis in which we would jointly develop and market tax products and jointly share in the fees, as you and I have discussed.)</i>	2691
117. KPMG email, September 1997, re: <i>Flip Tax Opinion (ALSO, OUR DEAL WITH BROWN AND WOOD IS THAT IF THERE NAME IS USED IN SELLING THE STRATEGY, THEY WILL GET A FEE.)</i>	2692
118. KPMG Memorandum, March 1998, re: <i>B&W Meeting (What should be the profit-split between KPMG, B&W and the tax products group/ implementor for jointly-developed products?)</i>	2693
119. KPMG Memorandum, December 1997, re: <i>Business Model—Brown & Wood Strategic Alliance</i>	2696
120. Brown & Wood email, December 1997, re: <i>Confidential Matters (On another point, as I have been mentioning with you, I do work for a number of people who have potentially complementary tax advantaged products. Let me state up front, I am not trying to push any of these on KPMG, but it might be useful if you are trying to get a repitire of products jump started to talk to some or all of them. In addition, each of them has a relationship with one or more financial institutions who provide credit, derivatives trades, etc. necessary to execute the product.)</i>	2699
121. KPMG email, May 2000, re: <i>BLIPS—7 percent (The breakout for a typical deal is as follows: . . . Trading Loss 70 * * * Attached is Kerry's breakout of the 7 percent. [Redacted] gets 30 bpts from the Mgt. Fee. Is this detailed enough?)</i>	2701
122. KPMG email, September 1999, re: <i>BLIPS—managing deal flow (As you know, we have until 10/15 at the latest to close loans and 10/22 to activate the FX trading, etc. (the 60 day countdown).)</i>	2702
123. HVB Memorandum, October 1999, re: <i>Presidio Credit Request Dated September 14, 1999 (To summarize the above, the increased limits will now permit the full amount of our facility to be invested in EUR deposits and do related forwards.)</i>	2703
124. HVB Document, <i>Back-End Process</i>	2705
125. HVB Document, <i>Transaction Timeline (Exchange USD Amount to EUR Amount * * * USD 181,300,000)</i>	2711
126. PRESIDIO ADVISORY SERVICES, LLC Memorandum, April 2002, re: <i>Year 2000 Strategic Plan. (Over the past two years because of delays in obtaining the requisite approvals to market the OPIS and BLIPS products, we did not begin closing deals until September of 1998 and 1999, respectively. * * * Both Deutsche Bank and KPMG have requested that we replace our existing BLIPS product with a new product in 2000.)</i>	2712

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127. KPMG/Presidio Advisors email, October 1999, re: <i>Couple of quick questions—Liquidating distributions (Upon distribution (at the end of the 60 day period), can the client designate where the funds go?)</i>	2719
128. Handwritten notes, March 1998, re: <i>Brown & Wood (Confirm w/Presidio that they will register.)</i>	2720
129. PRESIDIO ADVISORY SERVICES, LLC Memorandum, September 1999, re: <i>BLIPS loan test case (Four special purpose, single member Delaware LLC, owned by four trusts: D. Amir Makov revocable trust (1/3), JL capital trust (1/3), RP capital trust (1/6), pointe du Hoc irrevocable trust (1/6))</i>	2721
130. KPMG/Presidio Advisors email, December 1998, re: <i>BLIPS meeting (Second, the tax analyses and opinion writing needs to go into high gear.)</i>	2722
131. KPMG/Presidio Advisors/Brown & Wood email, December 1998, re: <i>BLIPS meeting (I spoke with R.J. this morning about a “tax-focused” meeting next week. As a first step before scheduling a meeting, we thought that we should first draft the base of an opinion letter in an outline format which will be circulated for comment before getting everyone together for a “all-hands” meeting. We are currently working on the document and expect to circulate it next week.)</i>	2723
132. KPMG email, February 2000, re: <i>Brown & Wood opinion letter—BLIPS (Jeff Eischeid has promised the Brown & Wood opinion template ready in two weeks and we need your analysis.)</i>	2724
133. KPMG email, January 2001, re: <i>blips (We’re still working with Moore & Van Allen. They’ve declined to write a concurring opinion—their firm doesn’t write such opinions as a matter of policy. They are considering, this week, whether they will write [redacted] a MLTN [More Likely than Not] penalty opinion.)</i>	2726
134. IRS Form 8264, <i>Application for Registration of a Tax Shelter, QA Investments, LLC</i> registration of FLIP	2727
135. KPMG/Quadra Fax and Memoranda, October 1997, re: Registration of FLIP	2729
136. Deutsche Bank email, July 1999, re: <i>hi bill..presidio (i informed him that you are point man on the deal and that all comments should go through you)</i>	2734
137. KPMG email and Memorandum, July 1997, re: <i>Revised Memorandum (I) KPMG’s Tax Advantaged Transaction Practice; (II) Presidio’s Relationship with KPMG; (III) Transition Issues.</i>	2735
138. HVB Document, August 2000, <i>Presidio—Plafond (Investors have, so far, chosen to liquidate before the second (180 day) phase. ie after 60 days.)</i> ...	2745
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143. SEALED EXHIBIT: StrateconWest email, December 2001, re: <i>StrateconWest / FSG Solution (Please find attached the latest and greatest list of strategies for StrateconWest and FSG)</i>	*
144. SEALED EXHIBIT: Correspondence between Brown & Wood LLP and Presidio Advisors LLC, dated October 1998 and February 1999, regarding billing and document preparation for tax opinion	*
145. Organizational Chart, <i>KPMG Tax Practice Organization</i> , produced by KPMG LLP in response to request made by Senator Levin at the November 18, 2003, hearing	2874

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146. Statement for the Hearing Record of Reuven S. Avi-Yonah, Irwin I. Cohn Professor of Law and Director of the International Tax Master of Law Program at the University of Michigan Law School	2875
147. a.–b. Supplemental questions and answers for the record of KPMG. [Note: Exhibit 147a has been redacted, full document has been made a SEALED EXHIBIT.]	2878
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TAX PRODUCT Alert

December 18, 1997

FY98-02

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**PENALTY OPINION LETTERS FOR TRANSACTIONS THAT
MAY BE TAX SHELTERS**

Product Profile

The Taxpayer Relief Act of 1997 broadened the definition of "tax shelter" for purposes of the 20-percent substantial understatement penalty. Effective for items (e.g., deductions, deferrals, tax-free treatment) with respect to transactions entered into after August 5, 1997, a "tax shelter" is any entity, investment, plan or arrangement (e.g., partnership, joint venture, merger/acquisition, or other tax advantaged transaction) with "a significant purpose" (instead of "the principal purpose") of avoiding federal income tax. The preferable manner for a taxpayer to avoid this penalty for a tax shelter position is by **qualifying for the reasonable cause exception** to the penalty. Reasonable and good faith reliance by a taxpayer on a well-reasoned opinion of a tax professional can significantly enhance the likelihood of a client successfully qualifying for the reasonable cause exception. **In order to provide this protection, the opinion must conclude that there is a greater than 50-percent likelihood (i.e., that it is more likely than not) that the position will be upheld if challenged by the IRS.**

Our penalty opinion letter product consists of a careful review of a proposed return position followed by a written opinion letter concluding that the position is more likely than not correct. In limited instances, it also may be appropriate for KPMG to opine that it is more likely than not that the penalty will not apply (or, put another way, that the reasonable cause exception applies). In certain cases, such as where an opinion is provided by a promoter with an economic stake in the transaction, a concurring opinion by KPMG may be advisable. **Because of the tax law change, this product potentially has a huge market and can generate high-margin (and in many cases large fee) engagements when priced on a value-added, fixed-fee basis.**

As a general rule, we should not promote the issuance of an opinion letter on whether the penalty applies. Opining on whether the penalty applies (for example, that it is more likely than not that the substantial understatement penalty will not apply to the return position) generally does not afford clients any protection in their dealings with the IRS that is not already provided by opining that the return position is more likely than not correct. Notwithstanding, we do anticipate

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situations in which either a client requests such an opinion, or it will be appropriate to issue such an opinion.

Optimal Target Characteristics

The optimal target is a corporate or non-corporate client (e.g., individual, trust, LLC, or other non-corporate taxable entity) that plans to enter into a transaction with significant federal income tax risk, or that proposes to take a particular tax return position on a return that has not yet been filed with respect to a transaction with significant federal income tax risk that was entered into after August 5, 1997 (the effective date of the new definition of "tax shelter"). Corporate clients that entered into transactions with significant federal income tax risk before August 6, 1997 and that have not yet taken return positions for those transactions also could be strong opinion letter candidates in view of the tougher reasonable cause rules for corporations.

Typical Buyer

Tax Director or CFO.

Pricing and Fee Guidelines

The fee for an engagement involving **ONLY** the issuance of an opinion letter to enhance the taxpayer's position vis-à-vis the substantial understatement penalty should take into account a number of factors, including the complexity of the issues, the size of the transaction, and the risk that the penalty will be asserted. The **minimum fee** for an opinion letter concluding that a return position is more likely than not correct generally should equal 10 percent of the penalty exposure, depending upon the presence or absence of the factors noted above.

Example 1: A corporate client would like us to prepare a penalty opinion letter concluding that it is more likely than not that a \$3,000,000 deduction on the corporation's federal income tax return will be upheld if challenged by the IRS. Assuming a 35% federal income tax rate, if the deduction is disallowed, the underpayment of tax attributable to this deduction is \$1,050,000 (i.e., \$3,000,000 deduction x 35% tax rate). The penalty exposure is \$210,000 (i.e., \$1,050,000 tax underpayment x 20% penalty rate). The suggested fee for the opinion letter supporting this position would be approximately \$21,000 (i.e., \$210,000 penalty exposure x 10% fee), increased or decreased depending upon such factors as the size, risk and complexity of the transaction. Because in this case the size of the transaction is relatively small, the fee might be increased by 5 percent, so that the fixed fee agreed to in the engagement letter would equal \$32,000 (i.e., \$210,000 penalty exposure x 15%, rounded to the nearest \$1,000).

Example 2: The facts are the same as in the preceding example, except the penalty exposure is \$3,500,000, instead of \$210,000. In this case, a fixed fee of \$245,000 (i.e., \$3,500,000 penalty exposure x 7% fee) might be more appropriate given the larger size of the transaction, and depending upon the other factors involved.

A premium above the 10 percent fee guideline generally should be charged for an opinion that concludes that it is more likely than not that the penalty will not apply (as opposed to the position being correct), in view of the additional risk to KPMG for such opinions. Fee terms also should state that we will be compensated for time and expense in those situations in which we conclude following our review that we cannot issue a more-likely-than-not opinion letter.

To help ensure consistency in application of the pricing model for this product, the engagement terms for a penalty opinion letter-only engagement which proposes a fee of less than 10 percent of the penalty exposure must be approved, before the engagement letter is sent to and signed by the client, by the engagement partner's area LOB or DS tax leader. Additionally, to help us track our success in penetrating the marketplace, a copy of all penalty opinion engagement letters must be forwarded to the Tax Innovation Center (attention Sheila Butler) in Washington National Tax.

Also, all proposals to issue an opinion letter concluding that it is more likely than not that the penalty (as opposed to the tax position) will not apply are to be approved by Larry DeLap, the Partner-in-Charge of the Department of Professional Practice-Tax prior to issuance of the engagement letter.

Of course, if KPMG markets the underlying product (e.g., a tax advantage transaction), we often will issue an opinion letter as part of that engagement and it will be priced in accordance with the terms of that engagement. When we market the underlying product and provide a penalty opinion letter, the client generally should be advised to obtain a concurring penalty opinion letter to minimize the client's exposure to the substantial understatement penalty.

Service Delivery

Penalty opinion letters are designed to be marketed and delivered by local office client service engagement teams, in consultation with appropriate WNT personnel. **All opinion letters that involve transactions that may be considered tax shelters and that opine on the merits of a return position for purposes of the substantial understatement penalty are to be reviewed by a partner in the applicable technical resource group in WNT and by any of the following members of the Practice, Procedure and Controversy group in WNT before the opinion is issued: Mark Ely, Ken Jones, or Eve Elgin.**

Competitors' Product Assessment

Key Competitors: Large accounting firms and law firms.

Competitors' Strengths: Large accounting firms have a large client base, personal contacts, and strong marketing skills. Law firms may be able to opine on non-tax issues and there is the perception that information provided to law firms is more likely to be privileged. Both generally have the requisite technical skills for this product.

Competitors' Weaknesses: We are not currently aware of anyone actively marketing penalty opinion letters. We have an opportunity to be "first-to-market" with a structured penalty opinion letter product.

Product Toolkit

A product toolkit has been created to assist you with marketing and delivering penalty opinion letters. The toolkit, available through KMan at Services/Tax Services/Hot Tax Products/Tax Planning Strategies/Penalty Opinion Letters, contains the following items:

- Technical executive summary
- Prospecting letter for clients/targets
- Sample engagement letter
- Sample "on-the-merits" opinion letter
- Client Q&As (anticipated frequently asked questions for use as a sales tool)

Action Required by the Client Service Professionals

All client service professionals should identify all clients and major targets to whom this product should be presented. The following summarizes the action steps for selling and delivering a tax shelter penalty opinion letter:

1. Identify corporate and non-corporate clients/targets that have an item/will have an item with significant federal income tax risk (post August 5, 1997 transactions only for non-corporate targets) for which a return filing position has not yet been taken, and for which the penalty exposure for the position is in excess of \$100,000.
2. Discuss in a face-to-face meeting with the client/target our tax-shelter penalty opinion letter product. The technical executive summary and client Q&A documents included in the toolkit should be very helpful in preparing for and conducting these client/target meetings. Clients/targets with no current activity, but for whom items with significant federal income tax risk are anticipated, should be sent a personalized version of the prospecting letter (included in the toolkit).
3. For penalty opinion letter proposals for audit clients, discuss with the Audit partner, and the client if appropriate, the financial statement ramifications of the opinion letter. For example, if we conclude that the position has only a 51% likelihood of success, it may be necessary to "cushion" the tax provision relative to that position; however, if we believe the position has, for example, an 80% likelihood of success (even though we would still only issue a "more-likely-than-not opinion), documentation of that conclusion in the audit workpapers, as opposed to a tax provision cushion, may be all that is necessary.
4. Secure a signed engagement letter (a sample is provided in the toolkit) pursuant to the guidelines set forth above (generally a minimum fixed fee of 10 percent of the penalty exposure; LOB/DS area tax leader approval if less; DPP-Tax approval for proposals to issue

an opinion letter concluding that it is more likely than not that the penalty will not apply; forward a copy of the signed engagement letter to the Tax Innovation Center (attention Sheila Butler) in WNT).

5. Prepare the opinion letter, and have it reviewed by BOTH the appropriate technical group AND the Practice, Procedure and Controversy group in WNT prior to delivery to the client. If following your review and analysis (and consultation with WNT if appropriate) you conclude that we cannot issue a more-likely-than-not opinion, you should so inform the client immediately.
6. At the same time as delivery of the opinion letter, submit a bill requesting immediate payment for the amount set forth in the signed engagement letter. If an opinion letter will not be issued, a bill in an amount equal to time and expense for our review and analysis should be sent to client once you have communicated that we cannot issue the opinion letter.

Technical questions on penalty opinion letters should be directed to Mark Ely (202-467-3854), Ken Jones (202-467-3748), or Eve Elgin (202-467-3968) of the Practice, Procedure and Controversy group in WNT.

Doug Green,
National Partner-in-Charge,
Tax Products & Solutions

Distribution:
U.S. Partners
Tax Management Group

***Tax Product Alert* is a periodic publication of KPMG's Tax Practice and is edited by Mark A. Springer, Partner-in-Charge of the Tax Innovation Center. All issues of *Tax Product Alert* are available through KMan at Services/Tax Services/Tax Publications/Tax Product Alert.**

The information contained in *Tax Product Alert* is general in nature. Any technical discussion is based on authorities that are subject to change. The reader is responsible for evaluating and determining the applicability of the information contained herein to specific facts and situations. Additional due diligence to assess the viability of any strategy, issue, or opportunity presented in *Tax Product Alert* is required.

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Date: December 22, 1997
To: All U.S. Partners
Tax Senior Managers and Managers
From: Doug Green - New York
Subject: Tax Product Alert FY98-02

This Tax Product Alert announces the wider application of a high-margin tax product: Tax Shelter Penalty Opinion Letters -- a tax product that can be provided by local office client service engagement teams across all industry segments. Although we have historically provided tax shelter penalty opinion letters to our clients, we believe that the 1997 Tax Act change which significantly broadens the definition of a "tax shelter" for purposes of the federal 20 percent substantial understatement penalty creates a huge opportunity for KPMG. Many more clients/targets should now be in the market for a tax shelter opinion letter as a way to significantly enhance their ability to avoid the penalty for their "tax shelter" items (e.g., deductions/deferrals/tax-free treatment relating to partnerships, joint ventures, mergers/acquisitions, and other tax advantaged transactions).

As indicated in the Alert, to help ensure the consistent marketing and delivery of tax shelter penalty opinion letters, a product toolkit (including sample prospecting and engagement letters) has been created and is available via KMan to assist client service professionals in marketing and delivering this product. Please note that a standard pricing/fee model has been adopted for this product, and that in order to ensure consistent application of that model, exceptions to the pricing model must be approved, prior to being sent to and signed by the client, by the engagement partner's area LOB or DS tax leader. Because of its broad application, we expect that every LOB and DS tax partner and manager will have opportunities to actively sell and deliver this product. And to help us measure our success, Area Tax Leaders and Area DS PICs will track and report on the financial results for this product in their respective markets.

Since this product has broad application across all industry segments, please read the attached carefully and consider all clients and targets for whom this tax product may apply.

XX-002034

[SAMPLE CLIENT PROSPECTING LETTER]

[Insert date]

Private & Confidential

[Insert name]

[Insert address]

**KPMG Opinion Letters Can Provide Significant Protection
Against the Substantial Understatement Penalty**

Dear _____:

We would like to alert you to a recent legislative change in the definition of "tax shelter" that could significantly increase your [company's] exposure to the substantial understatement of income tax penalty for return positions. If the IRS challenges a particular tax return position and asserts the penalty, it would equal 20 percent of the underlying tax underpayment. A KPMG tax opinion letter can significantly enhance your position against this penalty.

Taxpayer Relief Act of 1997

The Taxpayer Relief Act of 1997 broadened the definition of "tax shelter" to include any entity, investment, plan or arrangement with "a significant purpose" of avoiding or evading federal income tax, effective for items with respect to transactions entered into after August 5, 1997. Previously, a "tax shelter" had to have "the principal purpose" of avoiding or evading tax. While the IRS has not yet issued any guidance explaining the meaning of this new definition of "tax shelter," the new definition potentially is so broad that it could encompass most tax planning ideas. This change is important because stricter penalty rules apply to tax shelters.

Tougher Rules for Tax Shelters

The substantial understatement penalty applies if there is an understatement of income tax on a return that exceeds the greater of 10 percent of the tax required to be shown on the return or \$5,000 (\$10,000 for a C corporation). See section 6662(d)(1) of the Internal Revenue Code. **[Add as part of this paragraph, whichever of the following two options applies:]**

[Option #1: Non-corporate taxpayer -- If the understatement of tax is due to a tax shelter item, a non-corporate taxpayer can avoid the penalty only by proving to the IRS that the taxpayer either (i) reasonably believed that the tax treatment of the item was more likely than not the proper treatment and that there was "substantial authority" for that

Permanent Subcommittee on Investigations

EXHIBIT #97b

XX-002029

treatment, or (ii) qualifies for the reasonable cause and good faith exception to the penalty.]

[Option #2: Corporate taxpayer -- If the understatement of tax is due to a tax shelter item, a corporate taxpayer can avoid the penalty only by qualifying for the reasonable cause and good faith exception to the penalty.]

KPMG Opinion Letters

A KPMG opinion letter can be of significant value in demonstrating to the IRS that you qualify for the reasonable cause and good faith exception. Treasury regulations provide that a taxpayer's reasonable reliance on a well-reasoned opinion of a qualified tax professional qualifies for the reasonable cause exception if, on the basis of all pertinent facts and circumstances, the reliance was reasonable and the taxpayer acted in good faith. To provide reasonable cause protection in the case of a tax shelter, the opinion must unambiguously conclude that there is a greater than 50-percent likelihood (*i.e.*, that it is more likely than not) that the tax treatment of the tax shelter item will be upheld if challenged by the IRS.

You may wish to consider obtaining an opinion letter from KPMG for items that may be considered to be attributable to "tax shelters" and for which you have not yet taken a return position, to significantly reduce your potential penalty exposure for these positions. We would be happy to work with you to identify items for which these tax opinion letters could be issued.

* * *

Please call [insert name of KPMG professional] at [insert number] or drop a note at the above address if you would like to discuss this matter further.

Sincerely,

KPMG Peat Marwick LLP

[Insert name]
[Partner/Principal]

XX-002030

**Q & A'S TO ADDRESS TARGET INQUIRIES ON TAX SHELTER
PENALTY OPINIONS**

Q1: How does the Taxpayer Relief Act of 1997 make tax opinions more necessary?

A1: The Act does this by forcing taxpayers to satisfy a higher standard in order to avoid the substantial understatement penalty. A well-reasoned opinion letter from a qualified tax professional is of significant help in proving to the IRS that the higher standard is satisfied.

Before the Act, taxpayers could avoid the penalty by proving that there was substantial authority for a position or by disclosing the position. After the Act, transactions are much more likely to be considered "tax shelters." This means that, to avoid the penalty, taxpayers must show that they reasonably believed the return position was more likely than not correct. The "more-likely-than-not" standard is more difficult to satisfy than the "substantial authority" standard.

Q2: Can I avoid the substantial understatement penalty without an opinion letter?

A2: Yes, but it's much more difficult. Without an opinion (assuming a tax shelter), you have to convince the IRS that you reasonably believed, at the time the return was filed, that the return position was more likely than not correct. This is an uphill battle. With an opinion, you have to demonstrate that you qualified for the reasonable cause and good faith exception to the penalty. This usually is much easier to show. The regulations provide that reasonable reliance on a well-reasoned opinion letter from a qualified tax professional generally constitutes reasonable cause.

Q3: What are the advantages of a written, as opposed to an oral, opinion?

A3: Proof. Treasury regulations require that an opinion be based on all pertinent facts, as well as reasonable assumptions, and apply the law to the facts. It is much more difficult to demonstrate that these opinion requirements were satisfied if the advice is not in writing.

Q4: Is an opinion letter an insurance policy against penalties?

A4: No. Opinion letters are of significant value in helping taxpayers demonstrate that they qualify for the reasonable cause and good faith exception to the accuracy-related penalty. However, the reasonable cause exception depends upon all facts and circumstances.

Q5: Will you give me an opinion concluding that the penalty will not apply?

A5: We generally issue opinions on the merits of a position, not on whether a penalty applies to the position. In the case of a non-corporate taxpayer in a tax shelter, an opinion on the merits is what helps the taxpayer show reasonable cause. An additional opinion on whether the penalty applies provides no additional protection to the taxpayer in its dealings with the IRS, but puts our firm at additional risk. In the case of a corporate taxpayer in a tax shelter, an additional opinion on the penalty might help in establishing reasonable cause, because the regulations refer to other factors (such as business purpose) that could affect reasonable cause. If you like, we can examine these other factors with the goal of issuing you an opinion that the penalty more likely than not will not apply. Our fee for that type of opinion letter will be higher than the fee for the opinion letter that only opines on the merits of your return position, because of our increased risk. We do not issue opinions that a penalty “will” not apply.

Q6: Another firm already has agreed to provide me with an opinion letter. Why do I need another opinion from you?

A6: This is a risk management decision. Some companies want more than one opinion letter on particularly aggressive transactions to better manage their penalty exposure. At other times, multiple opinions may be advisable if one of the firms issuing an opinion has an economic interest (e.g., as a promoter or contingent fee) in the transaction. Case law provides that an opinion of a professional advisor that is not independent of the transaction may be given less weight than other opinions.

Q7: Will a “more-likely-than-not” opinion provide protection from the negligence and disregard, as well as the substantial understatement, penalties?

A7: Usually, yes. However, if a position is contrary to a final or temporary regulation, the opinion would have to address that issue separately.

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TAX PRODUCT *Alert*

January 9, 1998

FY98-03

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Capital Transaction Strategies (CaTS)

Product Profile

The Capital Transaction Strategies (CaTS) team is a national group of Personal Financial Planning (PFP) professionals dedicated to delivering high fee/high margin engagements by identifying, marketing, and selling innovative strategies to high net-worth individuals who wish to minimize tax on the sale of an appreciated asset. CaTS team members work with local office professionals to ensure the client's goals and objectives are met, and innovative strategies are properly implemented.

The objective of every CaTS engagement is to deliver a customized portfolio of tax solutions that fit a client's risk profile. To achieve this objective, the assigned CaTS team member first analyzes a client's needs, objectives and tolerance for risk. Based upon the client's unique risk profile and stated objectives, a portfolio of strategies deemed appropriate for achieving the individual client's goals is designed and presented for his or her approval. The goal of using this portfolio strategy is to maximize engagement wins and the fees related thereto by offering clients/prospects a mix of tax planning strategies, ranging from non-aggressive to "cutting edge," rather than a single "take-it-or-leave-it" technique.

The tax solutions deployed by the CaTS team include proprietary KPMG Peat Marwick LLP strategies and unique ideas developed in concert with third parties. The CaTS team works closely with the PFP Innovative Strategies Board and the tax practice's Tax Innovation Center (TIC) in Washington National Tax to identify, research, and develop cutting edge tax planning strategies for high net worth individuals. Examples of KPMG proprietary strategies delivered by the CaTS team that you may have heard of include the Investment Diversification Vehicle and the Private Annuity Trust. External CaTS strategies include the Foreign Leveraged Investment Program, foreign trust strategies, derivative based products, and insurance strategies.

Permanent Subcommittee on Investigations

EXHIBIT #97c

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Optimal Target Characteristics

Every high net-worth individual seeking to sell a highly appreciated capital asset is a potential CaTS engagement target. As many of the strategies also have estate and gift tax opportunities, clients with an appetite to restructure their assets among their family members are also potential targets. Ideal target clients include individuals who own stock in a closely held corporation that may go public or be sold, and individuals seeking to cash-in on gains generated by the recent market run-up. In any event, a target's appreciated property should have built-in gain of at least \$5 million.

Recent Success Stories

Since the beginning of FY '98, CaTS engagements have generated over \$8 million in revenue for KPMG, including a \$1 million fee on a single engagement serviced through the Los Angeles office that resulted in approximately \$15 million in savings to the client. At the present time, the CaTS Group is working on approximately 20 opportunities across the country encompassing transactions valued from \$10 to \$300 million.

Pricing and Fee Arrangements

CaTS engagements use a two phase fee structure. During the first phase (screening phase) a CaTS team member analyzes a client's overall situation, assessing the client's objectives and risk tolerance, and examining the proposed transaction that precipitated the engagement. The customary fee for this phase is based on time plus out-of-pocket expenses, and generally ranges between \$5,000 and \$40,000. The second phase (implementation phase) consists of designing and implementing the chosen strategy(ies). The implementation phase is priced as a fixed fee, and is determined based upon projected results, engagement complexity, and resource utilization. If upon completion of the screening phase the client engages KPMG to perform the implementation phase, the screening phase fee will be credited against the fee charged for implementation.

Service Delivery

CaTS is marketed by a select group of PFP professionals. Gregg Ritchie, *Partner* (Warner Center), leads the CaTS team. The CaTS team members have been assigned responsibility by region, and consists of the following professionals:

Northeast

Larry Foster, *Partner* (New York)
(212)872-7725

Dale Baumann, *Senior Manager* (Charlotte)
(704)335-5565

Southeast

Jeff Eischeid, *Partner* (Atlanta)
(404)222-3180

Dale Baumann, *Senior Manager* (Charlotte)
(704)335-5565

Tracie Henderson, *Partner* (Atlanta)
(404)222-3134

Southwest

Mark Watson, *Partner* (Dallas)
(214)754-2232

Deke Carbo, *Partner* (New Orleans)
(504) 584-1050

Mid-Atlantic

Mike Watkins, *Partner* (Philadelphia)
(215)299-3943

John Gardner, *Senior Manager* (WNT)
(202)467-3870

Midwest

Robert Jordan, *Partner* (St. Louis)
(314)444-1487

Robert Pedersen, *Partner* (Chicago)
(312)938-5062

David Zaudtke, *Partner* (Minneapolis)
(612)305-5686

West

Gregg Ritchie, *PIC CaTS* (Warner Center)
(818)227-6905

Randy Bickham, *Senior Manager*
(Palo Alto)
(560)354-1445

The CaTS team members work closely with WNT technical resources, the Department of Professional Practice - Tax, and the Tax Innovation Center at WNT to help ensure that the marketed strategies have been technically scrutinized, approved for risk tolerance, and "productized" with standard implementation tools (e.g., engagement letters, implementation work plans, opinion letters, etc.).

Competitors' Product Assessment

Key Competitors: We are unaware of any competitor offering a comprehensive process for high net worth individuals similar to CaTS. However, national law firms, investment banking firms, and other Big 6 firms are potential competitors.

Competitors' Strengths: Investment Banks have well-developed targeting, and can readily bring "capital partners" to the table to implement strategies. Because attorneys can perform tax and legal work, law firms can offer a turn-key product on their own without the assistance of a second party, whereas we must coordinate with a law firm for any legal work (e.g., drafting documents) involved.

Competitors' Weaknesses: In general, competitors are not offering end-to-end solutions.

Action Required by the Client Service Professionals

All client service professionals should be on the look-out for clients and major targets that fit the target profile for CaTS. Specifically, a positive response to any of the following questions is indicative of a CaTS candidate:

- **Is the target negotiating the sale of a highly appreciated (potential gain of at least \$5 million) asset?**
- **Does the target own highly appreciated (potential gain of at least \$5 million) assets that, although not in the process of selling, he or she would consider selling if tax on the gain could be deferred, minimized, or eliminated?**
- **Does the target desire to transfer appreciated assets to family members who will entertain a subsequent sale?**

After identifying a potential CaTS target, you should contact the appropriate CaTS team professional identified above.

Doug Green,
National Partner-in-Charge,
Tax Products & Solutions

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Tax Management Group

Tax Product Alert is a periodic publication of KPMG's Tax Practice and is edited by Mark A. Springer, Partner-in-Charge of the Tax Innovation Center. All issues of *Tax Product Alert* are available through KMan at Services/Tax Services/Tax Publications/Tax Product Alert.

The information contained in *Tax Product Alert* is general in nature. Any technical discussion is based on authorities that are subject to change. The reader is responsible for evaluating and determining the applicability of the information contained herein to specific facts and situations. Additional due diligence to assess the viability of any strategy, issue, or opportunity presented in *Tax Product Alert* is required.

1965

Date: January 13, 1998
To: All U.S. Partners
Tax Senior Managers and Managers
From: Doug Green - New York
Subject: Tax Product Alert FY98-03

The attached Tax Product Alert announces a new tax product: Capital Transaction Strategies (CaTS) -- a tax product that is provided by a national group of Personal Financial Planning (PFP) professionals dedicated to delivering high fee/high margin engagements to high net-worth individuals and/or closely-held businesses seeking tax minimization on the sale of highly appreciated assets (greater than \$5 million of potential gain).

All client service professionals should proactively identify and target clients/prospects that are in the process of selling highly appreciated assets, might consider selling if gain could be deferred or minimized, or who wish to transfer assets to family members who would then sell the asset. Tax Product Alert FY98-03 describes CaTS more fully, and contains a contact list for CaTS members in each geographic area.

XX-002008

**What is CaTS?
(Capital Transactions Strategies)**

- I. Group of approximately 25 PFP professionals dedicated to
 - Development
 - Marketing; and
 - Implementation of strategies designed to provide options with respect to appreciated assets.
- II. Generally designed with individuals in mind.
- III. Portfolio approach.
- IV. Careful assessment of risk profile; matching of strategies with risk profile.
- V. Strategies designed to, for example:
 - Provide an investment opportunity with profit potential and incidental tax benefits (Opis, Blips, TRACT, etc.).
 - Tax deferral strategies (CRUT, IDV, etc.)
 - Transfer tax strategies designed to enable taxpayers to move assets into trust for family members with little or no gift or income tax consequences.
 - Strategies to provide alternative means of financing estate tax (TCLAT).

Proprietary Material
Confidentiality Requested

KPMG 0019558

Permanent Subcommittee on Investigations

EXHIBIT #97d

1967

- VI. Natural segue into IAS services after monetization of the assets.
- VII. Some strategies proprietary (at least for a while); some external (reviewed by KPMG professionals).

**Proprietary Material
Confidentiality Requested**

KPMG 0019559

1968

Date: January 28, 1998
To: All U.S. Partners
Tax Everyone
From: Doug Green - New York
Larry Delap - Palo Alto
Subject: Modifications to Penalty Opinion Letters Product

In Tax Product Alert 97-02, we announced a high-margin tax product: Tax Shelter Penalty Opinion Letters. Briefly, the 1997 Tax Act significantly broadened the definition of a "tax shelter" for purposes of the federal 20 percent substantial understatement penalty, thereby creating a huge opportunity for KPMG. Many more clients/targets should now be in the market for a tax shelter opinion letter as a way to significantly enhance their ability to avoid the penalty for their "tax shelter" items (e.g., deductions/deferrals/tax-free treatment relating to partnerships, joint ventures, mergers/acquisitions, and other tax advantaged transactions).

As indicated in the Alert, a standard pricing/fee model and engagement terms were adopted for this product. As originally communicated, the engagement process involved an analysis of the client's proposed treatment of a tax shelter item, followed by the preparation and issuance of a "more likely than not" opinion on that proposed position if appropriate. If following the analysis it is determined that a "more likely than not" opinion cannot be issued, the client would be so notified, and KPMG would be entitled to a fee equal to actual time and out-of-pocket expenses for the review. This fee structure was set forth in a single sample engagement letter included in the Penalty Opinion Letters toolkit (which is available on Kman).

It has now been determined that from a professional practice standpoint, the analysis and opinion letter elements of this tax product must be provided as separate engagements. The analysis should be performed under an engagement letter providing for time and expense. If an opinion letter can be issued, a separate engagement letter will need to be executed, and should provide for fee terms that should equate to approximately 10 percent of the penalty exposure, taking into account the fee earned from the analysis engagement. Sample engagement letters for both "phases" of the penalty opinion letter product have been posted to the toolkit. The toolkit is available on Kman at Services/Tax Services/ Hot Tax Products/Tax Planning Strategies/Penalty Opinion Letters.

Once again, since this product has broad application across all industry segments, please consider all clients and targets for whom this tax product may apply.

Permanent Subcommittee on Investigations
EXHIBIT #97e

XX-002033

1969

[SAMPLE TAX SHELTER OPINION LETTER]

[Insert date]

Private & Confidential

[Insert name]

[Insert address]

Dear _____:

You have asked for our views on certain federal income tax consequences of the [describe transaction]. These matters are discussed below.

I. FACTS

[Describe]

II. ASSUMPTIONS OR REPRESENTATIONS

[List, if any]

III. DISCUSSION

[Apply applicable law to the taxpayer's facts and any assumptions or representations listed above, and then arrive at one or more conclusions as to the legal merits of each position at issue.]

IV. CONCLUSION(S)

Based upon the facts and any assumptions or representations set forth above, it is our opinion that there is a greater than 50-percent likelihood (*i.e.*, that it is more likely than not) that the federal income tax consequences set forth below will be upheld if challenged by the Internal Revenue Service:

[Describe the federal income tax consequences for each position on which we are opining, limiting the conclusion, where appropriate, to a specific tax year.]

V. SCOPE OF THIS OPINION

Our advice in this opinion letter is limited to the conclusions specifically set forth in the portion of this opinion letter titled "CONCLUSION(S)" and is based on the completeness and accuracy of the above-stated facts, as well as any assumptions or representations. If

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EXHIBIT #97f

XX-002027

1970

any of the foregoing facts, assumptions, or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusion(s). In rendering our opinion, we are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and judicial and administrative interpretations thereof. These authorities are subject to change, retroactively or prospectively, and any such changes could affect the validity of our conclusion(s). Unless you specifically request otherwise, we will not update our opinion letter for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof. This opinion letter also is for your exclusive benefit and no other person or entity is entitled to rely upon it.

Very truly yours,

KPMG Peat Marwick LLP

[Insert name]
[Partner/Principal]

XX-002028

1971

[SAMPLE FEASIBILITY LETTER FOR
TAX SHELTER OPINIONS]

[Insert date]

Private & Confidential

[Insert name]
[Insert address]

Attention: _____, [Insert title]

We are pleased you have engaged us to provide certain tax services for [insert client's name]. This letter confirms the scope and related terms of our engagement.

Scope of Services

We will review the facts and legal authorities pertaining to the proposed federal income tax treatment by [insert client's name] of [describe the transaction] on its [insert year] federal income tax return in order to determine the feasibility of issuing an opinion letter concerning such proposed treatment.

Professional Fees

Our fees for this engagement will be based on a number of factors, including the complexity of the issues and the time required of the individuals who will be performing the services. We estimate that the fee for the feasibility analysis would be in the range of \$ _____ to \$ _____.

Other Considerations

Upon completion of our analysis we will discuss with you the feasibility of issuing an opinion letter with respect to the tax treatment of the transaction. If you should decide to proceed with an opinion letter, we will issue a separate engagement letter to confirm the scope and related terms of an opinion letter engagement.

KPMG Peat Marwick LLP's maximum liability to [insert client's name] arising for any reason relating to services rendered under this letter shall be limited to the amount of fees paid under this agreement. In the event of a claim by a third party relating to services under this letter, [insert client's name] releases and will indemnify and hold harmless KPMG Peat Marwick LLP and its partners, principals, directors, agents and employees from all such claims, liabilities, cost and expenses, except to the extent determined to have resulted from the intentional or deliberate misconduct of KPMG Peat Marwick LLP.

Please sign the enclosed copy of this letter to confirm our agreement and return it to us within 30 days. If you have any questions, please call me.

Permanent Subcommittee on Investigations
EXHIBIT #97g

XX-002025

1972

Sincerely,

KPMG Peat Marwick LLP

[Insert name]
[Partner/Principal]

Enclosure

ACCEPTED:

[Insert client's name]

XX-002026

1973

[SAMPLE CLIENT ENGAGEMENT LETTER FOR
TAX SHELTER OPINIONS]

[Insert date]

Private & Confidential

[Insert name]
[Insert address]

Attention: _____, [Insert title]

We are pleased you have engaged us to provide certain tax services for [insert client's name]. This letter confirms the scope and related terms of our engagement.

Scope of Services

We will review the facts and legal authorities pertaining to the federal income tax treatment by [insert client's name] of [describe the transaction] on its [insert year] federal income tax return. If, in the exercise of our independent professional judgment, we believe that there is a greater than 50-percent likelihood that your proposed treatment of this transaction for federal income tax purposes will be upheld if challenged by the Internal Revenue Service, we will issue an opinion to that effect. The opinion letter will set forth the pertinent facts, any assumptions, and the legal authorities upon which we rely.

We will base the conclusion(s) in our opinion letter on the facts and assumptions that you submit and will not independently verify this information. Inaccuracy or incompleteness of the information you provide could have a material effect on our conclusion(s). In issuing our opinion letter, we may consider, for example, the applicable provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial decisions. Any such changes could affect the validity of our conclusions. Unless you specifically request otherwise, we will not update our opinion letter for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof. Our opinion letter also will not be binding upon the Internal Revenue Service, any other tax authority or any court, and no assurance can be given that a position contrary to that expressed therein will not be asserted by a tax authority and ultimately sustained by a court. KPMG will have no liability to [insert client's name] solely as the result of a final determination of a taxing authority or an adverse court decision.

Professional Fees

Our fees for this engagement will be based on a number of factors, including the complexity of the issues and the time required of the individuals who will be performing the services. [Insert name of client] agrees to pay KPMG Peat Marwick LLP a fixed fee of [insert amount of fee] for the issuance of an opinion letter concluding that there is a greater than 50-percent likelihood that your proposed treatment of this transaction for

Permanent Subcommittee on Investigations

EXHIBIT #97h

XX-002019

federal income tax purposes will be upheld if challenged by the Internal Revenue Service. An initial payment of **[insert amount of initial payment]** is due and payable upon acceptance of this agreement. The remaining portion of the fee is due and payable upon delivery of the opinion letter. If, following our review, we determine that we cannot issue such an opinion letter, you agree to pay us for the time incurred for our review at our standard hourly rates plus out-of-pocket expenses.

Other Considerations

You also agree that written advice provided by KPMG Peat Marwick LLP to **[insert client's name]** is for **[insert client's name]** information and use only and will not be provided to any third party without the express written permission of KPMG Peat Marwick LLP.

KPMG Peat Marwick LLP's maximum liability to **[insert client's name]** arising for any reason relating to services rendered under this letter shall be limited to the amount of fees paid under this agreement. In the event of a claim by a third party relating to services under this letter, **[insert client's name]** releases and will indemnify and hold harmless KPMG Peat Marwick LLP and its partners, principals, directors, agents and employees from all such claims, liabilities, cost and expenses, except to the extent determined to have resulted from the intentional or deliberate misconduct of KPMG Peat Marwick LLP.

Please sign the enclosed copy of this letter to confirm our agreement and return it to us within 30 days. If you have any questions, please call me.

Sincerely,

KPMG Peat Marwick LLP

[Insert name]
[Partner/Principal]

Enclosure

ACCEPTED:

[Insert client's name]

XX-002020

1975

[SAMPLE TAX SHELTER OPINION ENGAGEMENT LETTER]

[Insert date]

Private & Confidential

[Insert name]

[Insert address]

Attention: _____, [Insert title]

We are pleased you have engaged us to provide certain tax services for [insert client's name]. This letter confirms the scope and related terms of our engagement.

Scope of Services

We will prepare an opinion letter pertaining to the federal income tax treatment by [insert client's name] of [describe the transaction] on its [insert year] federal income tax return. The opinion letter will set forth the pertinent facts, any assumptions, and the legal authorities upon which we rely.

We will base the conclusion(s) in our opinion letter on the facts and assumptions that you submit and will not independently verify this information. Inaccuracy or incompleteness of the information you provide could have a material effect on our conclusion(s). In issuing our opinion letter, we may consider, for example, the applicable provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial decisions. Any such changes could affect the validity of our conclusions. Unless you specifically request otherwise, we will not update our opinion letter for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof. Our opinion letter also will not be binding upon the Internal Revenue Service, any other tax authority or any court, and no assurance can be given that a position contrary to that expressed therein will not be asserted by a tax authority and ultimately sustained by a court. KPMG will have no liability to [insert client's name] solely as the result of a final determination of a taxing authority or an adverse court decision.

Professional Fees

Our fees for this engagement will be based on a number of factors, including the complexity of the issues and the time required of the individuals who will be performing the services. [Insert name of client] agrees to pay KPMG Peat Marwick LLP a fixed fee of [insert amount of fee] for the issuance of an opinion letter concluding on the likelihood that your proposed treatment of this transaction for federal income tax purposes will be upheld if challenged by the Internal Revenue Service. An initial payment of [insert amount of initial payment] is due and payable upon acceptance of this agreement. The remaining portion of the fee is due and payable upon delivery of the opinion letter.

Permanent Subcommittee on Investigations

EXHIBIT #97i

XX-002017

Other Considerations

You also agree that written advice provided by KPMG Peat Marwick LLP to [insert client's name] is for [insert client's name] information and use only and will not be provided to any third party without the express written permission of KPMG Peat Marwick LLP.

KPMG Peat Marwick LLP's maximum liability to [insert client's name] arising for any reason relating to services rendered under this letter shall be limited to the amount of fees paid under this agreement. In the event of a claim by a third party relating to services under this letter, [insert client's name] releases and will indemnify and hold harmless KPMG Peat Marwick LLP and its partners, principals, directors, agents and employees from all such claims, liabilities, cost and expenses, except to the extent determined to have resulted from the intentional or deliberate misconduct of KPMG Peat Marwick LLP.

Please sign the enclosed copy of this letter to confirm our agreement and return it to us within 30 days. If you have any questions, please call me.

Sincerely,

KPMG Peat Marwick LLP

[Insert name]
[Partner/Principal]

Enclosure

ACCEPTED:

[Insert client's name]

*Capital Transaction Strategies
("CaTS")
Training & Strategic Planning*

February 26, 1998

Proprietary Material
Confidentiality Requested

KPMG 0022290

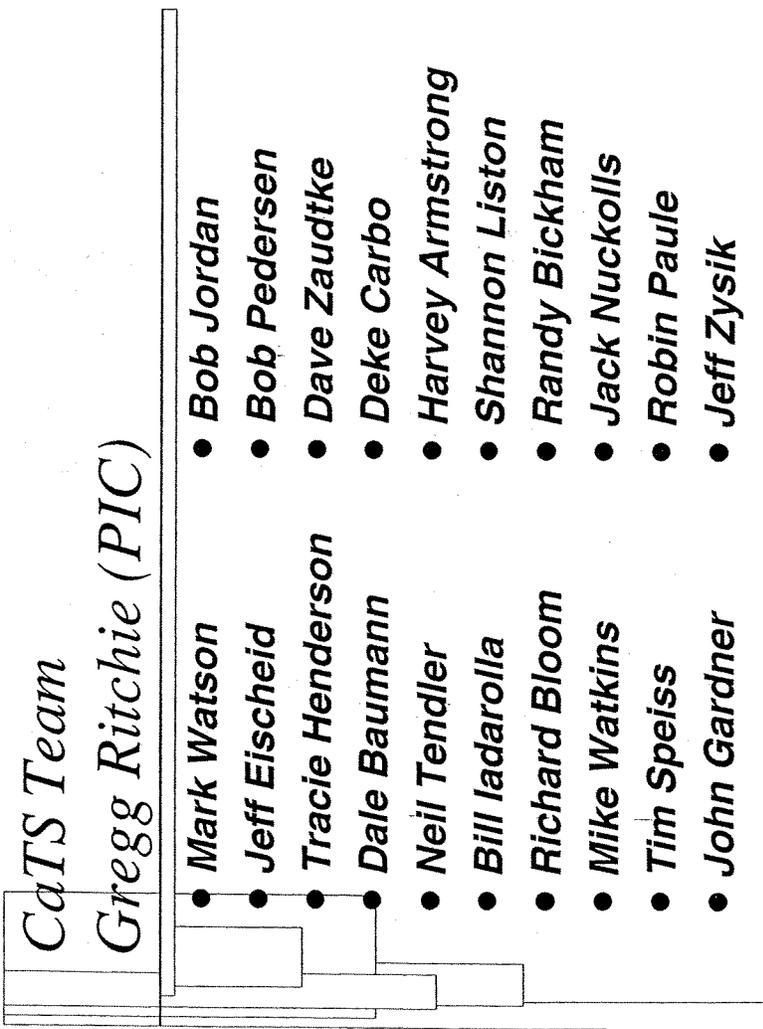
Permanent Subcommittee on Investigations

EXHIBIT #97j

FY98 Accomplishments

- *Branded "CaTS"*
- *Created model for "FCS"*
- *Increased team to 21 professionals*
- *\$11,500,000 Gross Revenue*
- *> 95% Contribution*
- *Adopted & executed FLIP strategy*
- *Via IS, created 3 new strategies*

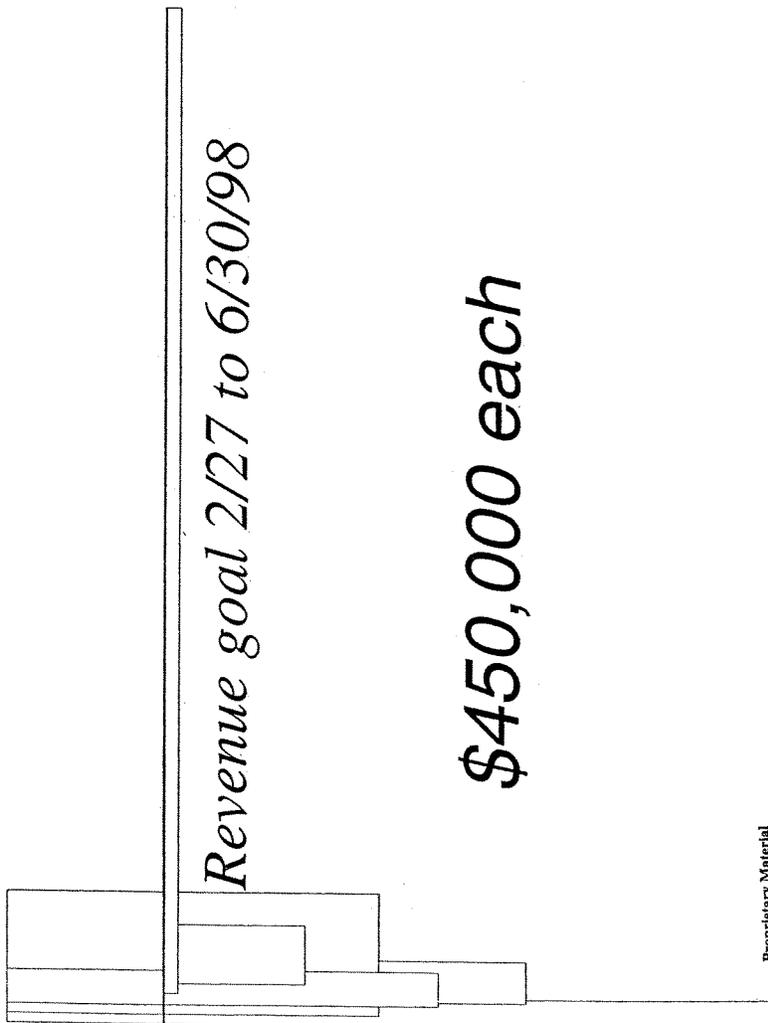
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Confidentiality Requested



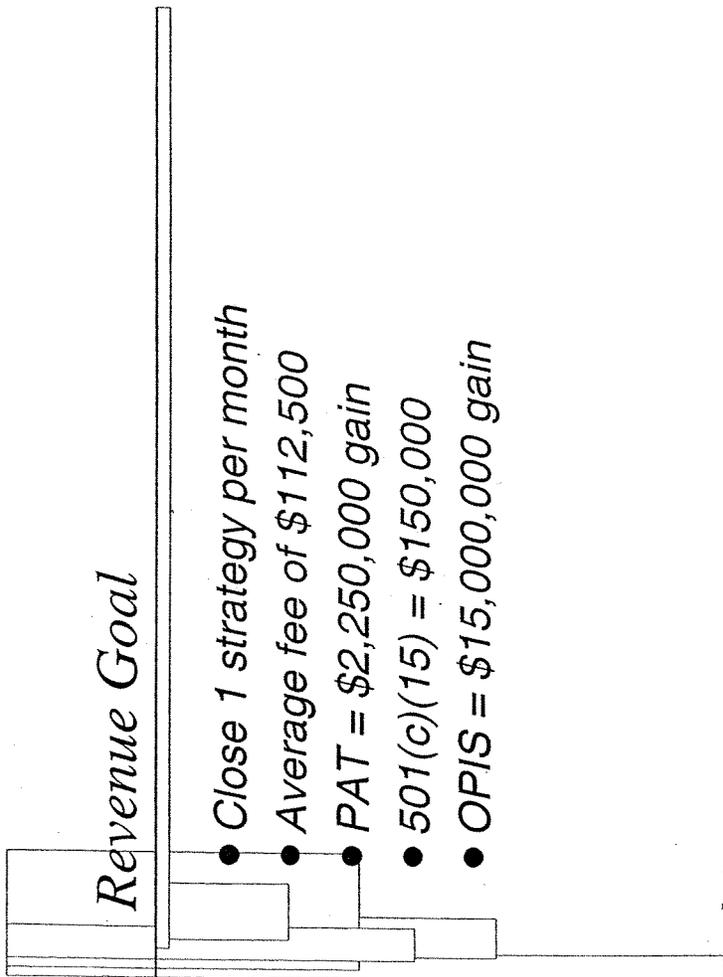
Your role- FY98

- *Time commitment*
- *Technical expertise*
- *Feedback channel from the field*
- *Primary marketing of CaTS in your area*
- *Area Targeting*
- *Area Sales of strategies*
- *Area Policeperson*

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Confidentiality Requested

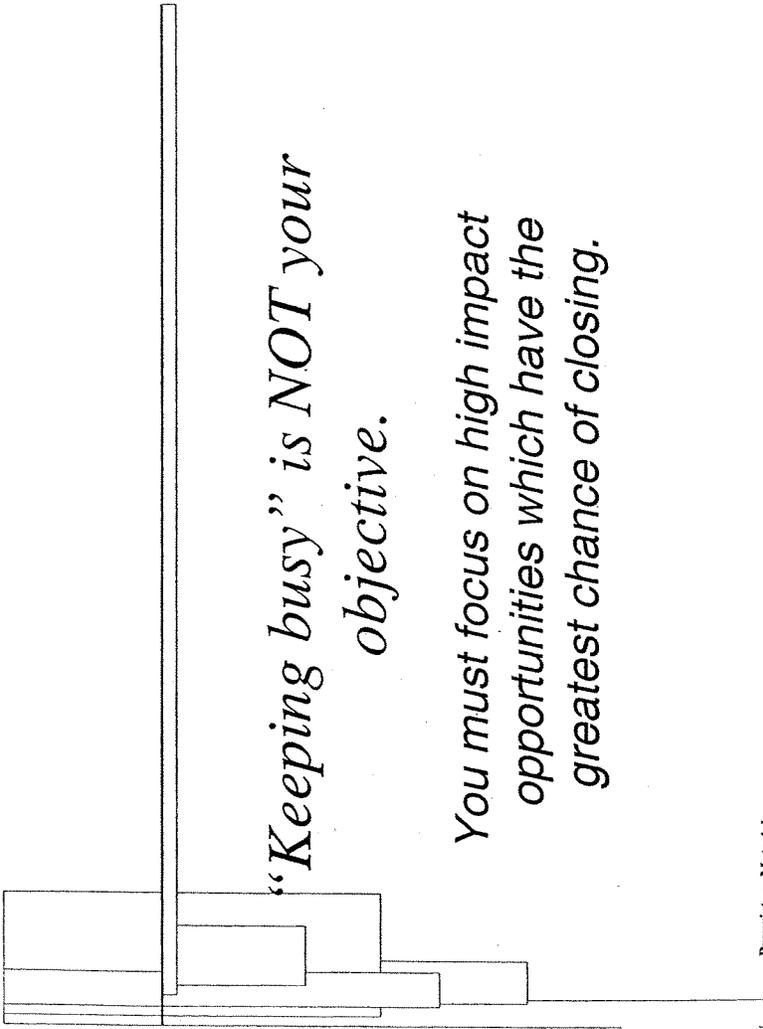


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Not Your Primary Job

- *Create ideas*
- *Packaging resources*
- *Deal with DPP-Tax*
- *Increase Personal Revenue*

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“Keeping busy” is NOT your objective.

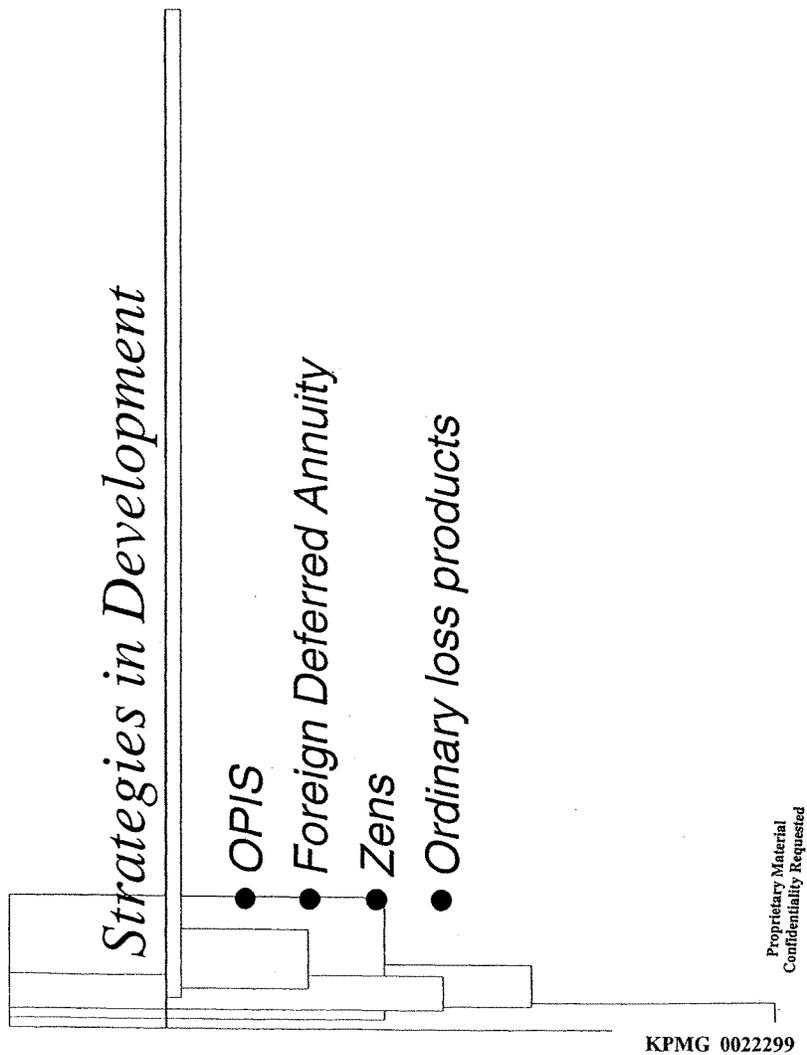
You must focus on high impact opportunities which have the greatest chance of closing.

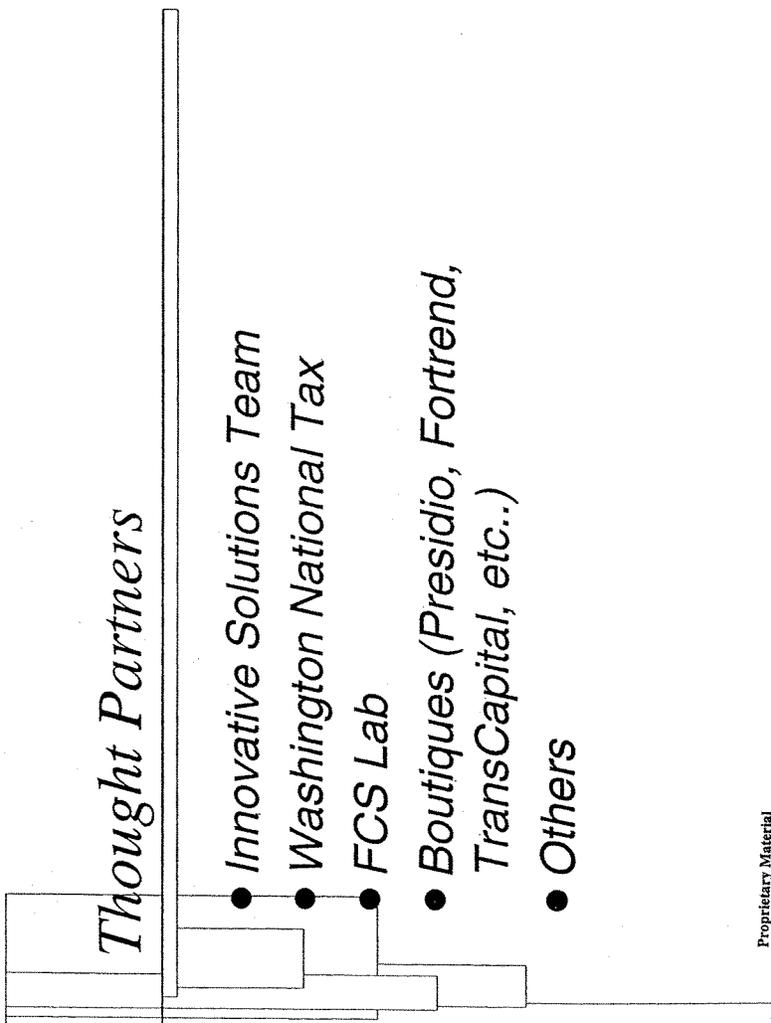
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Current Strategies

- *Private Annuity Trust ("PAT")*
- *Tax Exempt Insurance Company*
- *"Mixing Bowl"*
- *"Midco"*
- *Others Noted in CaTS Resource Book*

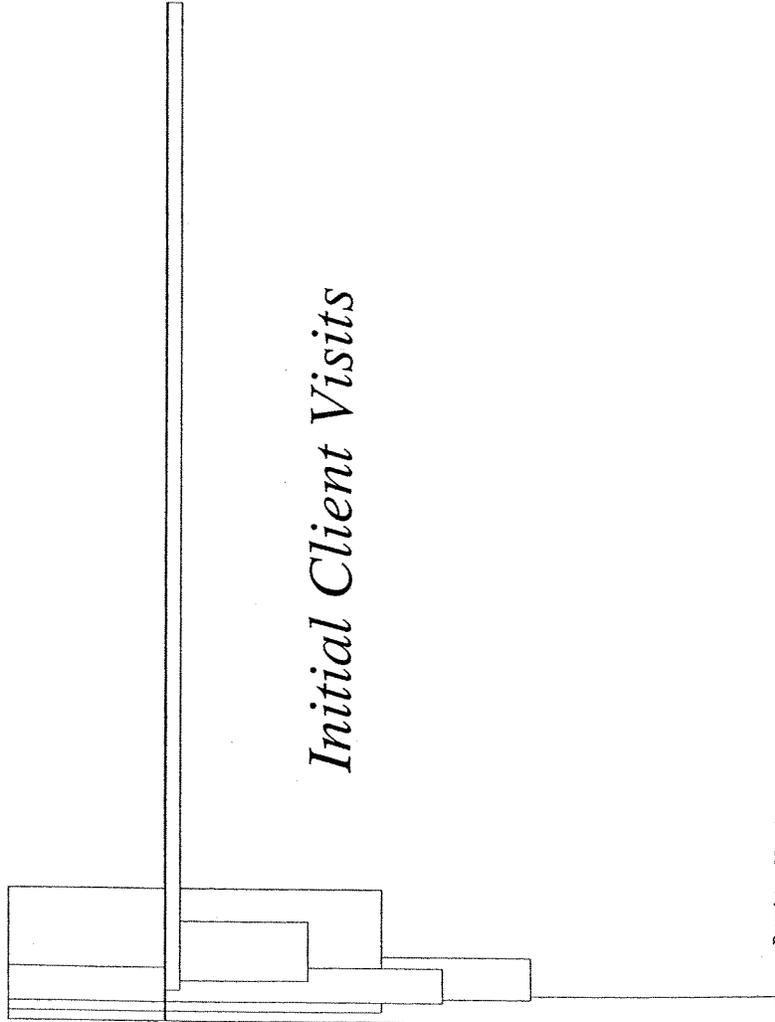
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Initial Client Visits

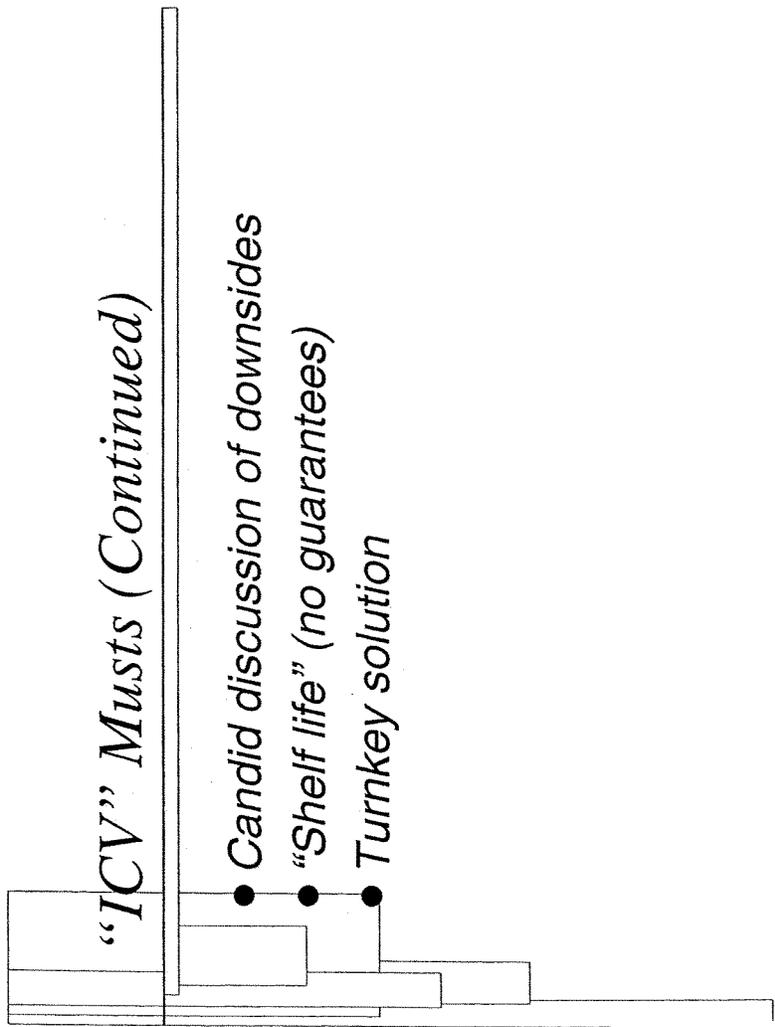


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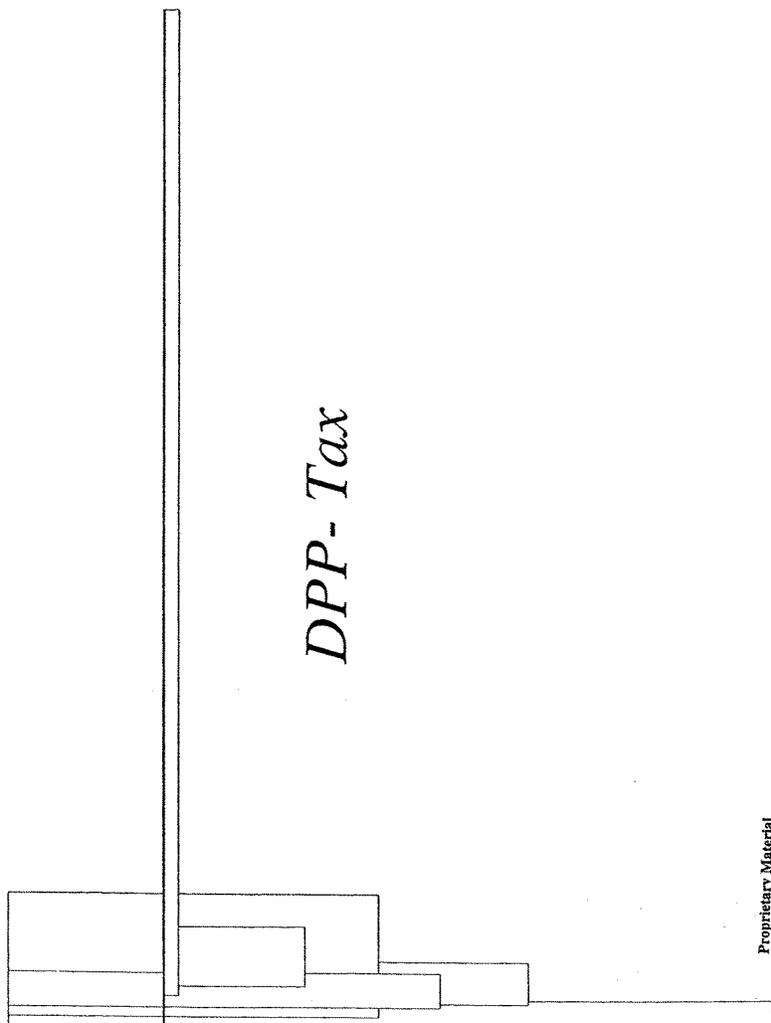
Initial Client Visit (“ICV”) Musts

- *Introduction of team*
- *Benefits to client*
- *Fee Arrangement (client commitment)*
- *General marketing of product*
- *Implementation (issues, timing, disclosures, etc.)*
- *Opinion letter (uses and abuses)*

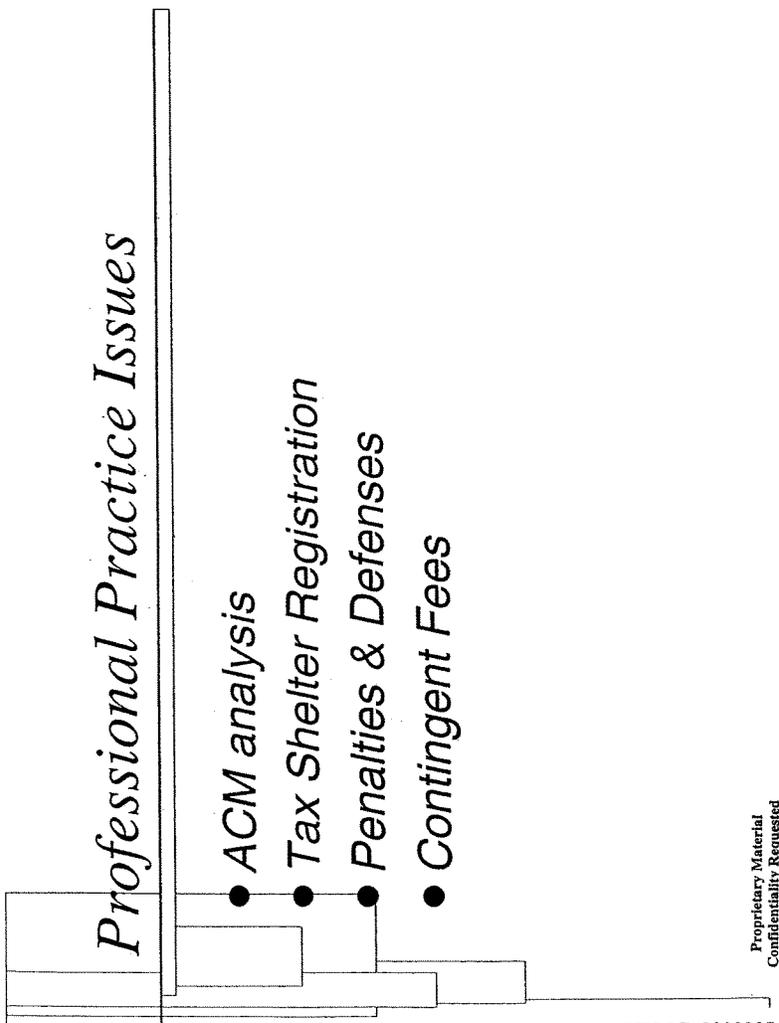
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DPP - Tax



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Confidentiality Requested



Proprietary Material
Confidentiality Requested

Tax Shelter Registration

- *Section 6111(c)*
- *Aggregate deductions exceed 2x amount invested; and*
- *substantial investment (>\$250k and 5 or more investors)*
- *Income tax avoidance a significant purpose*

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1994

Redacted by the
Permanent Subcommittee
on Investigations

KPMG 0022307
KPMG 0022308
KPMG 0022309
KPMG 0022310
KPMG 0022311
KPMG 0022312
KPMG 0022313
KPMG 0022314
KPMG 0022315
KPMG 0022316

Frequently Encountered Sales Issues in ACRA and Sub-ACRA Strategy Presentations

- The following presentation poses questions and provides answers to issues that frequently arise when preparing for and presenting the ACRA and Sub-ACRA strategies to clients. The presentation covers issues from a sales perspective, such as how to best approach a potential client, and which attributes define a company as a good prospect for this strategy. The presentation also provides the questions and answers to issues that clients often raise during an ACRA or Sub-ACRA sales presentation.

This presentation is for internal use only.



1996

BDM TUTORIAL

March 4, 1999

- Topics:
 - ACRA (Acquisition Cost Recovery Analysis)
 - Sub ACRA (Subsidiary Cost Recovery Analysis)
- Ownership
 - National M&A Tax Practice
 - 9 partners 40 professionals
(DC, NYC, Boston, Chicago, Atlanta, DFW, LA, SF)



XX-000996

**How should I approach a prospect?
Who should I contact (decision maker)
and what is the short solution pitch I
need to give?**

- Best approach is by phone as a letter will not fully convey, as an initial matter, the benefit of the solution.
- The “short pitch” involves:
 - the ability to deduct/amortize costs incurred, in an acquisition by both the acquiring and target corporation
 - absent our work, these items may not be deductible.
 - Benefit: Reduction in taxes paid

What are the market issues that made the solution particularly relevant and that can be used to create urgency from the buyer?

- High amount of acquisition activity over the past few years
- Possible extension of the amortization period from 5 to 15 years.
- IRS attempts to capitalize internal M&A costs

**How should I qualify a prospect?
What questions should I be asking the
prospect to be sure that they fit the
desired profile?**

- A good ACRA prospect is one that:
 - Has just acquired all the stock of another corporation, and
 - The acquirer does not have a net operating loss
- A good Sub ACRA target is:
 - A corporation, without a loss that has done a number of acquisitions
 - The acquisitions took place more than two years ago.
 - The target was a public holding company, with no current public debt.

2000

What benefits does this strategy deliver? Why should the prospect be interested? How will our strategy help?

- The strategy reduces tax expense
- Enhanced cash flow allowing for faster debt repayment, cash for dividends, or cash for expansion/acquisitions



XX-001000

2001

**Why KPMG? What does KPMG offer
that no one else is offering?**

- Experience (50+engagements)
- Reasonable tax position backed by opinion
- National/International teams
- Technical support from WNT



XX-001001

Common objections--What resistance will we meet from the prospect?

- “Do it myself”
 - Retort: Not sufficient resources to accomplish the task. Time consuming and fact dependent
- IRS Challenge
 - IRS position of what is “final” is not “real world view”
- “It will trigger an audit”
 - Not any more than any other position taken. No need for specific disclosure on tax return

2003

Implementation Timetable

- Usually takes 2-3 months to accomplish
- Need to work with investment bankers who worked on the deal
- Need to interview key personnel of both the target and acquiring corporation



XX-001003

2004

Pricing Model

- 10% of risk adjusted benefit
 - No escrow
 - No amount earmarked to defending the position. That is a separate fee



XX-001004

2005

Tax Idea Awards Program
5/13/99

The following outlines recommendations for a Tax Idea Awards Program, the purpose of which is to encourage tax professionals in the field to submit leverageable ideas and related material to the Tax Innovation Center (TIC). The recommendations are those of the following individuals: Joe Davis, John Kinney, Joe Maiorano, Marsha Peters, Nilesh Shah, Mark Springer.

Presently, the TIC sends a thank you note and communicates with the Idea Submitter as to the status of his or her idea as it moves through the product development process.

Recommendations:

1. **Thank you note.** At its weekly meeting, the TIC Leadership Team (defined in the Tax Product Development Process Manual) reviews and acts on all Idea Submission Forms submitted that week. The current members of the TIC Leadership Team who provide input on submitted ideas are partners Mark Springer and Marsha Peters and senior managers Phillip Galbreath and Violet Goodheart.

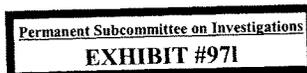
If an idea has not already been considered for development it is forwarded to the product group that should take the lead in considering it for development. The TIC sends a thank you email message to the Idea Submitter with a copy to the Idea Submitter's performance manager (if the performance manager's name was entered on the Idea Submission Form).

If the idea has already been considered, the TIC sends an email message to that effect to the Idea Submitter.

2. **Light Bulb award ("Tax Innovation Award").** The product group then evaluates the idea for technical merit and revenue potential. A decision is made to (1) develop the idea into a product, (2) refer the idea to the Tax Services Idea Bank (TSIB), or (3) reject the idea for not having technical merit. After this decision is made, the TIC sends the Idea Submitter another message indicating the path the idea is taking.

If the idea goes either to the TSIB or into product development, the TIC sends a message to that effect by regular mail, along with a "trinket" such as a Light Bulb Paperweight engraved with "KPMG Tax Innovation Award" (copy of message to performance manager). If the idea is rejected as not having technical merit, the TIC sends a positive thank you email message to that effect to the Idea Submitter with a copy to the performance manager.

Ideas that are improvements to existing products or Tax Services Ideas are treated the same as new ideas.



XX-002011

2006

If more than one person submits the same idea, generally the award would go only to the first Idea Submitter. However, the TIC Leadership Team would have the discretion to make multiple awards, depending on the circumstances, keeping in mind that we should err on the side of giving out more rather than fewer awards.

3. **Cash Spot Award.** The Idea Submitter receives a cash award when (1) the idea is posted to the TSIB or (2) a Tax Product Alert is issued (or the product is launched as a Tier III product).

The TIC directs office accounts to issue a check (net of withholding) to the Idea Submitter. The TIC prepares a letter of congratulations from the National Partner in Charge-Tax Product Development (currently Mark Springer) with copies to the Idea Submitter's performance manager, Business Unit PIC, Area Managing Partner-Tax, and, if appropriate, area product PIC. The letter explains that this Spot Award is given independent of the firm's regular incentive award program. The TIC sends the check and all copies of the letter to the Idea Submitter's BUPIC or area product PIC, as appropriate, for presentation to the Idea Submitter in person. After award is presented the BU/area product PIC mails the copies of the letter.

Amount of Award. The Spot Award amounts for TSIB ideas and TPA ideas are different. Recommendation is \$1,500 maximum for TSIB ideas and \$5,000 maximum for TPA ideas. (See separate excel spreadsheet showing potential program costs and revenues using these amounts. Note that these are maximum award amounts—actual awards may be less.) The TIC Leadership Team determines the amount of the award for a particular idea (up to the approved dollar amount) and may consult with product development personnel from the respective product group in making this determination. The TIC will develop criteria to help evaluate submissions and determine actual award amounts.

If a TSIB idea is "upgraded" to a product, the Idea Submitter should get a "catch-up" Spot Award.

4. **Public recognition.** To give additional recognition to Idea Submitters and to publicize the program:
 - The names and offices of Idea Submitters are listed on the face of the *Tax Services Idea* or *Tax Product Alert*.
 - The TIC Homepage posts a list of award winners and dollar amounts of awards.
 - The names and offices of new award winners are published in *InfoTax*.
5. **Incentive award.** If the idea generates substantial revenue (e.g., product exceeds the \$3 million threshold) the Idea Submitter could receive a substantial additional bonus through the firm's regular incentive compensation program.
6. **Effective date.** Program will be effective for ideas submitted to the Tax Innovation Center on or after July 1, 1999, with no ending date designated. This will give the

2007

TIC time to get the ideas currently being worked on posted to the TSIB (these are ideas from post-busy season checklists, Items of Interest, Tax Services Bulletins, etc.). Also, professionals in the field should be focused on selling and delivering work from now through June 30.

7. **Source of funding.** WNT budget should cover the cost of the Light Bulb awards. The Cash Spot Awards should be charged to the product group and geography of the award recipient as a payroll cost.
8. **Eligibility.** All tax professionals are eligible for Light Bulb awards. Each permanent Tax Lab participant and WNT personnel participating in product development should receive a Light Bulb award at the end of the fiscal year rather than for each product. Partners, WNT managers and staff, and regular Tax Lab participants are *not* eligible for Cash Spot Awards. All other tax professionals are eligible for Cash Spot Awards.

If an idea is submitted by a team, each team member should get a Light Bulb award and share in a Spot Award. It will be up to the TIC Leadership team as to whether each team member should get the full Spot Award amount or a lesser amount. Thus, in some cases more than the maximum Spot Award amount may be awarded for a particular idea, but no more than the maximum to any one person. Generally, the award will be split among the team members.

kpmg

Page 1
 All U.S. Tax Professionals
 June 21, 1999

Tax Idea Awards Program

Overview

The Tax Idea Awards Program, effective for ideas submitted to the Tax Innovation Center on or after July 1, 1999, is a real-time cash awards program designed to encourage tax professionals to share their leverageable tax solution or service ideas.

Program Terms

Award Levels and Amounts	An award of up to \$5,000 for Tax Solution ideas and up to \$1,500 for Tax Service Idea Bank ideas. These are maximum award amounts—actual awards may be less (see below for selection criteria).
Who is eligible	U.S. tax managers and staff, except permanent Tax Lab participants and Washington National Tax personnel, are eligible for Tax Idea Awards.
How to qualify	Complete fully the <i>Idea Submission Form</i> available on the Tax Innovation Center Home Page and forward it to the “US-TAX INNOVATION CENTER” Outlook mailbox, along with any leverageable documents related to the idea. Forms that are not completed fully will be returned.
Selection Process and Notification	<ul style="list-style-type: none"> The Tax Innovation Center and the appropriate Washington National Tax functional group(s) will screen all Idea Submission Forms for solution/service development potential. You will be informed as to which group(s) is screening your idea; you may be asked to provide additional information to assist with this review. If the idea is ultimately posted as a Tax Service Idea or released as a Tax Solution, you will receive a Tax Idea Award.
Development Selection Criteria	<ul style="list-style-type: none"> In deciding which ideas will enter development the Tax Innovation Center will screen all ideas for technical merit, uniqueness, leverageability, revenue potential, and risk management. Ideas that are already in the Tax Service Idea Bank or the Tax Solutions portfolio, or that are currently under development, are not eligible for an award. Ideas that are significant improvements to existing Tax Solutions or Tax Service Ideas are treated the same as new ideas. The primary distinction between a Tax Solution and a Tax Service Idea is revenue potential. Technically sound ideas for which it can be clearly shown there is revenue potential of at least \$5 million per year

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 All U.S. Tax Professionals
 June 21, 1999

	(or \$5 million in total if there is likely to be a limited deployment period) generally will enter the Tax Solution development process.
	<ul style="list-style-type: none"> Technically sound ideas with revenue potential less than \$5 million will generally enter the Tax Service Idea Bank development process.
Criteria for Determining Award Amounts	<p>In deciding the amount of a Tax Idea Award the Tax Innovation Center evaluates an idea using the following criteria:</p> <ol style="list-style-type: none"> Completeness of Idea Submission Form and toolkit items submitted and cooperation by idea submitter(s) with Washington National Tax in developing the idea; Revenue and profit potential; Uniqueness of idea.
Team Awards	<p>If more than one person participates in an idea submission, each idea submitter is eligible for up to the full amount of a Tax Idea Award. Thus, the total amount awarded to a team may exceed \$5,000 (for Tax Solutions) or \$1,500 (for Tax Service Ideas).</p>
Timing and payment of Awards	<ul style="list-style-type: none"> You will receive a cash award when (1) your developed idea is posted to the Tax Service Idea Bank or (2) a <i>Tax Solution Alert</i> is issued (or the solution is otherwise deployed without issuing a TSA). Payment is subject to appropriate federal and state withholding. Please note that while we strive to complete the development of all selected ideas as quickly as possible, timing is difficult to predict. Please be patient.

Frequently Asked Questions

- Q: Does the Tax Idea Awards program replace the current incentive compensation program?
- A: Not at all. Rather, this program complements the incentive compensation program. It allows specific, predictable, and real-time awards for sharing your solution and service ideas.
- Q: If my idea is accepted for development into a Tax Solution or Tax Service Idea, why do I have to wait for the solution or idea to be released before I can get a cash award?

2010

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- A: A number of things can happen from the time an idea is initially selected for development until it becomes a Tax Solution or Tax Service Idea (e.g., technical issues may arise, beta testing may change the estimate of revenue potential, or the Department of Professional Practice ultimately may not approve the idea). Also, we hope this policy will encourage idea submitters to send in as complete a package as possible to speed development.
- Q: Why aren't Tax Lab participants and Washington National Tax personnel eligible for Tax Idea Awards?
- A: An important ongoing responsibility of Washington National Tax and the Tax Labs is idea generation and development of those ideas into leverageable solutions and services. A major purpose of the Tax Idea Awards program is to provide an incentive for tax professionals who do not normally participate in solution and service development to do so.
- Q: How can I track the status of my idea?
- A: The Tax Innovation Center will notify you each step of the way as your idea is screened and as it moves through the development process. And because it's your idea, you may be called upon to assist in the development. You will be given the name of the Washington National Tax manager or partner responsible for your idea. You can also inquire about your idea at any time by sending a message to the US-Tax Innovation Center Outlook mailbox.
- Q: Who should I contact with questions or comments about Tax Idea Awards?
- A: Send your question or comment to the US-Tax Innovation Center Outlook mailbox or contact any one of the following individuals: Mark Springer (202-533-3076), Marsha Peters (202-533-3074), or Sheila Butler (202-533-3880).

XX-002016

2011



new

From: Sritz, William L
Sent: Tuesday, July 13, 1999 3:11 PM
To: Maxfield, W. B
Subject: FW: First Union RFP

-----Original Message-----

From: Gurnan, John M
Sent: Tuesday, March 23, 1999 6:45 AM
To: Sritz, William L; Conway, Michael A; DeLap, Larry; Lican, Jerry R; Brawley, David F; Seiden, David M
Subject: RE: First Union RFP

The summary captures the final points raised in our discussion.

-----Original Message-----

From: Sritz, William L
Sent: Monday, March 22, 1999 4:31 PM
To: Conway, Michael A; Gurnan, John M; DeLap, Larry; Lican, Jerry R; Brawley, David F; Seiden, David M
Subject: First Union RFP

Gentlemen:

The following is a summary of the conclusions and related stipulations that resulted from our conference call this morning. I would appreciate your comments regarding the following if you find it to be in any way inaccurate. Background information related to the details of the RFP are attached including a corrected letter to Larry Delap dated March 24, 1999 that summarizes KPMG's services envisioned by the RFP as well as correspondence with Larry Delap that discusses various issues associated with those services.

In the conference call, we concluded that our services envisioned under the terms of the RFP would not impair independence as long as the following holds true:

- 1) KPMG must become one of several qualified providers/advisors based on some prequalification criteria.
- 2) First Union must provide the customer more than one advisor to choose from when KPMG is presented to the customer as a possible advisor.
- 3) The customer must select the advisor (not First Union).
- 4) If KPMG is selected by the client, KPMG must go through its normal client evaluation process as well as its normal due diligence process in order to develop information.
- 5) The customer must be made aware that the service (strategy) could be delivered without First Union.
- 6) KPMG must issue its own engagement letter and with no price dependency on other parties (i.e. First Union).
- 7) If KPMG's fee will be reduced for work performed by other parties, that reduction must be based on reasonable guidelines, and the engagement letter must spell out the work that will be performed by KPMG as well as other parties in accomplishing the required tasks.
- 8) KPMG can not pay First Union a referral fee or commission.
- 9) KPMG can not share joint and several liability with First Union.
- 10) There can be no dependency between KPMG and First Union in being able to deliver this service/strategy.

It is anticipated that on a go forward basis, this relationship between KPMG and First Union will be discussed with the audit committee under business relationships. << File: FUDELAP.DOC >> << File: DELAP2.DOC >> << File: RFP1.DOC >>

1

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EXHIBIT #97n

KPMG 0036575

2012

*Innovative Strategies
FY'00 Business Plan*

July 15, 1999

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EXHIBIT #970

Table of Contents

- I. Definition of Innovative Strategies (“IS”)
- II. Current & End State of IS
- III. Marketplace trends
- IV. Overview of the Competition
- V. Market Strategy
- VI. Human Resources
- VII. Potential Investments
- VIII. Structure and Leadership
- IX. Plan Summary

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What is IS?

- *Team of specialized PFP professionals delivering integrated solutions for individual sellers of appreciated property.*
- *IS approach creates a “portfolio” of innovative tax strategies by linking tax “risk” of individual strategies with potential “return”.*
- *Includes income and transfer tax strategies as appropriate for the seller.*
- *Dovetails with investment portfolio architecture following sale.*
- *Provides innovative KPMG and external strategies.*

2014

KPMG 0026451

Buyers

- ◆ Individuals owning appreciated property with gains in excess of \$5 million.
- ◆ Closely held businesses entertaining the sale of the business.
- ◆ Closely held businesses entertaining an Initial Public Offering.

2015

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Benefit of Products and Services

2016

Benefit to our Clients:

- ◆ Provides significant increase in the after tax proceeds from the sale of property.
- ◆ Allows property to be allocated among family members at reduced transfer tax rates.

Benefit to the Firm:

- ◆ Significant value-added fees.
- ◆ Generally leads to full service engagement by family following the transaction.
- ◆ Provides key officers/owners of large KPMG clients with innovative ideas leading to added satisfaction.

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Current State

- ◆ Branded the “IS” practice and approach- both inside and outside KPMG.
- ◆ Grew IS team to 25 PFP partners and managers across the country.
- ◆ Local engagement teams encouraged to introduce IS team to assist in planning for the transaction.
- ◆ Significant revenue generated (> \$28 million) in FY'99 with contribution > 90%. Leading product was only available for 3 months in this year.
- ◆ Contact with outside advisors (lawyers, asset managers, etc...) has led to significant opportunities with non-clients.
- ◆ Created 2 new strategies in FY'99. Some difficulty encountered in being quick to market with new ideas.
- ◆ Competition seen from boutique tax advantaged firms and select Big 5.

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End State

- ◆ Strong economic growth and continued Bull Market should provide significant opportunities in coming years.
- ◆ Practice will only be as good as our new ideas.

Today	↑	Tomorrow (2001)
• \$28 million revenue	↑	• \$50 million revenue
• 200% revenue growth	↑	• 30% revenue growth
• 25 professionals (part-time in PFP)	↑	• 50 professionals (housed in PFP)
• 4 FTE partners	↑	• 6 partners

Not a player ↑ A dominant player

\$100 Million in 5 Years

Top Line Focus CaTS Revenue by Priority Product

	Incubator SMI			
	FY98	FY99	FY00	FY01
Midco Strategy	1.5	.5	1	2
OPIS Strategy	8	24	1	--
Boss Strategy	--	--	--	30
BLIPS Strategy	--	--	25	--
InsCo	NIL	.5	.5	1
TRACT	NIL	2	5	5
IDV/PAT	1.5	.5	.5	1
West	--	--	3	5
External Strategies	.5	.5	2	6
Total	11.5	28	38	50

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Top Line Focus IS Revenue By Priority Industry

2020

Category	Incubator			
	FY98	FY99	FY00	FY01
PFP	6.5	28	38	50
International	5			
Total	11.5	28	38	50

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Top Line Focus IS Revenue- Geographic Center

Category	SMI		Incubator	
	FY98	FY99	FY00	FY01E
Midatlantic				
Midwest				
Northeast				
West				
Southeast				
Southwest				
SALT				
IS (includes TTM & ECS)		4		
PFP		7.5	28	38
Total		11.5	28	38
				50

KPMG 0026458

IS Resource Map

Incubator FY98 FY99 FY00 FY01					
Category	2	3	4	6	
Partners	2	4	4	6	
Management Group	2	4	4	6	
Staff	--	--	--	--	
Total	4	7	8	12	
Revenue Per Partner	\$5.8	\$9.3	\$9.5	\$8.3	
Revenue Per Professional	\$2.9	\$4.0	\$4.7	\$4.2	

* reflects full-time equivalents

Turnover will be monitored

Marketplace Trends Projection of Market

Market Size	FY'00	FY'05
1. Capital Transaction Strategies	\$ 90 Mil.	\$200 Mil.

2023

Based on Estimates by Subject Product Leaders
and Analysis of Total Tax Services Market

KPMG 0026460

Market Trends - Factors Driving Business Success

- ❖ Strong economic conditions leading to sales of businesses.
- ❖ Bull market.
- ❖ Industry consolidations in Financial Institutions, Telecommunications, Automotive, and other.
- ❖ Strong IPO marketplace.
- ❖ Increase in age of privately-held business owners.
- ❖ Public awareness of strategies enabling individuals to reduce or eliminate taxes on transactions.
- ❖ Ability of KPMG to provide turnkey strategies (including tax opinion letters).
- ❖ Increase in number of boutique tax advantaged investment companies looking for distribution channel for their value added ideas.

2024

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Marketplace Trends - Factors Affecting Growth

- ◆ Lack of speed to market from idea to product.
- ◆ Competition among select other Big 5.
- ◆ Human resources dedicated to product development.
- ◆ Legislative changes and threats from the IRS.
- ◆ Law firms reluctance to embrace ideas.
- ◆ Protection of confidentiality of ideas.

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Overview of the Competition

An assessment of KPMG's competitive position is shown in the following chart:

		Investment Banks KPMG
	E&Y PW/CL, D&T	
LOW	Law Firms	
HIGH	Permission	

LOW HIGH Growth

We believe that, given our market position in the Financial Services industry, KPMG has an edge competitively not only to bring strategies to this industry (albeit regulatory issues abound) as "users," but also to work with the industry as channels for both distribution and, alternatively, as a source for new ideas/products KPMG can distribute.

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Market Strategy - Overall

- ◆ Value-added strategies marketed discretely to high net-worth individuals through the IS team.
- ◆ Target industries in consolidation to approach on a proactive basis.
- ◆ Bring newest ideas to key individual clients in each market to solidify relationship and provide future opportunities.
- ◆ Add pull-through services for individuals, their families, and their businesses.
- ◆ Create alliances with outside providers to ensure idea flow and provide execution capabilities.

2027

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Overall Market Strategy - Costs, Benefits and Risks

- ◆ **Costs**
 - ❖ Travel costs.
 - ❖ Product development human resources.
 - ❖ Potential referral fees.
 - ❖ Technology development to illustrate benefits of strategies.
 - ❖ Training of team for new products.
- ◆ **Benefits**
 - ❖ Significant value-added fees.
 - ❖ Leverageable due to core team of sellers.
 - ❖ Pull-through services for clients/non-clients.
 - ❖ Solidification of relationship with key owners and Fortune 400 individuals.
- ◆ **Risks**
 - ❖ Tax risks associated with opinion letters.
 - ❖ Potential negative publicity for aggressive deals.

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Overall Market Strategy - Critical Factors

- ◆ Support of the Innovative Strategies “Lab” to ensure continued product development.
- ◆ Increase speed to market through own resources and DPP-Tax.
- ◆ Better targeting of industries and individuals.
- ◆ Protection of proprietary information (ours and our alliance partners).
- ◆ Integration with the PFP practice for targeting and distribution.
- ◆ Support from the TIC to ensure consistent packaging.
- ◆ Technology support.

2029

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Market Strategy 3-year Operating Plan

Current	FY'99	FY'00	FY'01
<p>\$11.5M Rev.</p> <p>Internal Awareness</p> <ul style="list-style-type: none"> • Adopt FLIP • Roll-out 4 HEPS • Internal Commun.. to brand "CaTS" • Area PIC and NIDs Buy-In • Identify Full & Part-time players • Brochures • Business Plan 	<p>\$18M Rev.</p> <p>External Awareness</p> <ul style="list-style-type: none"> • Monthly training • Roll-out 5 HEPS • Brand CaTS outside KPMG • Continue new product devel.. • Develop third party alliances • Add technology personnel 	<p>\$38M Rev.</p> <p>Mature Practice</p> <ul style="list-style-type: none"> • Add IS resources • Roll-out 5 HEPS • Continued product development 	<p>\$50M Rev.</p> <p>Expand Alliances</p> <ul style="list-style-type: none"> • Add resources • Roll-out 5 HEPS • Expand alliances

KPMG 0026467

Market Strategy Product Portfolio

#1
Redacted by Permanent Subcommittee
on Investigations

Capital gain avoidance and charitable gift opportunities
Can be used as a technique for marketable portfolio sales

- Lends itself to \$100K to \$1.0M Per Transaction Fees

Contact: Jeff Eisele, Mark Watson

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Market Strategy Product Portfolio

#2

Redacted by Permanent Subcommittee
on Investigations

*Take advantage of high basis asset transactions to shelter
individual capital gains*

Examples:

- ❖ BLIPS
- ❖ OPIS
- ❖ BOSS

Lends itself to \$200K to \$2 mm Engagements

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2032

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Contact: Jeff Eischeid/Mark Watson

Market Strategy Product Portfolio

#3

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on Investigations

Provides long term capital gain deferral, transfer tax savings and current income tax deductions. Best suited for privately-held companies and real estate.

Examples:

- Families considering sale of business
- Families with appreciated property in the hands of second generation.
- Businesses with uninsured and/or self insured risks.

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Contact: Jeff Eischeid/Mark Watson/Mark Anderson

Market Strategy Tomorrow's Portfolio

- ◆ **Will today's portfolio be relevant tomorrow?**
 - ❖ Changes in legislation, and administrative or judicial action, can render strategies obsolete. Critical that new strategies continuously be added to portfolio.
 - ❖ Appetite for strategies dependent on strong economic conditions and/or bull market.
- ◆ **What is in tomorrow's portfolio?**
 - ❖ Portfolio of strategies changes constantly. New ideas include the incorporation of foreign planning, depreciation enhancement, and partnership high-basis transactions.
- ◆ **What are the lowest value products/highest value products, and pricing strategies for each?**
 - ❖ All strategies are value-added fees supported by expected tax savings.
 - ❖ Pull-through services include compliance work for family, valuation services, other consulting work (at normal rates).

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Market Strategy Targeting



- ◆ Fortune 400 individuals
- ◆ High Net-Worth clients
- ◆ Privately held businesses
- ◆ Individuals with recurring gains
- ◆ Sales of businesses
- ◆ Industries in consolidation
- ◆ IPO market

2035

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Market Strategy Industries Targeted

- ◆ Individuals/family groups
- ◆ Privately-held companies
- ◆ Financial Services industry
- ◆ Automotive industry
- ◆ ICE practice

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Market Strategy Knowledge Sharing

- ◆ Weekly conference calls with IS team
- ◆ Quarterly meetings with IS team (product training)
- ◆ Tax Product Alerts (for appropriate strategies)
- ◆ Monthly sub-lab meetings for Innovative Strategies team
- ◆ Review of outside providers ideas
- ◆ Participation in FCS Lab activities
- ◆ Presentations at Family Wealth Institute conferences, partner meetings and area meetings.
- ◆ KWorld site for resource tools and marketing materials

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Human Resources - Hiring

- ◆ **FY'00 Needs by Subproduct and Geography**
 - ❖ Coordination with Risk Management subproduct team for delivery and support of InsCo strategy.
 - ❖ Add one full-time product development partner.
 - ❖ Attract 2 additional managers.
- ◆ **Plan for attracting those individuals**
 - ❖ Coordinate with PFP leadership to free up an additional partner for product development.
 - ❖ Create career path for managers.
 - ❖ Guidelines for revenue allocation on products created by FCS team and distributed through IS.

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Human Resources - Training

- ◆ **Technical skills training**
 - ❖ Via teleconferences and meetings.
 - ❖ Also need to communicate ideas (less depth) to all of PFP practice and firmwide.
- ◆ **Local office awareness sessions including technical material**
- ◆ **Coordination of information with BDM network**

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Human Resources - Retention

- ◆ **Honest evaluation of skills of professionals**
- ◆ **Detail plans to ensure we lose no A players?**
 - ❖ Ensure that product development personnel are included in incentive compensation structure to provide reward for non marketing efforts.
 - ❖ Provide access to key technical personnel to support product development efforts.
 - ❖ Remove barriers to speed to market.
 - ❖ Provide significant incentive for sales successes commensurate with revenue generated.
 - ❖ Ensure clear career path for partners and management team.

2040

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Potential Investments

- ◆ Budget for travel costs- \$200,000
- ◆ Training expenses- \$200,000
- ◆ Technology development- \$40,000
- ◆ Marketing and communication- \$20,000
- ◆ Re-deployment of partner for product development

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Structure and Leadership

- ◆ Partner in Charge- Jeff Eischeid
- ◆ Mark Watson- Washington National Tax - Technical
- ◆ Randy Bickham- Senior Manager, Managing Director
Product Development

2042

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Plan Summary

- ◆ Significant value added revenue can continue to be generated with proper product support and management.
- ◆ Discrete marketing balanced with appropriate publicity for practice.
- ◆ Development of internal communications to advertise practice.
- ◆ Reward product development efforts
- ◆ Increase speed to market
- ◆ Forge appropriate alliances with outside providers

2043

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Plan Summary

Meeting Tax T⁶ Strategies

<p>I. UPSELL - Take a Greater Share of client business</p> <ul style="list-style-type: none"> • Bring ideas currently reserved for investment bankers 	<p>II. UPSCALE - Trade up services and client base</p> <ul style="list-style-type: none"> • Enhance compliance and daily PFP activities with high-end strategies
<p>III. FIRST TO MARKET - Turbo-charge product development</p> <ul style="list-style-type: none"> • Provide environment for Innovative Strategies team to develop ideas for IS delivery. 	<p>IV. INDUSTRY FOCUS - Target key industries</p>
<p>V. The "KPMG 100"- Top tier clients</p> <ul style="list-style-type: none"> • Client retention for existing HNWI • Attract Fortune 400 caliber clients 	<p>VI. EXPAND BUSINESS DIMENSION</p> <ul style="list-style-type: none"> - Transform KPMG Tax • Productization of PFP practice

KPMG 0026481

Marketing / Drive Period Product Push

Jill Ronda, Montvale

2045

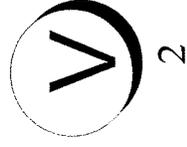
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Drive Periods

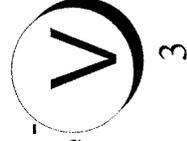
What?	Focused effort to promote tax services that appeal to specific target audience
Why?	Integrated marketing approach to increase effectiveness and efficiency
How?	Pool marketing resources
When?	Three times per year



FY00 Drives

	<u>Target Audience</u>	<u>Service Lines</u>	<u>Time</u>
Drive 1	Human Resources Directors	CAB PFP IES	Sept. - Dec.
Drive 2	C - Class Executives	TTM SALT Federal - M&A PFP IES	Dec. - Mar.
Drive 3	Tax Directors	Federal IS SALT	Mar. - June

2047

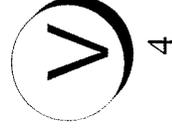


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What's in a Drive?

- Advertising
- Direct Mail
- Telemarketing / PDC's
- Public Relations
- Special Events
- Internal communications

2048



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Drive Period Two: C-Class Executives

- Personal Financial Planning
 - Innovative Strategies
 - Senior Executive Counseling
- Federal Tax
 - Mergers & Acquisitions

2049

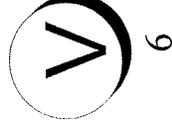


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Drive Period Two: C-Class Executives

- Total Tax Minimization / Financial Capital Strategies
- International Executive Services
 - Expatriate Cost Minimization
- State and Local Tax
 - State Tax Minimization
 - Strategic Relocation and Expansion Services
- E-Business Tax

2050

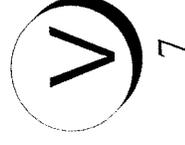


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The Campaign

- 1-800 Advertising Campaign
- PR Campaign
- Direct Mail Program
- E-Business Tax Client Briefings
- KPMG / C Class Executive Industry / Networking Event

2051



XX-002149

Marketing Update Drive Period 2

Jill Ronda, Montvale

2052

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Drive Periods

What? Focused effort to promote tax products that appeal to specific target audience

Why? Integrated marketing approach to increase effectiveness and efficiency

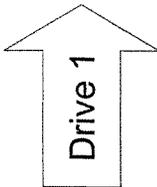
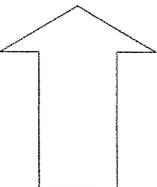
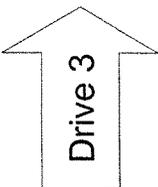
How? Pool marketing resources

When? Three times per year

V

2

FY00 Drives

	<u>Target Audience</u>	<u>Service Lines</u>	<u>Time</u>
	Human Resources Directors	CAB PFP IES	Sept. - Dec.
			
	Tax Directors	Federal IS SALT	Mar. - June

3

“Kayak” Direct Mail

- Three dimensional mailing
- Sent out week of 2/7
- To 113 c-class executives with no existing relationship with KPMG tax professionals

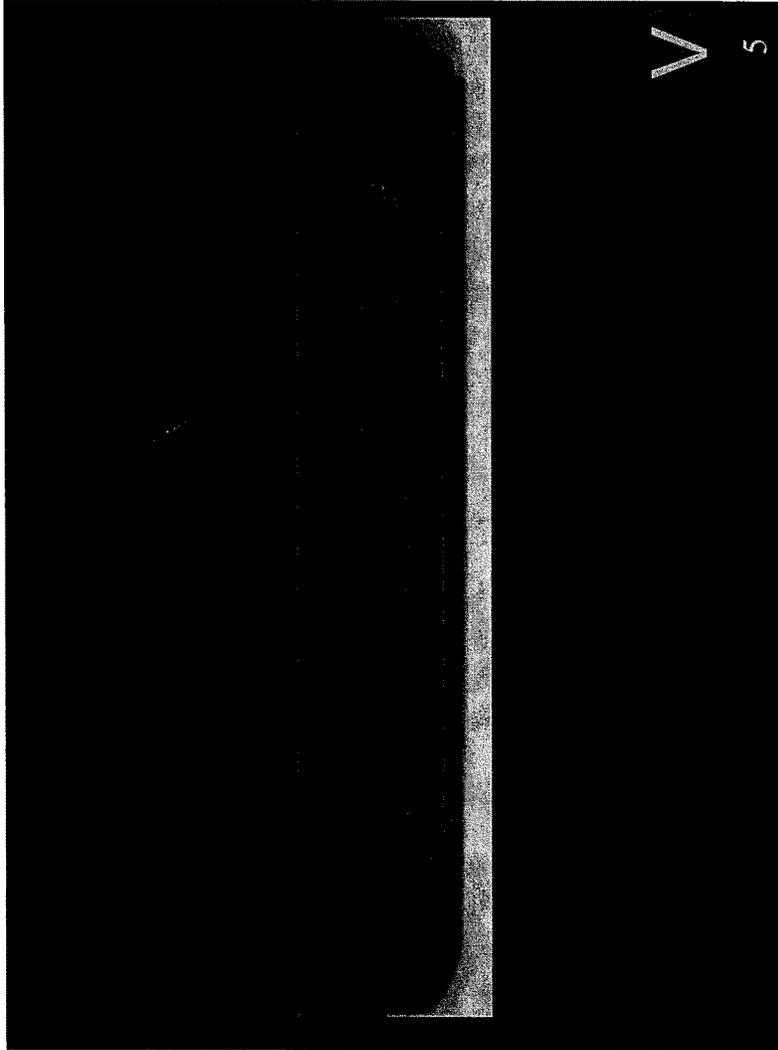
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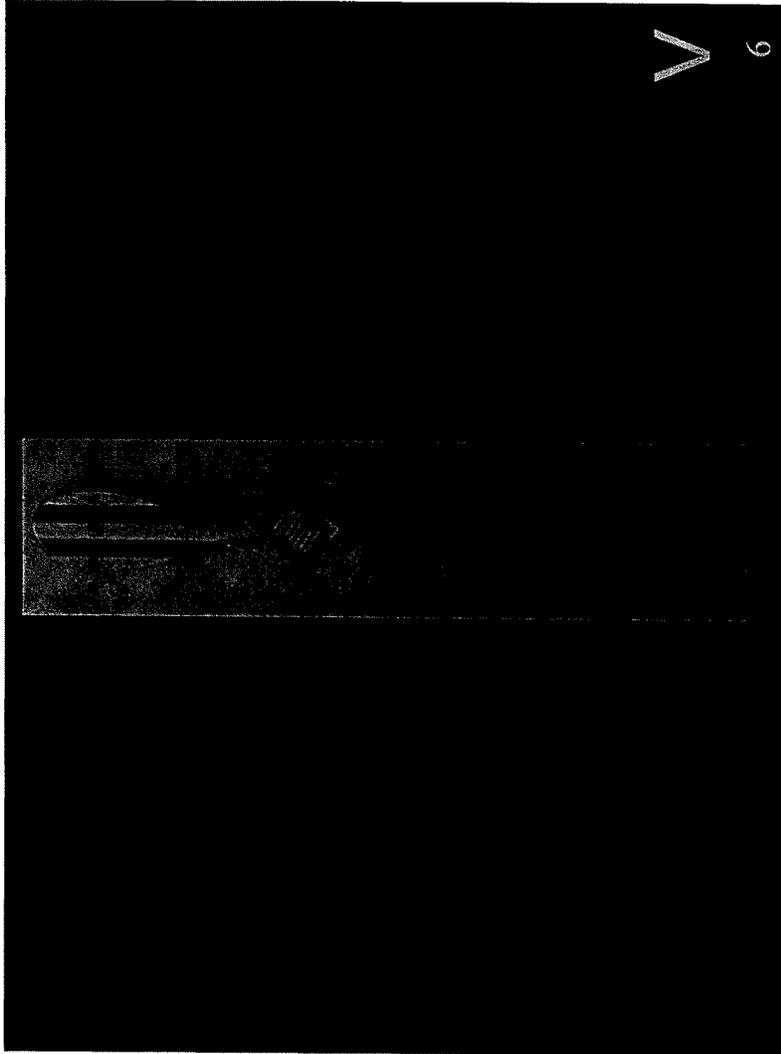
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V 5

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V 6

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13276

**We'll even give you
the kayak to go with
this paddle. So you
can do some soloing
on your own.**

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“Kayak” Direct Mail

- TSP is linchpin BUT we must ensure that appropriate high end products are top of mind
- Very positive response from majority of targets

2 ICVs set up already!

V

8

**Real Estate Investment Trusts
REIT Targeting Questionnaire
Version: 1/27/00**

Objective:

To arrange a face-to-face meeting between the CFO (or appropriate decision-maker) and KPMG SALT.

Prior to telephone call:

1. Determine any pre-existing relationships between client and KPMG. If relationship exists, contact appropriate person to determine extent and nature of the relationship.
2. Determine the person with the company that has the authority to actually purchase the products.
3. Contact REIT National Product or Area Product Champion.
National Product Champion Joseph Patin 404-222-3564
Area Product Champions
Northeast Mike Desrochers 617-988-1396/ Jeffrey Brown 212-872-4438
MidAtlantic Rob Van Gulick 215-299-3902
Southeast Cheryl Larsen 704 335-5564
Southwest Dick Coshow 214-754-2177
Midwest Joseph Neveril 312-665-8931
West Brad Bauer 415-438-7745
4. Review copies of Form 10K and 10Qs for the current year and obtain the following information:
 - a. overview of business
 - b. state of incorporation
 - c. number of subsidiaries
 - d. states where doing business
 - e. international operations, if any
 - f. total assets
 - g. taxable income for last 3 years
 - h. third-party debt

Telephone Call:

- Our State and Local Tax partners, _____ and _____, recently reviewed your public financial information.
- Based on this review, it appears name of company currently pays state taxes in excess of \$ _____. Based on the size of name of company's real estate portfolio, we believe a

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EXHIBIT #97r

XX-002063

2061

strategy exists that could potentially produce state income tax savings of up to \$ _____.

- We would like to schedule a meeting (which should be completed in under an hour) with you and your Tax Director to meet with KPMG Partner to discuss this strategy.
- The purpose of the meeting is to discuss the strategy and identify the savings and how it can help name of company achieve significant permanent annual savings.

Potential Client Responses and Answers:

Question: Can't this meeting be handled by my tax department?

Answer: While tax department support and teamwork is very important, senior management buy-in is critical to success. Senior management can provide insight into Name of Company future direction so that any strategies recommended fit naturally around the business operations.

Question: Why can't our tax department do this?

Answer: Most tax departments are focused on tax compliance, federal and state audits, and transactional planning. We take a fresh, "top-down" approach to significantly reduce your state taxes with a proven implementation track record. For example, if the company can save an additional \$1 million per year, it makes sense to implement the project as soon as possible. We have helped over 125 companies implement this strategy.

Deleted: ; in addition.

In addition, implementation of the strategy takes a significant amount of work and few organizations have the internal resources available to dedicate to these types of projects without significant assistance.

Drive Period 3 Marketing Update

Wendy Klein, Montvale
Michael Schmidt, Montvale

**FOR INTERNAL USE ONLY --
NOT TO BE USED FOR CLIENT PRESENTATIONS**

XX-002156

Drive Periods

- What?** Focused effort to promote tax solutions that appeal to specific target audience
- Why?** Integrated marketing approach to increase effectiveness and efficiency
- How?** Pool marketing resources
- When?** Three times per year



2

Drive Period Three

Time

April - June 2000

Target Audience

Tax Directors

Service Lines

e-Tax Solutions



Advertising

How important is tax strategy in e-business?

How important is your steering wheel at 150 mph?



KPMG
Advisers
Company

When you travel at 150 mph, speed, unexpected obstacles, can appear out of nowhere. At 150 mph, your steering wheel is critical. Our strategic approach helps you handle critical tax issues and steer clear of complications, which means your drive for success can be a smooth one.

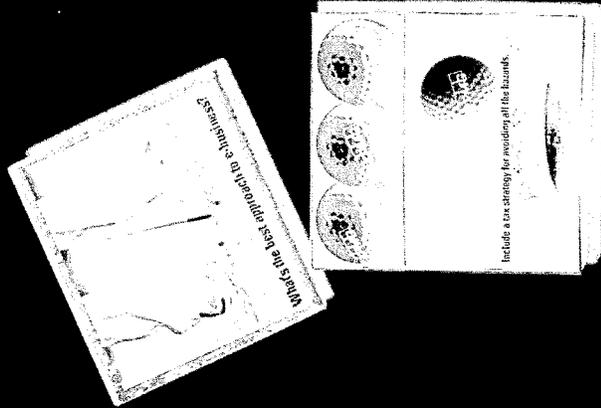
For more information, contact:
John A. Stein
Tom Chomkowski
Robert A. Miller
John Schmitt
www.kpmg.com

It's time for clarity™

4

XX-002159

Direct Mail



What's the best approach to e-business?

Include a tax strategy to avoid all the hazards

V

5

Internal Communications

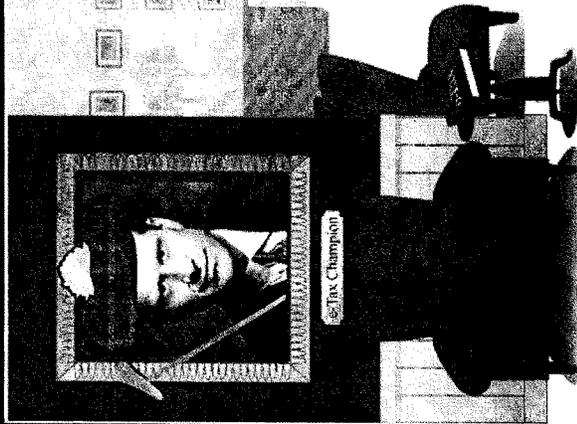
Welcome to the e-Tax Open!

Thanks for stepping by the clubhouse on your way to the first tee. I think we've got a great event—one we'll enjoy as we begin transforming our practice into the global leader for e-business-related tax services.

Just like winning a golf match this will take hard work, concentration, and the right tools. And that's where our e-Tax Solutions come in. They will be the key to providing our clients—and us—with a competitive edge in the digital age.

To learn more about these, visit our Web site and talk with your e-Tax Solutions Area Leaders.

Now it's almost time to head to the course to see who's won the first hole of our e-Tax Open. You'll also want to check the succeeding holes over the next weeks to keep track of your chances to win my tickets to the U.S. Open. In the mean-time, I'm going to the Pro Shop. I hear they have a new shipment of hats.



2068

From: POSTMASTER-US
Sent: Tuesday, April 18, 2000 2:01 PM
Subject: KPMG Tax Financial Results
Date: April 18, 2000

To: US Tax Professionals

From: Jeffrey Stein - NSS/345 Park Avenue

cc: S. Butler - NSS/345 Park Avenue
R. Alspaugh - NSS/345 Park Avenue
J. Lanning - NSS/345 Park Avenue
H. Luessmann - Germany
J. Heintz - NSS/Montvale
R. Wells - NSS/Montvale
International Tax & Legal Steering Group

Subject: KPMG Tax Financial Results

I am proud to inform you that Bowman's Accounting Report, an industry trade publication, published the fiscal year '99 financial results for the Big 5 Accounting Firms last week. Those results place KPMG #1 -- as the fastest growing U.S. tax practice among the Big 5. All firms were asked to restate their financial results based on a 9/30 year end in order to ensure an equitable comparison. The final growth rates as reported were:

KPMG:	22.4%
AA:	22.0%
D&T:	8.2%
PwC:	5.0%

E&Y did not submit figures to Bowman's indicating that it was material to Cap Gemini's MCS acquisition. However, based on information available to us, E&Y growth rates for tax are estimated to be in the 10% range.

In terms of total tax revenue, KPMG now ranks third behind E&Y and PwC yet ahead of AA and D&T. This is our third consecutive year of growth in excess of 20%. Considering that KPMG Tax was 5th out of the Big 6 just three years ago, our performance has been nothing short of remarkable - all across the board - and all of you are to be congratulated for the significant contributions you have made. As I know most of you have heard me say before, we are a professional services firm and as such, everything ultimately boils down to having the right people on your team.

Taking a closer look at the results, were it not for the merger of PW and C&L, we would clearly be second in terms of overall tax revenue and vying for #1 in that category as well. Further, keep in mind that the E&Y purchase of Kenneth Leventhal added nearly \$200M to their gross revenue figure at the time of the acquisition.

Our results this year through Period 9 continue to be just as impressive as what we put on the board a year ago. Our growth in just the last two periods shows revenue up 27.7% and operating income (profit) up an astounding 56.7%. For the year, revenue is up 20.5% and operating income is up 22.8%. With growth at this rate it is clear that we are well positioned to eclipse the competition. And we are committed to getting there quickly.

Over the past couple of years, you have witnessed the investments we have made in our tax practice -- in people, in clients (all clients - National Accounts, Area Accounts, ESP clients, clients

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EXHIBIT #97t

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2069

that we've never done work for in the past and clients that don't even know they're about to be clients), and in capturing creative and innovative ideas and leveraging them across over 4,000 professionals. We're not done yet. Our push towards e-Tax Solutions, as you will see in Drive Period 3, is just the beginning of what you can expect in the coming year. We will be promoting this initiative hard both internally as well as externally. Our advertising breaks in the *Wall Street Journal* today and we will maintain a strong presence in key business publications including *Forbes* and *Fortune* for the next several months. I know you'll like what you see.

There's plenty left to accomplish, both for the remainder of this year as well as in the coming years. But I couldn't be more pleased with where we are today. You can be sure we will continue to push the envelope by setting aggressive goals but we are equally committed to providing all of you with the tools to drive towards those goals.

I reiterate what I said earlier -- for a professional services firm everything ultimately boils down to having the right people on your team. It is a privilege to work with such a talented group.

Again, thank you for your extraordinary efforts.

XX-002069



**KPMG Tax Practice
Our Strategic Blueprint**

September 2000

Permanent Subcommittee on Investigations
EXHIBIT #97u

KPMG 0001762

Proprietary Material
Confidentiality Requested

Today's Discussion

- ◆ Tax Transformation
- ◆ FY01 Tax Strategy
- ◆ Major Initiatives
- ◆ Linking with Assurance and Industry

2071



Proprietary Material
Confidentiality Requested

KPMG 0001763

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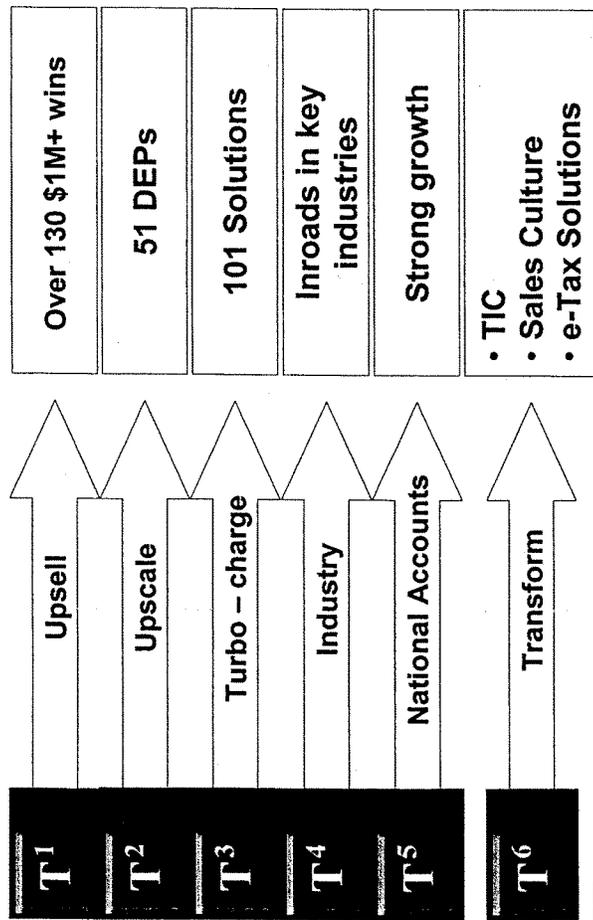
Tax Transformation. FY98 - 00

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Confidentiality Requested

KPMG 0001764

Our Results



Proprietary Material
Confidentiality Requested

KPMG 0001765

Our Results vs. Competition

FY97	FY00
<ul style="list-style-type: none"> ◆ 5th of Big 5 	<ul style="list-style-type: none"> ◆ 3rd of Big 5
<ul style="list-style-type: none"> ◆ Slowest growth 	<ul style="list-style-type: none"> ◆ Highest growth - 2x industry average
<ul style="list-style-type: none"> ◆ Significant partner turnover 	<ul style="list-style-type: none"> ◆ No partner losses in 18 months to Big 5 - 10 new partners from Big 5
<ul style="list-style-type: none"> ◆ Lack of marketplace presence 	<ul style="list-style-type: none"> ◆ Marketplace force

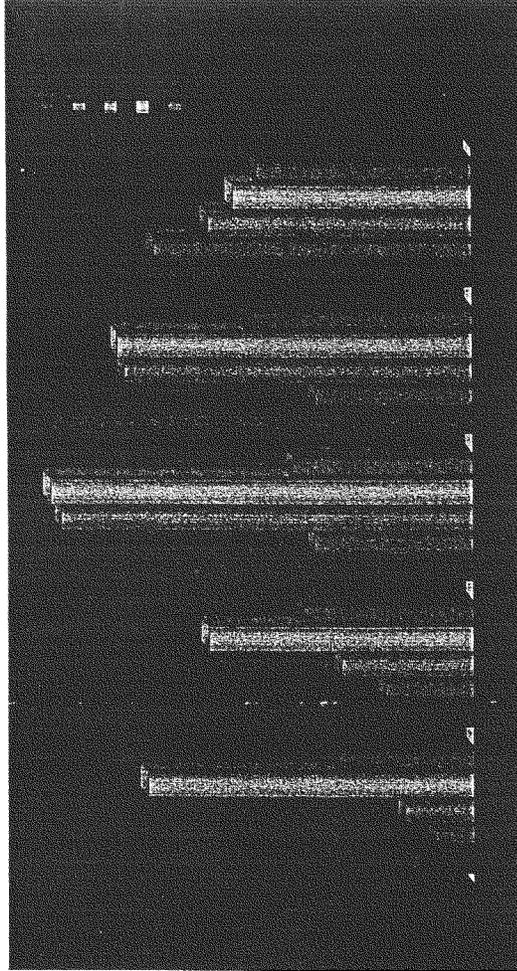


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KPMG 0001766

Our Results vs. Competition

FY95 – FY99 US Net Tax Revenue
%Δ vs. Prior Year



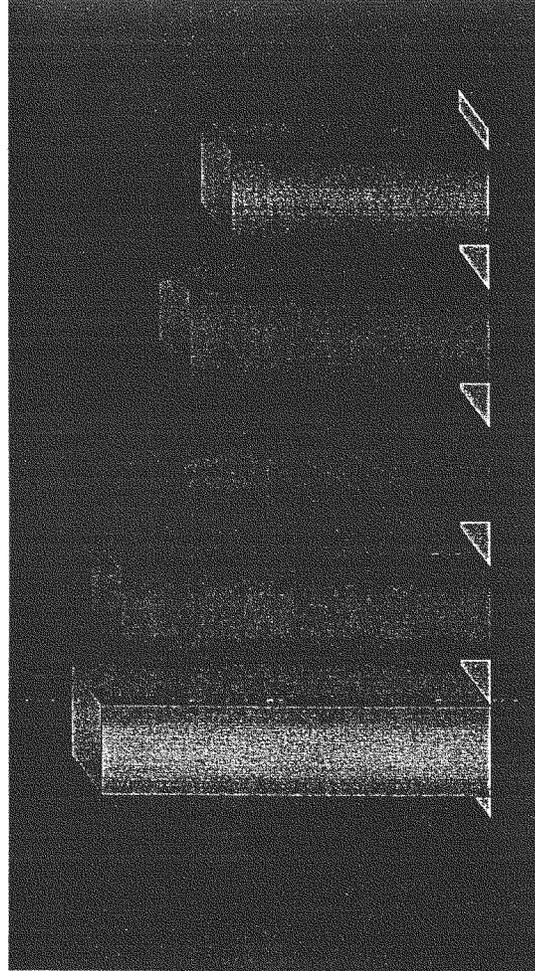
Proprietary Material
Confidentiality Requested

Source: Bowman's Accounting Report

KPMG 0001767

Our Results vs. Competition

FY99 Net Tax Revenue



Proprietary Material
Confidentiality Requested

Source: Bowman's Accounting Report

KPMG-0001768 7

Tax FY01 Strategy.

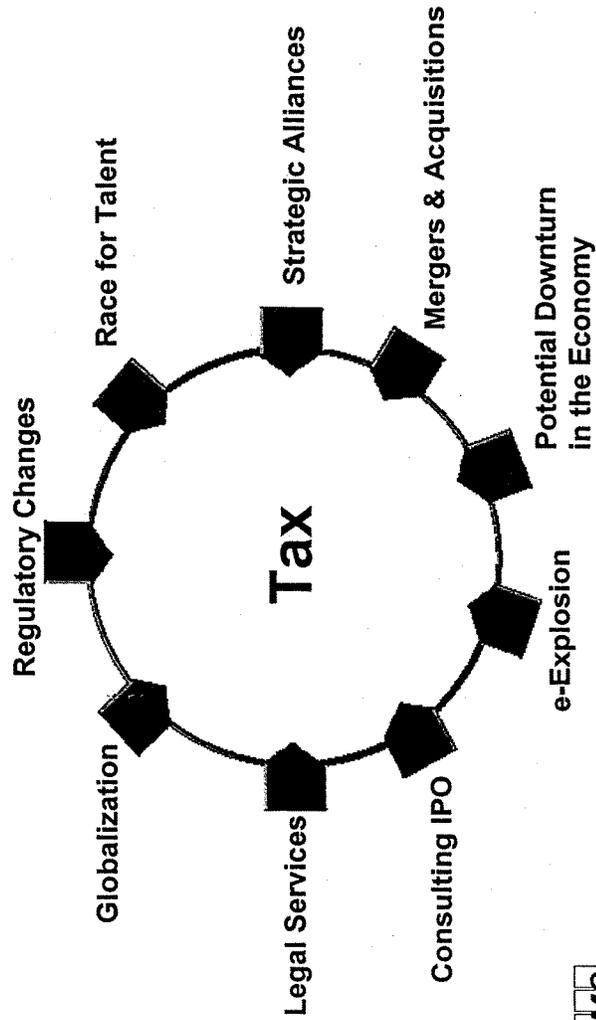
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Proprietary Material
Confidentiality Requested

KPMG 0001769

Market Forces Driving Change

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Proprietary Material
Confidentiality Requested

KPMG 0001770 9

Tax Strategy: e⁵ x T⁶

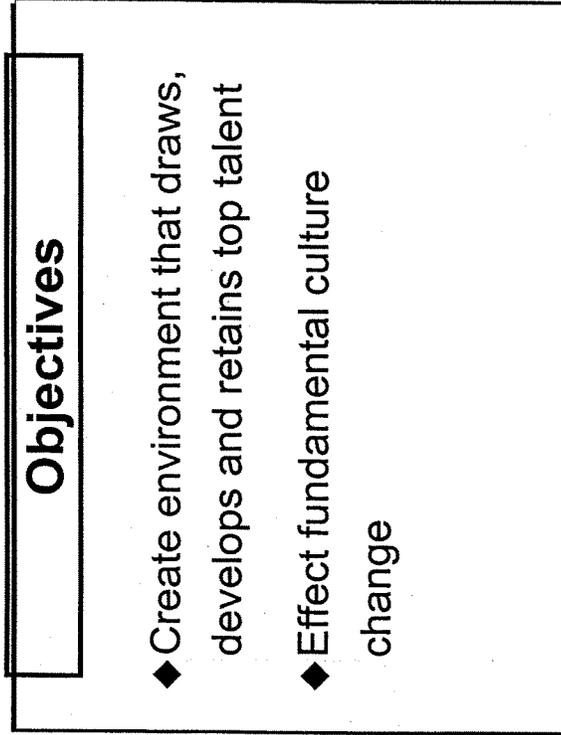
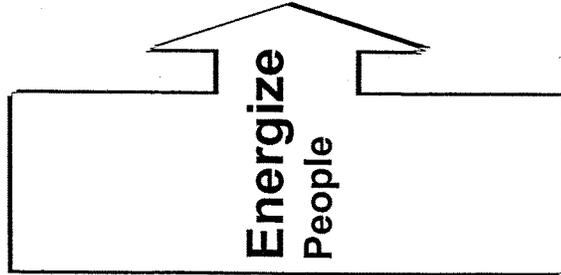
Exceptional Value		T ¹	T ²	T ³	T ⁴	T ⁵	T ⁶
energize our people							
e-morph our business							
execute tax business solutions							
excel in operations							
expand global reach							



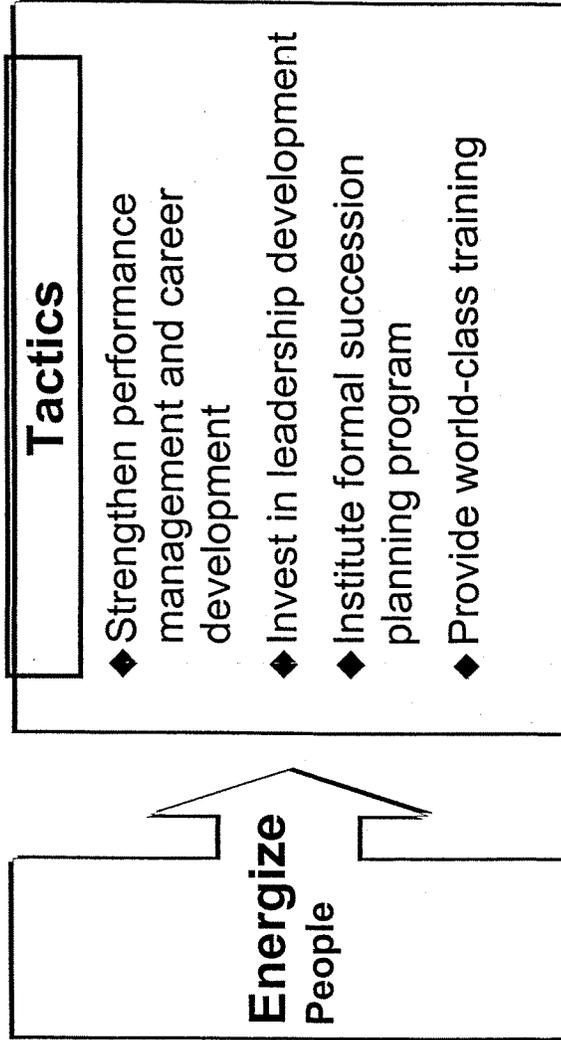
Proprietary Material
Confidentiality Requested

KPMG 0001771

e⁵ x T⁶



e⁵ X T⁶



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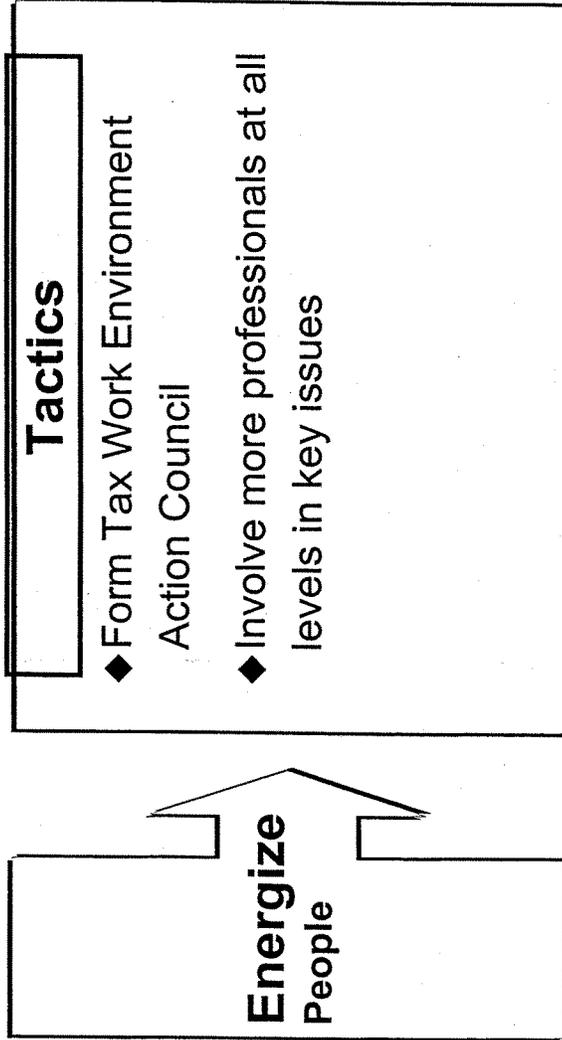


Proprietary Material
Confidentiality Requested

KPMG 0001773

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e⁵ x T⁶



2082

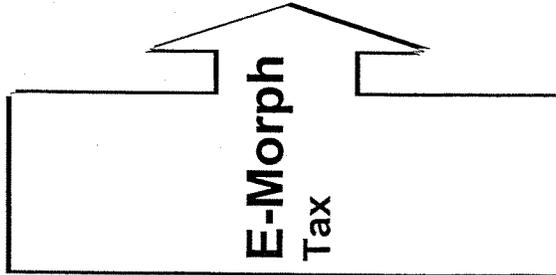


Proprietary Material
Confidentiality Requested

KPMG 0001774

13

e⁵ X T⁶



Objectives

- ◆ Lead e-Tax Solutions market
- ◆ E-enable tax to improve:
 - client service and relationships
 - efficiencies and profitability
- ◆ Capitalize on new economy
 - access to new markets, distribution channels, solutions
- ◆ Anticipate and preempt new entrants



Proprietary Material
Confidentiality Requested

KPMG 0001775 14

e⁵ X T⁶

2084

Tactics
◆ Build premier e-Tax Solutions Practice
◆ Develop and deploy e-Tax solutions real time
◆ Drive Service Lines to develop e-enabled tools and solutions
◆ Enhance client relationships through release of KPMGTax.com

E-Morph Tax



Proprietary Material
Confidentiality Requested

KPMG 0001776

15

e⁵ X T⁶

2085

Tactics
◆ Drive engagement efficiencies and teamwork through web-based collaboration tools
◆ Launch online businesses
◆ Enhance e-based knowledge and culture through delivery of targeted training
◆ Build alliance practice

E-Morph Tax



Proprietary Material
Confidentiality Requested

KPMG 0001777

e⁵ X T⁶

**Execute
Tax Business
Solutions**

Objectives

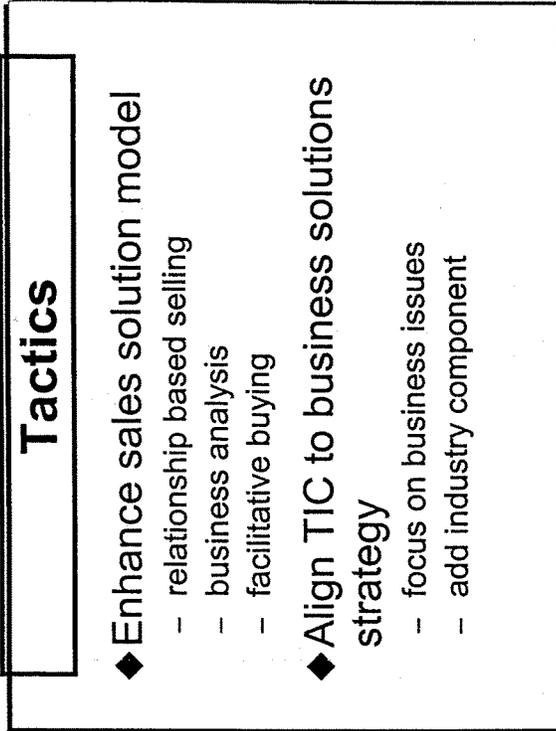
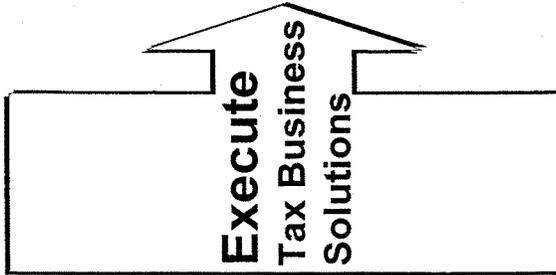
- ◆ Establish KPMG as premier provider of tax services to leading companies
- ◆ Expand tax service portfolio along industry lines and business issues
- ◆ Gain deeper understanding of clients' businesses
- ◆ Grow Tax Services and ESP client base



Proprietary Material
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KPMG 0001778

e⁵ X T⁶



2087



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e⁵ X T⁶

**Execute
Tax Business
Solutions**

Tactics

- ◆ Integrated National Account teams
 - dedicated TSP, Service Line and WNT Partners
- ◆ Focus on highest opportunities
- ◆ Enhance role of the Tax Industry Leader (TIL)

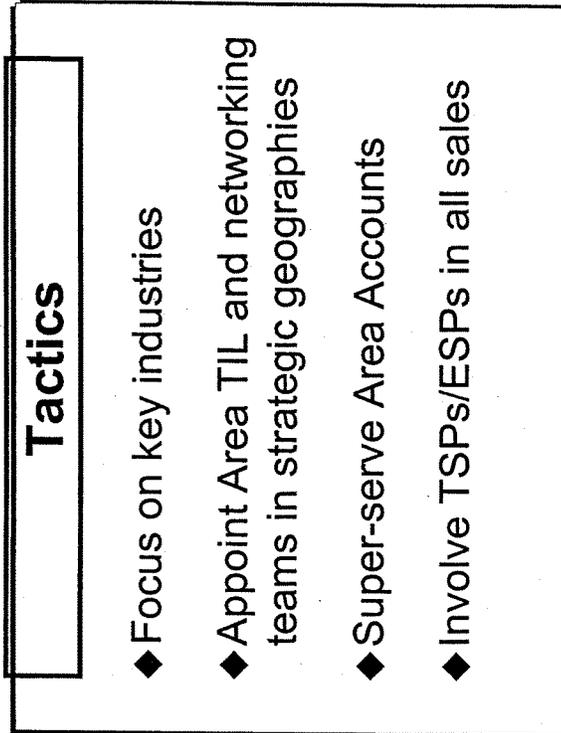
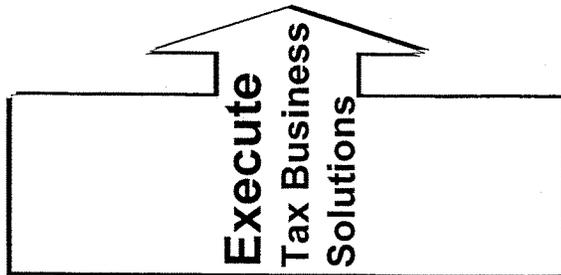
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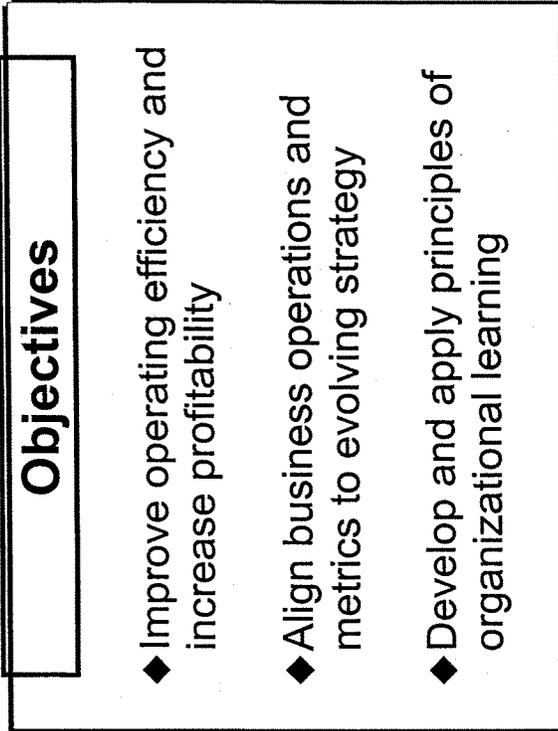
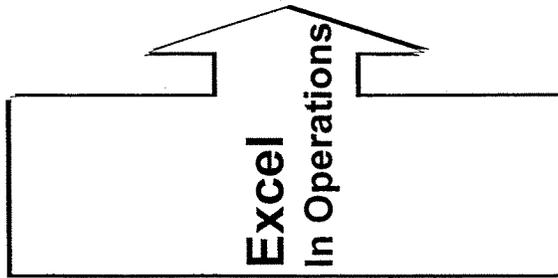
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KPMG 0001780

e⁵ X T⁶



e⁵ x T⁶



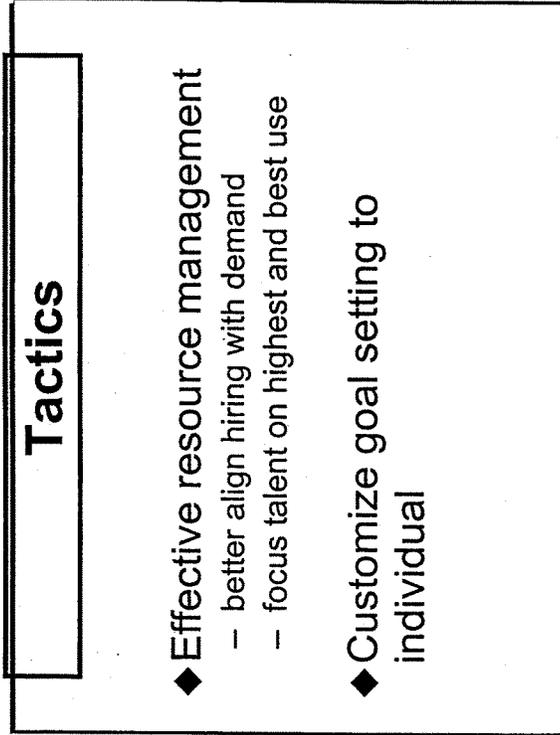
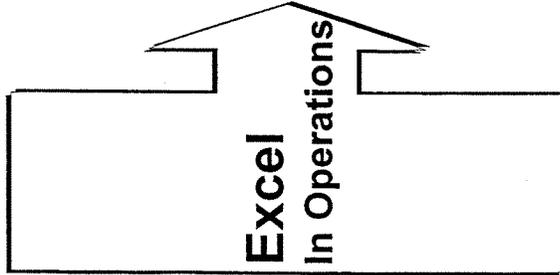
2090



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Confidentiality Requested

KPMG 0001782

e⁵ x T⁶



2091

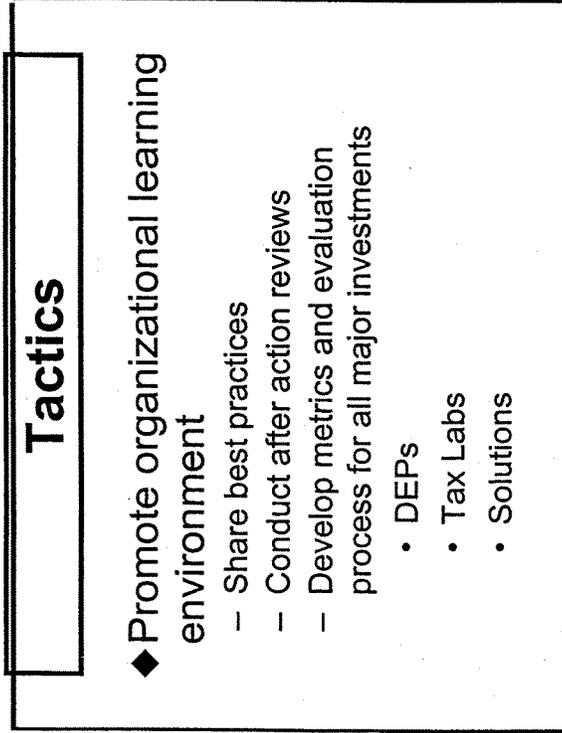
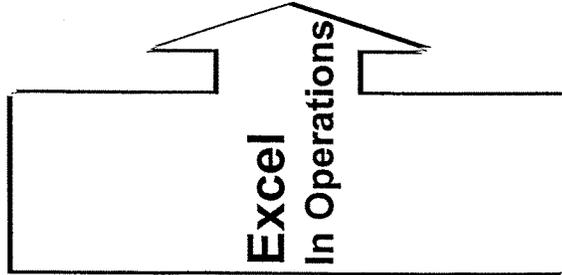


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Confidentiality Requested

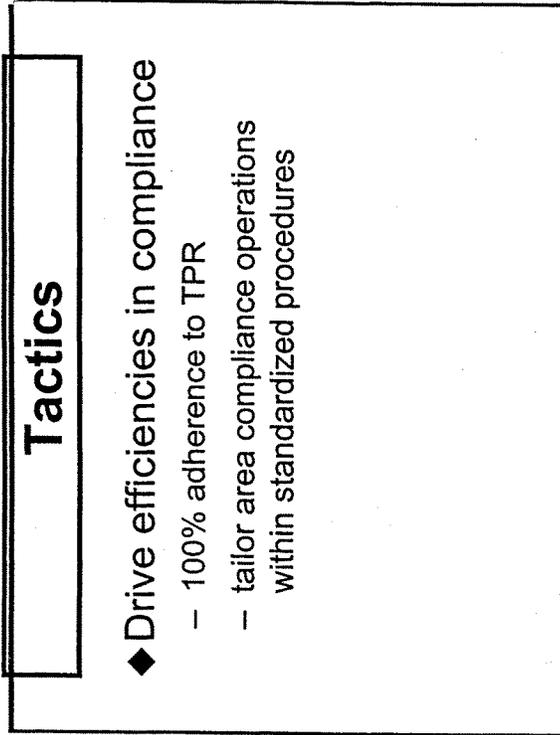
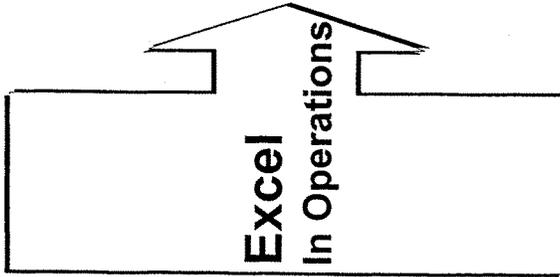
KPMG 0001783

22

e⁵ X T⁶

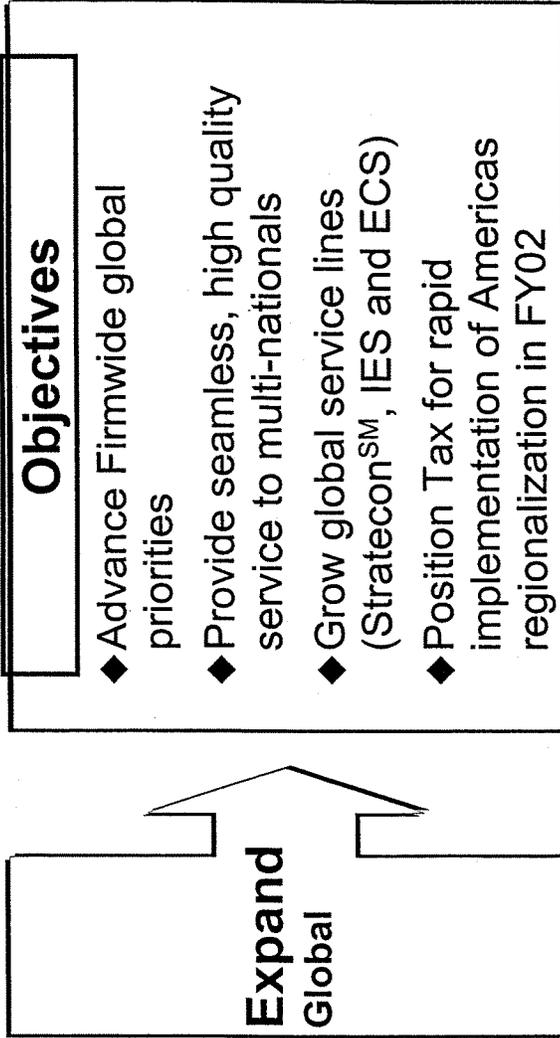


e⁵ x T⁶



e⁵ x T⁶

2094

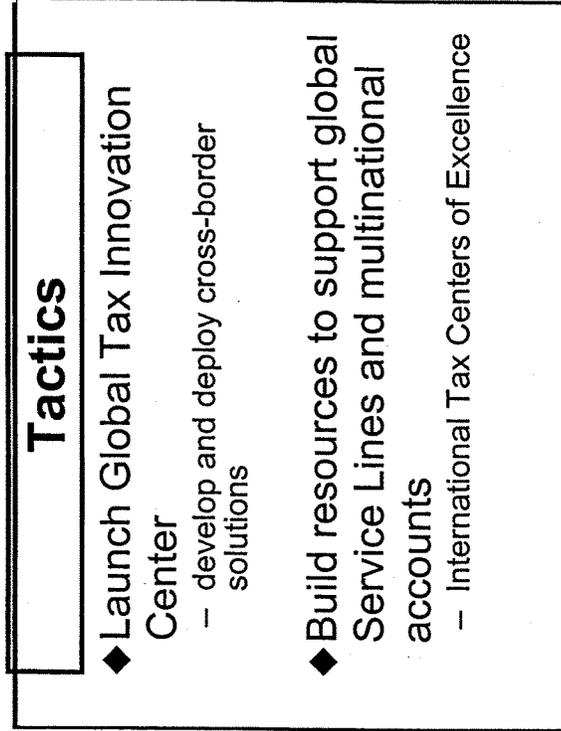
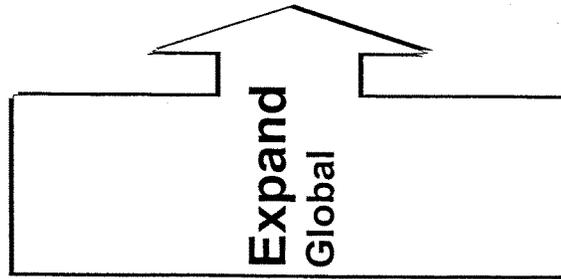


Proprietary Material
Confidentiality Requested

KPMG 0001786

25

e⁵ X T⁶



Major Initiatives

Initiative	Payback
Recruit top talent	<ul style="list-style-type: none"> • Build market image • Accelerate growth • Enhance client service • Drive new solution development
Build online presence	<ul style="list-style-type: none"> • Reach new audiences • Deliver new services • Access new distribution channels
Establish WNT West	<ul style="list-style-type: none"> • Create major impact in SV and SF • Align top resources with top opportunities



Proprietary Material
Confidentiality Requested

KPMG 0001788

Major Initiatives

Initiative	Payback
Form global practices IES, ECS, PFP	<ul style="list-style-type: none"> • Seamless service delivery
International Tax Centers of Excellence	<ul style="list-style-type: none"> • Accelerate regionalization and globalization • Seamless service delivery
Technology	<ul style="list-style-type: none"> • KPMGTax.com • Tax Services Homepage
Alliances Major financial institution Other providers	<ul style="list-style-type: none"> • Accelerated growth • Expansion of market



Proprietary Material
Confidentiality Requested

KPMG 0001789

Linking with Assurance & Industry

2098

- ◆ **Joint solution development**
 - Intellectual Property
- ◆ **Coordinated marketing**
 - Digital marketplace
 - Drive period planning
- ◆ **Expanding the tax industry network**
 - Drive National Account growth
 - Drive Area Account growth
 - Revitalized development of industry resources

Our Strategy

- ◆ Energize Our People
- ◆ E-morph Our Business
- ◆ Execute Tax Business Solutions
- ◆ Excel in Operations
- ◆ Expand Global Reach

2099



Proprietary Material
Confidentiality Requested

KPMG 0001791

30



2101

From: Manth, Larry E
Sent: Friday, March 30, 2001 9:43 AM
To: Alvarez, Adele M; Atkin, Andrew S; Baumann, Dale R; Bendheim, Redge E; Bergmann, Jeffrey K; Black, Suzanne J; Bottini, Wayne F; Boyar, Adam W; Brown, Brad L; Busick, Ronald L; Choy, Susie K; Coughlin, Sean S; Cozart, Toby; Curtis, Gary L; D'Addio, Michael R; De La Hoya, Raquel M; DeCredico, David G; Dougherty, Timothy M; Duncan, Douglas P; Frimershtein, Oleg; Garigliano, Thomas; Gergen, Patricia A; Greenberg, David; Hacker, Barry C; Harrison, Mark E; Hirata, Masanori; Huber, Robert; Hutchison, Mark-Warner Cntr; Ida, Walter Y; Ito, Dennis A; Jackman, Thomas E; Kamahele, Dean B; Kreutzer, Conrad B; Lytle, Norman W; Maxfield, W B; Mcgrath, Michael W; Morris, Craig S; Murakami, Alton A; Orshansky, Anthony J; Pace, Kevin A; Perez, Frank; Pfaltelcher, Linda E; Prager, Daniel; Robideaux, Robert W; Shen, Stephanie L; Sparkman, James; Tafoya, Angela M; Takaki, Cheryl M; Tom, Randall G; Turski, Douglas A; Walker, James D; Wilson, John H; Wise, Richard
Cc: Alfonso, Dale A; Burke, Michael S; Crawford, Russell W; Duer, Walter M; Midlock, Eugene J; Songey, Jim H; Stone, Michael E
Subject: Today's Call

Hello everyone. Today's call at 3 pm will include a 30 minute discussion on two solutions jointly marketed by PFP and Stratecon. Dale Baumann will present. For the remainder of the call we will discuss our top pipeline opportunities.

Larry

USA Toll Free Number: 877-915-4783
PASSCODE: 83658



CEDS and CELS.rtf

Permanent Subcommittee on Investigations
EXHIBIT #97v

XX-002193

2102

From: Fisher, Sonia R
Sent: Thursday, March 15, 2001 1:18 PM
To: US-Stratecon MA Managers; US-Stratecon MA Partners; US-Stratecon MW Managers; US-Stratecon MW Partners; US-Stratecon NE Managers; US-Stratecon NE Partners; US-Stratecon SE Managers; US-Stratecon SE Partners; US-Stratecon SW Managers; US-Stratecon SW Partners; US-Stratecon W Managers; US-Stratecon W Partners; US-Stratecon WNT Managers; US-Stratecon WNT Partners; Hartwich Luessmann; Kelly Williams; Louise Brunnekreeft; Paul Beeson; Richard Whitley; Stephanie Seickel
Cc: Eischeid, Jeffrey A; Speiss, Timothy P
Subject: CEDS and CELS
To: Stratecon Partners, Managers

From: Walter Duer

cc: Jerry Rokoff, Alvin Knott, Jeff Eischeid, Tim Speiss

Re: New Solutions - CEDS and CELS

Stratecon and PFP have worked together in the development and approval process of two powerful new solutions CEDS and CELS for individuals seeking to monetize appreciated holdings of publicly traded stock without triggering current gain. We have developed and are deploying the solutions in conjunction with our alliance partner, Bricolage Capital. Bricolage is a very capable alliance partner—the key principals of which include a graduate from Harvard Business School, a PhD from Harvard in economics, a PhD in chemical physics from Princeton, and a summa cum laude graduate of Harvard college. PFP has the expertise and sophisticated software required to compare solutions.

This is a particularly important time to focus on these strategies because individuals are becoming increasingly concerned with diversifying to minimize risk and maximize returns, but wish to avoid gain recognition.

On the Monday night roll-out call Rick Rosenthal suggested that Stratecon area leaders get involved with PFP in the marketing and follow-up on these solutions.

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on Investigations

Suitable candidates generally will have net worth of at least \$100 million

Although PFP will generally have better access to clients and will take the lead in introducing this strategy, Stratecon professionals who have access to or knowledge about suitable candidates should contact by e-mail or phone: Jerry Rokoff 212 872 5798, Alvin Knott 212 872 5908, Jeff Eischeid 404 222 3180 or Tim Speiss 212-872-7901.

Many thanks.

XX-002194

Tax Practice Update

RICK ROSENTHAL
Vice Chairman, Tax Operations

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Permanent Subcommittee on Investigations
EXHIBIT #97w

XX-002162

Our Discussion

- FY00 Results: Congratulations!
- FY01 Expectations

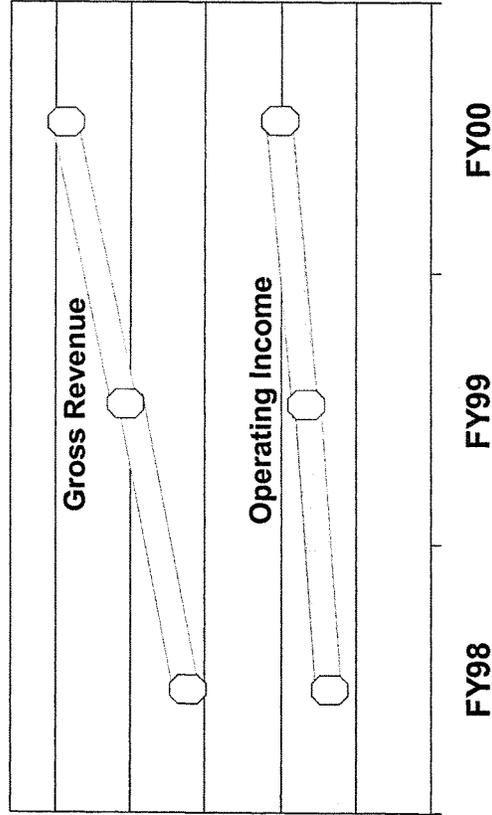


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XX-002.163

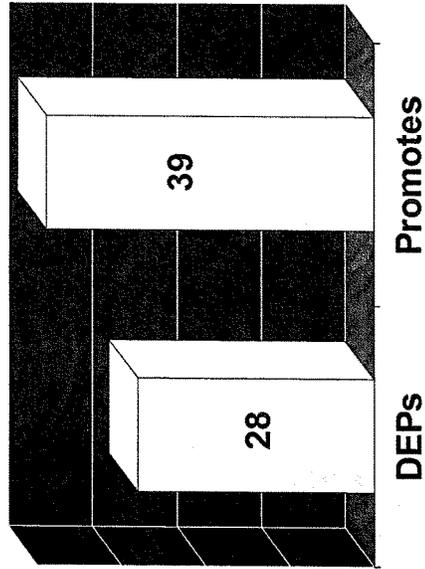
Congratulations!

- Strong top line and bottom line growth



Congratulations!

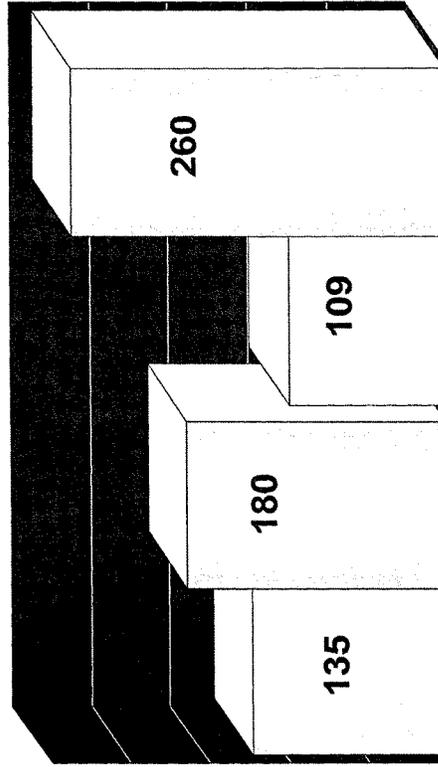
- Significant number of new partners



4

Congratulations!

- ...and senior managers and managers



Direct Entries Promotes Direct Entries Promotes

Sr. Managers

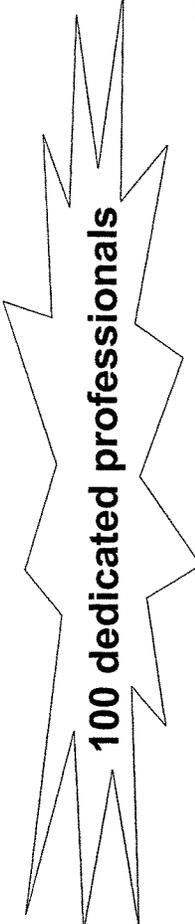
Managers



**Redacted by the
Permanent Subcommittee
on Investigations**

Congratulations!

- Launch of e-Tax Solutions
 - ◆ Solutions portfolio
 - e-Advisory
 - e-Transformation
 - Tax Portal



100 dedicated professionals

V

7

FY01 Expectations

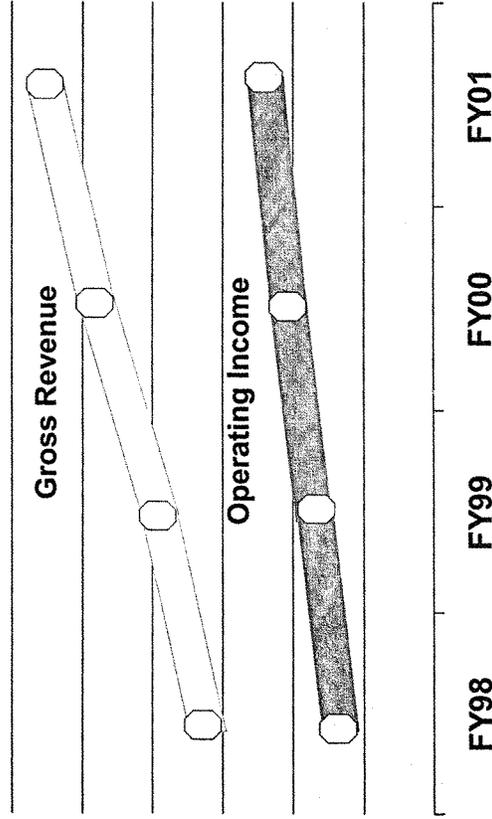
- Aggressive, but realistic top line and bottom line goals
- Responding to a new environment
 - ◆ increasing regulatory scrutiny
 - ◆ e-Business demands
 - ◆ escalating global pressures and opportunities

V

8

FY01 Expectations

- Strong top line and bottom line growth



V 9

FY'01 Tax Drive Campaign

Carol Ziegelheim, Montvale

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Permanent Subcommittee on Investigations
EXHIBIT #97x

XX-002150

Drive Periods

What? Focused effort to promote tax solutions that appeal to specific target audience

Why? Integrated marketing approach to increase effectiveness and efficiency

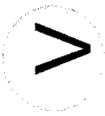
How? Pool marketing resources

When? Three times per year



FY'01 Drives – What's New

- One umbrella theme throughout the year – the age of “e”
- Static universe of targets – audience changes each drive
- Facilitative buying model – needs-based selling
- Coordination with Assurance
- Web-based marketing channel

V

3

Drive Period Tactics

- 3D Direct Mail with Web Interaction
- BDM Involvement
- Public Relations
- Advertising
- Internal Communications



**Want to drop in
on a tropical island?**

Keep your eyes peeled. You could win a trip to Bali.*

*The new tax drive is here.
Watch for complete details.

XX-002154

2117



XX-000155



1842

2118

From: POSTMASTER-US
Sent: Tuesday, May 08, 2001 11:22 AM
Subject: PFP Practice Alignment

Date: May 8, 2001

To: All PFP Professionals

From: Doug Ammerman - Orange County

cc: J. Stein - NSS/345 Park Avenue
R. Rosenthal - NSS/345 Park Avenue
All Federal Tax Professionals

Subject: PFP Practice Alignment

I would like to take this opportunity to share with you significant changes that are occurring in our PFP practice. The changes will better align the PFP practice with achieving its strategic and operational goals. Going forward, our National PFP practice will be comprised of innovative solutions, investment consulting (including STRATIS) and ACUMEN. The core PFP professionals will join our Federal Tax practice. This positions us to take greater advantage of market opportunities. Specifically we will be able to better penetrate our client base by ensuring our comprehensive portfolio of solutions -- both Federal and PFP -- is shared with *all* clients. By joining these professionals, it will also facilitate the sharing of resources during cyclical fluctuations in workloads.

As for those who remain in PFP, they will be dedicated to driving high-end solutions into the national marketplace, irrespective of the geography in which they reside. Their single-minded focus will undoubtedly translate to better results. In select instances, some of these individuals will maintain limited area engagement responsibilities.

We recognize the technical specialization of our PFP professionals and will maintain a national PFP practice (similar to Compensation and Benefits) to provide leadership and direction which includes:

- developing and executing a strategic plan
- delivering high-end strategies
- coordinating service to our National Accounts
- supporting the Family Wealth Conference which solidifies our relationship with key clients and prospects
- holding national and regional training programs
- technology tools such as KPMG InStrat, goals, options, Quick PFP, 1040
- coordinating HR and practice development efforts with the AMPs

The core piece of PFP will be consolidated into the Federal Tax financials. Currently each area maintains a separate P&L which requires substantial administration by area professionals in terms of the effort expended to manage utilization, billings and collections. While each partner and manager will continue to be responsible for the administration of their respective accounts, the Area Managing Partners will assume responsibility for the PFP financial statements. This will allow PFP area leaders to focus more attention in the marketplace without being burdened with

Permanent Subcommittee on Investigations

EXHIBIT #97y

XX-002065

day-to-day account administration. The PFP National practice consisting of innovative solutions, investment consulting and ACUMEN will continue to maintain its own financial statements.

I am confident that for now you will remain committed to doing everything possible to assist PFP in achieving our forecast for FY01. I also expect that you will all work to achieve a smooth transition so we are well positioned to start FY02. We are developing an integration plan that will take effect July 1st. There will be a lot of effort that needs to take place during this transition period to make sure we flawlessly implement the plan. It's absolutely critical that we make sure we retain our outstanding PFP professionals. I'm sure our competition will try to twist this to their advantage and attempt to recruit our top resources. We cannot let this happen. We absolutely intend to remain in and grow our PFP practice. Our PFP professionals will continue to work on PFP matters but without the internal administration and dispute of whether closely held corporations should be a part of PFP or federal tax. This is a very positive step forward and it will create significant synergies and opportunities for our PFP professionals.

I am proud of our accomplishments over the past few years and salute all of you for your tremendous effort. This change should allow our partners and management team to function as a cohesive component of the Firm's tax practice while continuing to demonstrate what has made you a success in the market.

If you have any questions or would like to discuss further, I welcome your call.

Douglas K. Ammerman
National Partner In Charge
Personal Financial Planning

2120

From: Wiseberg, Stanley C
Sent: Tuesday, July 24, 2001 12:49 PM
To: Ajiboye, Bobby; Avent, Thomas W; Baron, Jeffrey A; Barton, Alan D; Barton, Michael L (US/NYC); Basil, Dean F; Beecy, Paul A; Behrendt, Lars; Braverman, Harvey J; Calloway, Robert L; Cafes, Bernard V; Christensen, Katherine M; Connolly, William; Eakman, Lindel; Finkle, Andrew E; Flick, Hans; Franci, Jason K; French, Mark; Galarza, Louis E; Geoffroy, Richard E; Gold, Brett L; Goldberg, Dana; Golub, Errol G; Gonzales, Robert J; Goonan, Brad A; Goto, Yumi; Halpert, Ethan C; Hamersley, Michael C; Haran, Robert B; Hawkes, Robert T; Hayes, Thomas M; Hoffmann, Jeffrey M; Hughes, Ian D; Hussain, Selwa; Kaiser, Kevin W; Keppler, Juliane L; Lawrie, Gretchen R; Lee-Leviten, Ian E; Leo, Grace W; Loper Jr., James L; Lucas, Gerard; Martin, Scott; Masaitis, Scott; McCarthy, John P; Mckee, James F; McLean, Rick ; McMahon, Edward P; Mcquillin, Francis D; Melvin, John F; Mihara, Atsushi; Moreno, Kathleen M; Moresco, Scott E; Moser, Peter K; Muriello, Traci J; Neuenhaus, David; Nunez, Jessica M; O'brien, Timothy LA J; O'Donnell, Heather E; Oen, Terri L; Orndorff, Brian P; Pan, Paula; Patten, Anthony W; Peischel, James; Pershouse, William H; Porter, Lance A; Potter, William W; Prager, Daniel; Rowe, Grace G; Rubirosa, Patricia M; Russell, Jean L; Seickel, Stephanie S; Simulis, Charles S; Slattery, Kelly A; Smith, Glenn A; Spanjer, David (NL); Steinberg, Howard B; Strickler, Charles; Swanson, Marc; Tamer, Timothy J; Tansley, James C; Tata, Jason A; Terral, Travis M; Timmons, Samantha A; Tindall, James W; Ton-That, Marc ; Topper Jr., Bernard C; Turski, Douglas A; Walker, John M (US/TAX/Denver); Williams, Kelly (US/Paris); Woll, Christopher W; Woodruff, John T; Zinn, Michele R

FY01 was another outstanding year for the practice. Our practice grew total revenue by 55% over last year to \$38.5 million and operating income by 49.6% over last year to \$20.6 million. Thanks so much for your efforts. We all should be proud of our accomplishments.

Stan Wiseberg
M&A Tax
(P)202.533.3852
(F)202.533.8558
scwiseberg@KPMG.com

XX-002067

**Tax Innovation Center
FY01 Business Plan**

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Idea Generation	1. Align solution ideas with client business and industry issues	1. With Tax Industry Leaders create and implement industry lab structure 2. Develop and implement a business analysis model as a part of the TIC idea generation and solution/idea development processes	TIC Leadership, TILs TIC Leadership	Industry lab structure developed and communicated to TILs. Labs held: Communications, Consumer Markets, Energy, Banking & Finance, e-Tax, Industrial & Automotive Products. Business analysis is an inherent part of the industry labs. New WNT Solutions Inventory process incorporates consideration of business purpose, including TCS review.
Idea Generation	2. Award 75 light bulbs and \$50,000 to non-WNT idea submitters	1. Design and implement program to promote Idea Awards 2. With the Global Tax Innovation Center, develop and implement a global Idea Awards Program	TIC Leadership Springer, Peters, M. Avery	Idea awards program promoted via TIC distance learning, TSI Alerts, ESP News. 50+ light bulbs and \$35,000 cash projected to be awarded this FY.
Solution and TSI Development	1. Develop and deploy 35 new solutions that individually meet target revenue (\$5 million) and collectively meet target revenue of	1. Work with WNT functional leaders to set solution goals 2. Work with WNT functional leaders to assign solution development resources 3. Revise Solution Development Manual to be web-based and post to TIC home page	Springer, Peters Springer, Peters Springer, Peters, Galbreath	Launched 39 solutions (see attached spreadsheet).

**Tax Innovation Center
FY01 Business Plan**

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
	\$275 million	4. Create and implement plan to promote and measure use of Solution Development Manual	Springer, Peters, Galbreath	

2122

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Solution and TSI Development	2. Develop 6 cross-functional (tax with assurance and/or consulting) solutions (included in overall solution goal of 35)	<ol style="list-style-type: none"> 1. Create and implement plan for tax-assurance solution development and deployment 2. Link with e-Tax Solutions practice for tax-consulting solution development and deployment 	<p>Springer, Peters, S. Rucker, W. Klein</p> <p>Springer, Peters, Galbreath, Rainey</p>	<p>4 launched:</p> <ul style="list-style-type: none"> ■ Intellectual Property Services ■ Digital Marketplace Tax Suite ■ Customer Relationship Management ■ Economic Downturn Consulting Suite
Solution and TSI Development	3. Deposit 150 new Tax Service Ideas	<ol style="list-style-type: none"> 1. Work with WNT functional leaders to set TSI goals 2. Revise TSIB Manual to be web-based and post to TIC home page 3. Incorporate Lifecycle Ideas into TSIB 	<p>Springer, Peters, Rood</p> <p>Peters, Rood</p> <p>Rood</p>	<p>140 ideas posted/scheduled by 6/30, including 30 Lifecycle ideas converted to the TSIB.</p> <p>TSIB manual to be placed on TIC home page by 6/30.</p>
Solution and TSI Development	4. Improve speed to market.	<ol style="list-style-type: none"> 1. Develop and implement technical review and timing protocols for all solutions 2. Set and measure DPP review turnaround goals 3. Conduct training for WNT on Tax Solution and Tax Service 	<p>TIC and WNT functional group leaders</p> <p>Springer, Peters, DeLap, Elgin</p> <p>TIC Leadership</p>	<p>Held meetings with functional group leaders and solution development resources regarding solution and idea development processes.</p> <p>With WNT Leadership developed and implemented new WNT Solutions Inventory process.</p> <p>Worked w/ TKM to create reports for leadership.</p> <p>Will continue to meet w/ WNT leadership</p>

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Solution and TSI Development	5. Upscale quality of writing and graphics in toolkits and other presentations (e.g., distance learning)	1. Conduct writing skills seminar for new TIC staff 2. Identify and work with resources to help TIC create more professional looking presentations (content and graphics)	Rood Rood, Galbreath	Developed self-study writing skills seminar for new TIC staff and released it in Feb 2001. To be posted to TIC home page for general use. CLD is considering for firmwide course.
Solution and TSI Development	6. Enhance implementation elements of tax solution toolkits	1. Develop and implement protocol to ensure that copies of the work product from all beta test engagements are provided to the TIC for use in developing generic toolkits. 2. Include implementation workplans in all new solution toolkits 3. Create/capture implementation workplan for all ongoing active solutions	TIC Leadership TIC Leadership	Capturing engagement work plans for selected solutions (e.g., TAS). With Proposal Edge team developed protocol for collecting, screening, and posting best practice solution deliverables.

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Solution and TSI Development	7. E-enable all tax solutions	<ol style="list-style-type: none"> Revise the tax solution development process to include an "e" consideration phase to ensure that we consider possible e-enhancements to all tax solutions. Review all active tax solutions for opportunities to e-enable Integrate all appropriate TIC activities with Office of Web Tax Innovation 	<p>TIC Leadership</p> <p>TIC Leadership, National Deployment Champions</p> <p>TIC Leadership</p>	<p>Working with Office of Tax Digital Transformation and Tax Technology Practice to develop appropriate "e-enhancements" to solutions.</p> <p>Developed 8 criteria to use in evaluating need for technology tool when developing a solution/idea.</p>
Communication & Deployment	<ol style="list-style-type: none"> Increase WNT involvement in solution deployment. 	<ol style="list-style-type: none"> Develop, document, and implement protocol for role of WNT professionals in deployment and client-specific implementation of new tax solutions Develop and implement 	<p>Springer, Peters, WNT Leadership</p> <p>Springer, Peters,</p>	<p>Development process ensures involvement of WNT professionals in initial deployment of all solutions.</p> <p>Assisted WNT leadership in designing WNT Scorecard to encourage and track solution development and deployment activities.</p>

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Communication & Deployment	2. Provide guidance to Solution Deployment Teams	<p>criteria for measuring WNT partner role in revenue generation (i.e., partner scorecard)</p> <ol style="list-style-type: none"> 1. Create and implement plan to promote and measure use of Deployment Champion Manual 2. Work with deployment teams and PIC-Tax Solution Deployment to set and monitor solution-specific revenue goals 	Smith, Brockway Springer, Peters, Klein Springer, Peters, TIC Solution Development Teams	<p>With Tax Marketing finalized and posted to TIC and Marketing home pages National and Area Deployment Champion Manual. With tax leadership developed process for orientation and ongoing guidance for deployment champions.</p> <p>Worked with Tax Leadership on revised solution deployment process, including deployment of restricted distribution solutions and greater involvement of tax leadership and TIC in deployment.</p> <p>TIC leadership participated in all pre-revisit calls.</p> <p>TIC coordinated and facilitated pre-launch conference calls.</p>
Communication & Deployment	3. Improve communication of solutions and ideas	<ol style="list-style-type: none"> 1. Discuss all new solutions on weekly solution conference call 2. Issue Tax Solution Alert for all new solutions, with rare 	Springer, Peters Springer, Peters	<p>All new broad distribution solutions discussed on Monday calls.</p> <p>TSAs released/ to be released for all broad distribution solutions.</p> <p>15 TSI Alerts published</p> <p>All solutions (except very high-end Tier III)</p>

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
		<p>3. Issue TSI Alerts to cover all new TSIs</p> <p>4. Incorporate all solutions and Tax Service Ideas into KMatch.</p> <p>5. Develop and implement protocol to provide solution and service idea content for kpngtax.com</p> <p>6. Expand KMatch to include existing and new Canadian solutions</p> <p>7. Meet with TIC PICs from UK, Germany, Australia to encourage their participation in KMatch</p> <p>8. Conduct survey/focus groups to assess effectiveness of <i>Innovative Tax Solutions</i> distance learning sessions and modify format to better meet needs of participants</p>	<p>Rood</p> <p>TIC Management</p> <p>TIC Leadership, TKM</p> <p>Rood</p> <p>Springer, Peters, Rood</p> <p>Butler, Peters, Galbreath</p>	<p>put in KMatch.</p> <p>Worked w/ TKM and Marketing to launch External KMatch, including client focus groups and kpngtax.com webcast.</p> <p>Posted 9 Canadian solutions to KMatch Discussed KMatch at GTIC Summit Dec 2000. In discussion w/ UK TIC.</p> <p>With TKM developed SQL database of solution/idea information used to improve web-based communication of solutions/ideas (e.g., through more flexible abstract listing, service line specific reports) and to enhance toolkits (e.g., through web-based strategy indexes for umbrella solutions such as Net Ventures Tax Suite).</p> <p>Worked with TTP and TKM to develop versions 3 and 4 of KMatch, including ability to select solutions and ideas by business issue and to streamline KMatch administration by linking KMatch to the SQL database mentioned above.</p> <p>Added all TSIs under development to KMatch.</p> <p>Working with TKM on process to link TKS documents to TSAs, TSIs, and various tax web pages.</p>

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Communication & Deployment	4. Increase revenue from Tax Service Idea Bank	<ol style="list-style-type: none"> 1. Visit each area to promote and obtain feedback on TSIB and KMatch 2. Document and share best practices for TSIB deployment and KMatch 	Rood Rood	<p>Conducted TSIB/KMatch focus groups in each area. Documented findings and shared w/ ESP and tax practice leadership. Implemented suggested changes to KMatch.</p> <p>With ESP and Tax leadership, developed and implemented TSIB promotion program (METSA, DL, ESP News, regular ESP conference calls).</p> <p>With Service Line Leaders, identified selected TSIBs to promote on Monday solution calls and <i>Innovative Tax Solution</i> distance learning sessions.</p> <p>With Service Line Leaders and ESP PICs developed and promoted through Outlook and Distance Learning TSIB short term revenue generation checklist.</p>
Accountability	1. Measure solution profitability	<ol style="list-style-type: none"> 1. Obtain budgets for all new solutions 2. Prepare TIC cost and revenue report; distribute to WNT leadership and Tax Solution Development Team 	Springer, Peters, Butler Springer, Butler	<p>Solution development costs and revenue captured in PEAT and OMS. Prepared quarterly Solution Profitability Reports for WNT leadership.</p>

Tax Innovation Center
FY01 Business Plan

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
Accountability	2. Measure TSIB effectiveness	1. Work with ESP PICS and/or Area Marketing Directors to develop system for obtaining information on ESP deployment of TSIB	Rood	Met with ESP PICS to discuss system for determining effectiveness and usage of TSIB. Decided to set up a system of conference calls to report up to Paul Goldberg and tax leadership.
Human Resources	1. Retain 100% of personnel rated SE/EE and 75% of those rated ME	<ol style="list-style-type: none"> 1. Conduct informal performance management sessions for all core TIC personnel 2. Conduct formal mid-year and year-end performance management sessions for all core TIC personnel 3. Rotate core TIC team assignments to ensure variety of experience (Tax Service Idea Bank, solution development, KMatch, etc.) 4. Plan TIC social events 	<p>TIC Leadership</p> <p>TIC Leadership</p> <p>Rood, Galbreath</p> <p>Rood</p>	<p>One TIC manager (rated ME at FY00) left the firm. Two managers have requested extensions of their TIC rotations.</p> <p>Have filled all short-term (3-6 mo.) rotational spots. Short-term rotational program is fully integrated into the TIC, with participants working not only on TSIs but also on TSAs, GTIC solutions, KMatch and special projects.</p>
General Tax Practice Support	1. Assist with implementing GTIC vision	1. Get 8 GTIC secondees to Washington DC	Springer, Avery	<p>Core GTIC resource team in place.</p> <p>10 GTIC solutions deployed/to be deployed</p>

**Tax Innovation Center
FY01 Business Plan**

Focus Area	Goal	Critical Action Steps	Responsible Parties	Evaluation against Goal
General Tax Practice Support	2. Support Overall Tax Practice Vision/Goals/In initiatives	2. Develop and document GTIC solution development and deployment process 3. Develop 8 solutions with GTIC (included in overall goal of 35 new solutions)	Springer, Peters, Avery, Galbreath	by 6/30/01 through US practice as beta test opportunities, 75 ideas in development. TIC leadership continuing to work w/ GTIC leadership on enhancements to GTIC development and deployment process.
General Tax Practice Support	3. Assist w/ oversight and implementation of firm and tax practice risk management policies and procedures	1. Participate as active members of appropriate tax leadership teams/committees/task forces	Springer, Peters, Rood	TIC leadership team participated in Tax Leadership Team meetings, ESP PIC meetings, Alliance Practice, national industry meetings, GTIC meetings, experienced hire orientation training, Latin America partner training, e-Tax Strategy Workgroup, Office of Tax Digital Transformation advisory group. Done. Continue to manage Engagement Information Form database (to comply with Investor List requirements of corporate tax shelter regulations), including new reports to PPPs.

2131

Date: June 28, 2001
To: All US Tax Partners and All Federal Tax Professionals
From: Rick Rosenthal - NSS/345 Park Avenue
Cc: Jeff Stein - NSS/345 Park Avenue
Steve Anderson - 345 Park Avenue
AMPs - Tax
Subject: **Federal Solutions Group**

I am pleased to announce the formation of the *Federal Solutions Group* ("FSG"), effective July 1, 2001. The FSG will be comprised of dedicated Area professionals who are focused on the sale and delivery of designated federal solutions.

As our experience shows, we drive incremental revenue when we focus on solutions that have a defined market, a clear value proposition, and significant sales potential. When our tax professionals are able to dedicate themselves to specific solutions, we improve our speed to market, our quality, and thus, our competitive edge.

The FSG is a *delivery system* for these types of tax solutions. Traditionally, tax professionals are associated with *clients* and are on the lookout for solutions that will bring value to them. FSG professionals will be associated with specific *solutions* and *processes*, and will target clients and industries who will benefit from them. FSG solutions will cross industry lines and tax-functional areas. For example, the FSG will initially be responsible for the continued sale and delivery of the following solutions:

- Tax Accounting Strategies (TAS).
- Research and Experimental Tax Credit Studies.
- MEALS.
- CLAS.
- Other federal solutions as appropriate.

In the future, responsibility for additional federal solutions may be added where the solution has wide potential application and a repeatable, leverageable delivery model.

As soon as possible, FSG Groups will be active in each Area. Each Area Tax Managing Partner will designate a full-time Area FSG leader, as well as other individuals to focus on the sale and delivery of specific solutions. These Area professionals will continue to be part of our federal tax practice, team with TSPs and ESPs, and seek to leverage our other federal tax professionals when possible.

Nationally, the FSG will be led by Steven Anderson of our New York office. In this role, Steve will team with Area Leaders and WNT solution champions to build and equip the Area teams to sell and deliver the designated solutions.

We will provide additional information on the FSG and the names of the area leaders in the near future. In the meantime, if you have any questions, please contact your Area Managing Partner or Steve Anderson at 212/872-6452.

Permanent Subcommittee on Investigations

EXHIBIT #97aa

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**Tax Innovation Center
FY02 Goals**

Goal	Critical Action Steps
<p>1 Coordinate the launch/enhancement of 150 Tax solutions and/or Tax Service Ideas with a collective target revenue of \$300 million.</p>	<ul style="list-style-type: none"> ■ Coordinate w/ WNT leadership and functional group leaders to develop functional group goals that support overall goal. ■ Meet monthly with WNT Leaders and functional groups to review status and keep projects moving. ■ Conduct pre-launch calls for every new solution and enhancement featured on weekly tax solution conference call. ■ With the Tax Technology Practice and Office of Tax Digital Transformation, develop and implement technology enhancements to solutions. Identify and drive technology as part of 3 new solutions.
<p>2 Enhance TIC's role in deployment of all Solutions. Expand deployment of Tax Service Ideas</p>	<ul style="list-style-type: none"> ■ With Tax Practice and WNT leaders, finalize and implement Tax Solution Deployment process for both Broad and Restricted Distribution Solutions ■ Serve as virtual members of the deployment team for specific tax solutions, with joint accountability for developing and executing the solution deployment plan and revenue generation. ■ Actively participate in regular deployment team calls for all active tax solutions (share best practices; offer improvements; facilitate linkage with WNT resources) ■ Update and enhance materials as necessary ■ Prepare teams for solution revisits ■ Manage infrastructure for sharing solution materials ■ With Service Line and Industry leaders, specially promote all TSIs with revenue potential in excess of \$3 million.

Permanent Subcommittee on Investigations
EXHIBIT #97bb

**Tax Innovation Center
FY02 Goals**

Goal	Critical Action Steps
<p>3 Facilitate appropriate knowledge sharing of solution and service idea information</p>	<ul style="list-style-type: none"> ■ Work with tax leadership to institutionalize use of KMatch and other tools to promote TSIs. ■ Work with TTP on enhancements to KMatch and use of KMatch data. ■ Institutionalize use of solution Outlook folders ■ Coordinate selection and approval of solution-related material for kpmgtax.com
<p>4 Significantly enhance effectiveness of industry and service line/functional group labs</p>	<ul style="list-style-type: none"> ■ Establish key performance indicators; measure and report lab effectiveness quarterly ■ Include Assurance representation at all appropriate labs ■ Industry labs: <ul style="list-style-type: none"> ■ With TILs, sponsor industry-focused solution strategy meetings; ■ Develop suggested meeting format and follow-up protocol using best practices from FY01; ■ Agree with TILs on frequency of meetings. ■ Service line/functional group labs: <ul style="list-style-type: none"> ■ With National Service Line Leaders and WNT functional groups, determine appropriate frequency of and structure for service line/functional group labs; ■ Participate in all formal service line/functional group labs; provide appropriate follow-on support.

From: Walker, Charles R (US/Chicago)
Sent: Friday, May 10, 2002 8:07 AM
To: Engel, Greg A; Resnick, Joel
Subject: RE: State of Union (aka Stratecon)

Excellent. Agree with all points. I do think we need a lab with the people mentioned. Walter still wants Adkin, etc. which I don't agree with because we can't discuss anything without fear of losing it, same with Alvin. Next week is generally good. Would prefer to be in Nashville some as Reed will be home for only 3-4 days and I would at least like to have dinner, etc.

-----Original Message-----

From: Engel, Greg A
Sent: Thursday, May 09, 2002 11:52 PM
To: Walker, Charles R (US/Chicago); Resnick, Joel
Subject: State of Union (aka Stratecon)

Chuck/Joel,

Comments?

I think we need decide on some action steps immediately. Our people are in need of some information.

It seems that Richard is in general agreement that Stratecon should continue under a slightly different operating plan. On one hand, the plan is the same (e.g. ideas that can make money), however I think the minor adjustments are very significant. I don't think we should fall into business as usual with some reduction in force and a jettison of three partners to ICS.

I offer the following specific action steps (not in any specific order):

- (1) rename the group (this should demonstrate that it is not business as usual).
- (2) open up direct and honest communication with the AMP's; perhaps one on one meetings or telecon to gain support and solicit their input in our strategic planning and resource leverage issues. Perhaps this is ongoing, but I don't see it. I think all of us should be involved in these important discussions.
- (3) roadshow to the new AA partners and selected TIL's, BUPIC's and TSP's (very low key)
- (4) dedicate resources (perhaps some of our senior managers) to work with a few partners to determine the go to market issues related to privilege and Kovel arrangements. I think we have the green light to engage outside counsel, but we need to do some homework first. We need some "rules of the engagement"
- (5) Conduct a "lab" as soon as possible. This should be a steering lab type meeting to inventory who, what, how. I think there are some ideas, but not much focus. Perhaps this is just Joel, Chuck, Greg, Hap, Haynor, Manth(?). I think that one of the outputs of this meeting will be a "quality assurance plan" for all solutions (e.g. protocol, etc).
- (6) Have a practice meeting as soon as possible for the RF practice. This group is actually very busy, but with Mark gone there is no leadership. I will step in and get this going and we can see what happens when the AA guy joins (it may be too much to expect from him to lead this group without any break-in period). Decredico/Strobel can provide some leadership and organization to support me. Sellers should be tied in as well.
- (7) Get with Burke asap to discuss the next leader of SANV. We have a big stake in this and we need to have input.

Proprietary Material
 Confidentiality Requested

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Permanent Subcommittee on Investigations
 EXHIBIT #97cc

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(8) Review all investments. This is ongoing with the hard close, but we need to really drill into this one.

(9) As long as we have area leaders, we need to get the area leaders to focus on the utilization, etc needed to hit forecast. This will be complicated by the investments we must make (e.g. see above the need for labs, etc.).

(10) Put on a happy face, as leaders we can set the tone for our people.

These are my thoughts. I would be happy to execute asap once we have a green light.

Comments? Should we send to Walter? Richard?

Greg

Tax Deployment Champion Manual

**A Process Guide for National & Area
Deployment Champions**

Permanent Subcommittee on Investigations
EXHIBIT #97dd

XX-002104

July 2002

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**Tax Deployment Champion Manual
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I. INTRODUCTION**National & Area Deployment Champions**

- Deployment Champions are professionals in the tax practice charged with spearheading the market launch and deployment of new tax solutions in their service lines.
- National Deployment Champions (NDCs) and the respective National Service Line Leader(s) (NSLL) have ultimate accountability for the successful deployment of a new solution.
- Area Deployment Champions (ADCs) are similarly accountable for the success of the solution in their geographic areas.

Purpose of the Tax Deployment Champion Manual

- Informs NDCs and ADCs, in detail, of what is expected of them.
- Gives NDCs and ADCs the tools for successfully carrying out their mission.
- Offers an operational framework designed to enhance efficiency in deploying tax solutions.
- Provides a format for sharing best practices.

The Importance of Deployment Champions

- A deployment champion or "owner" is critical to keeping the team focused, coordinated, and moving forward.

II. SELECTION PROCESS**Purpose of the Deployment Champion Selection Process**

- A formal selection process:
 - Coordinates input from relevant tax leaders (e.g., Area Managing Partners (AMPs), NSLL(s), Tax Industry Leader(s) (TIL)) with regard to appropriate champions for a particular solution.
 - Helps ensure that NDC and ADC assignments are spread evenly across the tax practice.
 - Facilitates quickly putting together a team.

Selection of National Deployment Champions

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- For industry specific solutions, the TIL or his/her designee generally serves as the NDC.
- For non-industry specific solutions, the idea generator, WNT Development Leaders, Tax Innovation Center (TIC), NSLL(s) and AMPs determine who serves as the NDC.

Selection Criteria for National Deployment Champion(s)

Mandatory

- Demonstrated leadership abilities
- High degree of individual initiative (i.e., self starter)
- Successfully managed teams to achieve objectives
- Partner or experienced senior manager

Recommended

- Specific past success with one or more solutions
- Uses project management techniques
- Personal technical expertise in support of solution
- Establish credibility with AMPs

Selection of Area Deployment Champions

- Early in the development process, the TIC notifies AMPs and, where applicable, the NSLL(s) and TILs regarding upcoming solution introduction and solicits recommendations for ADCs.
 - AMPs/NSLL
 - ADC appointments should be finalized while solution is in development.

III. ROLES & RESPONSIBILITIES FOR NATIONAL & AREA DEPLOYMENT CHAMPIONS

The Purpose of Defining Roles and Responsibilities Up Front

- Apprises NDCs and ADCs of their responsibilities up front and communicates the criteria on which they will be measured.
- Informs other team members what they can expect from the NDC and ADC.
- Provides framework for measuring performance and accountability of NDCs and ADCs.

Commissioning National Deployment Champions

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- National Service Line Leader and VC-Tax Operations conduct meeting/conference call with NDC to review roles and responsibilities
 - Set preliminary goals for the solution (e.g., revenue, team building, market awareness)
 - Upon launch of solution, commit to final goals developed with ADCs
 - Incorporate final goals into performance review and notify performance manager
 - Update Dialogue

National Deployment Champion's Role

Pre-launch

- Leads and coordinates the Deployment Team for a specific tax solution.
- Develops the "go to market strategy" for the solution, with input from the ADCs, and documents on standard template (**Exhibit I: Tax Solution Deployment Plan**)
 - Works with TIC and Market Research to develop national target list
 - Reviews final strategy with ADCs and obtains their "buy in"
 - TIC posts go-to-market strategy document to solutions' Outlook folder
 - ADCs and NDCs accountable for executing against go-to-market strategy
- Establishes revenue goal for solution and holds ADCs accountable
 - Estimates and documents overall revenue potential and rationale using standard template (**Exhibit I**)
 - Validates revenue goals by area with ADCs
 - Obtains approval of revenue goals from Vice-Chair (VC) Tax Operations and AMPs via the ADCs.
 - Advises ADCs' performance managers (via email) to revise Dialogue
 - In collaboration with the TIC posts revenue document to solution Outlook folder
- Prepares the solution team for launch on the Weekly Tax Solutions call

Post-launch

- Organizes and conducts regularly scheduled *post-launch* solution conference calls/meetings.
- On a national basis, assists in briefing Business Development Managers (BDMs) and/or Practice Development Coordinators (PDCs) on the best sales approach with prospective clients.
- Periodically participates in Weekly Tax Solutions conference call to update tax leadership on market activity (revisits).

Commissioning Area Deployment Champions

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- NDCs, along with AMPs and/or appropriate Area Service Line Leaders, conduct meeting/conference call with ADCs to review roles and responsibilities.
 - Set initial goals for the solution (e.g., revenue, team building, market awareness)
 - Upon launch of solution, commit to final goals developed with NDC and Area Leaders
 - Incorporate goals into performance review and notify performance manager
 - Update Dialogue

Area Deployment Champion's Role

- Operate as a sounding board for the TIC and NDC during the solution development process on issues such as pricing, target characteristics, implementation issues, sales strategy.
- Meet with AMP/Business Unit Partner in Charge (BUPIC)/Area Service Line Leader/Area Marketing Director (AMD) and obtain buy-in for revenue goals and go to market strategy.
- Screen initial area target list for additions and deletions before solution launch.
- Serve as member of the solution Deployment Team.
 - Participate in regular conference calls/meetings with the Deployment Team and WNT/TIC representatives to share best practices and provide updates on solution activity in the area.
- Drive the solution's market introduction in the area.
 - Review and prioritize the target list with AMP/BUPIC/Area Service Line Leader/AMD and develop follow up plan.
 - Introduce the solution to the area at the Area Marketing Meeting following the Weekly Tax Solution call launch.
 - Build a team of professionals dedicated to helping sell and deliver the solution (with AMP/BUPIC/ Area Service Line Leader agreement).
 - Assist BDMS, with the help of the AMDs, in developing the best sales approach with prospective clients in his/her area.
- Create a sense of accountability:
 - Notify the AMP/BUPIC/AMD and/or Area Service Line Leader of progress against assigned targets, and ask them to circulate wins/losses to appropriate area Tax Service Partners (TSPs).
 - Review Opportunity Management System (OMS) reports on solution activity in the area for accuracy; follow up with AMD on updates and inaccuracies.
- Participate in Weekly Tax Solutions Conference call revisits
 - Discuss at Area Marketing meeting in the month prior to the revisit

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- Meet with AMP/BUPICs/Area Service Line Leader to review and assess "go to market" strategy; apprise of market activity including successes and challenges
- Provide update on revenue goals
- Identify top opportunities, stage in sales cycle, likelihood of closing and resources needed.
- Share information on national activity related to the solution with local TSPs, including technical updates and selling/marketing information.
- Channel questions, comments, best practices, need for additional toolkit items or toolkit revisions to TIC via team conference calls/meetings.

IV. THE CHAMPION NETWORK

Initial communication

- NDC sends an email to ADCs to inform them of their appointment as part of the national Deployment Team and to establish a schedule of team conference calls/meetings.

See Exhibit II: Sample Kickoff e-mail to Area Deployment Champions and Exhibit III: Sample Template for Contact List.

V. ONGOING TEAM COMMUNICATION

The importance of conducting regular Deployment Team meetings

- Establishes a forum for exchanging information, best practices, and ideas among team members.
- Keeps everyone on the team moving forward at an even pace.
- Provides WNT/TIC with additional information to enhance solution.

Procedures that help make conference calls more effective

- Schedule a standing call for the same time each week, every-other-week or month, as needed.
- Secure a permanent call-in number.
- Set a recurring meeting using Outlook "Plan a Meeting" feature
- Send a reminder 3 days prior to call (attach an agenda).
- Request that the call participants confirm their attendance (directly reply to NDC's assistant).
- Circulate minutes with action items immediately following the call.

See **Exhibit IV: Agenda Templates for Pre-Launch Teleconference Calls** and **Exhibit V: Agenda Templates for Post-Launch Teleconference Calls**.

Minutes from conference call

- Meeting minutes should identify key action items, due dates and persons responsible.
- The NDC should issue the minutes to all call participants and the WNT/TIC representatives within 24 hours of the call.

See **Exhibit VI: Template for Meeting Minutes**.

VI. PARTICIPATING IN WEEKLY TAX SOLUTIONS CONFERENCE CALLS: LAUNCH

Prepare the solution for launch on the Weekly Tax Solutions call

- NDC and TIC create PowerPoint document that is reviewed on the *pre-launch* call and distributed to Tax Leadership Team for the Weekly Tax Solutions call (**Exhibit VII: Sample PowerPoint for Launch Call**)
 - TIC circulates draft of PowerPoint and target list to *pre-launch* call participants at least 1 day prior to the *pre-launch* call
- NDC leads the Weekly Tax Solutions call launch discussion
 - Addresses the following issues: value proposition, critical success factors, rationale for revenue goals, and "go to market" strategy
 - Ensures that all ADCs participate on the call

TIC and Marketing support for Weekly Tax Solutions Call: Launch

Activities in advance of the call

- TIC schedules *pre-launch* solution calls involving the NDC and ADCs at least 6 days prior to solution launch (**see Exhibit VIII: Sample Standard Pre-launch Message from TIC**).
- TIC sends "plan a meeting" message to all Weekly Solutions Call participants from TIC inbox on the Thursday prior to the call
- TIC sends Weekly Tax Solutions Call attendee list to MCI, VC-Tax Services, VC- Tax Services Operations and Partner in Charge Strategic Sales on the Thursday prior to the call
- TIC distributes advance preparation materials to all attendees the Thursday prior to the call (e.g., PowerPoint presentation, target list)

Activities after the call

- TIC circulates Weekly Tax Solutions attendance list to Tax Leadership Team the day following the call
- National Marketing coordinates preparation of Monday Night Call minutes
 - TIC circulates Weekly Tax Solutions call minutes/action items to call participants the day following the call
 - TIC posts minutes/action items to the solution's Outlook folder

VII. PARTICIPATING IN WEEKLY TAX SOLUTIONS CONFERENCE CALLS: REVISITS**Prepare the solution for revisit on the Weekly Tax Solutions call**

- National Marketing Director confirms quarterly with NDCs, Service Line Leaders and AMPs that solution is still viable
- Hold previsit call at least 10 days prior to revisit to prepare for Weekly Tax Solutions Conference Call revisit
 - Attendees: NDC, ADCs, TIC, Partner in Charge Strategic Sales, National Service Line Leader and Marketing Director(s)
 - Call Leader: Strategic Sales Partner in Charge, TIC
 - Preparation: ADCs meet with AMPs/BUPICs/Area Service Line Leaders/AMDs to assess "go to market" strategy and top opportunities, update OMS report, review revenue goals.
 - Agenda: review value proposition, market activity, best practices, challenges
 - Outcome: PowerPoint presentation for Weekly Tax Solutions Conference call (**Exhibit IX: Sample PowerPoint document for solution revisit**), confirmation of solution viability
- Protocol for Weekly Tax Solutions conference call revisit.
 - The revisit should be an interactive discussion between NDC/ADCs and tax leadership on market activity. A PowerPoint document (See **Exhibit IX above**) and an OMS solution activity report are used as the basis for the discussion.
 - Most helpful information for NDC/ADCs to share based on facilitator's prompting could include:
 - Brief recap of the solution – value proposition and target profile
 - General assessment of progress against "go to market" strategy
 - Market activity
 - Number of targets called upon (review of OMS reports)
 - Marketplace reception
 - Competitors' actions and responses, if known

- Success stories
 - Closed deals, feasibilities, outstanding proposals (review of OMS reports)
 - Fee arrangements/pricing
- Looking forward
 - What is working well/not working
 - Suggested modifications to deployment strategy
 - Short term goals
 - Longer term goals and expectations
 - Specify additional support from the tax leadership team/tax partners -- be specific who (TSPs, Service Lines) and what (client/target introductions, resources)
- Outcome of the revisit will be confirmation of/improvements to deployment process.

TIC and Marketing support for Weekly Tax Solutions Call: Revisit

- Formalize revisit schedule quarterly based on input from AMPs and Service Line Leaders
 - Circulate revisit schedule to Tax Leadership Team at the outset of the quarter and issue reminders on Weekly Tax Solution Call announcements
- Schedule (See **Exhibit VIII above**) and conduct pre-revisit call at least 10 days in advance of Weekly Tax Solution Call
 - Include OMS report in meeting message
- Finalize PowerPoint and updated target list with input from NDC by the Wednesday preceding the Weekly Tax Solution Call
 - Circulate PowerPoint and updated target list, updated OMS reports with Weekly Tax Solution Call message
- National Marketing coordinates preparation of Monday Night Call minutes
 - TIC circulates Weekly Tax Solutions call minutes/action items to Weekly Tax Solution call participants the day following the call
 - TIC posts minutes/action items to the solution's Outlook folder

VII. TAX OPPORTUNITY MANAGEMENT SYSTEM (OMS)

OMS Overview

- A real-time repository of information about our sales targets/clients with a summary of market activity for each tax solution. Includes information about the company, our engagement team, company contacts and sales opportunities.
- Information is grouped and presented by company. It is possible to search by company name, partner, or solution.

See Sample OMS Screens:

- Exhibit X: Sample OMS Account Headquarters Screen
- Exhibit XI: Sample OMS Financial Screen
- Exhibit XII: Sample OMS Account Description & Team Screen
- Exhibit XIII: Sample OMS Opportunity Detail Screen

Benefits of using OMS

- **Channel conflict** identification: coordinate the sales efforts of TSPs, BDMs, PDCs, and the National Deployment Team for the solution.
- **Contact management** system providing detailed demographic and financial information about target companies and decision-makers.
- **Revenue forecasting** by measuring the pipeline and tracking solution-specific sales activity.
- **Measurement** of marketing programs through specific drive periods.

How to use OMS

- Access real-time database through the KPMG network or via SecurId.
- Data can be entered directly into OMS, or information can be directed to the appropriate Area Marketing Director for entry.
- Request customized activity reports from Area Marketing Directors or the OMS support team.

See Exhibit XIV: OMS Contact List.

Technical Contact List

- Installation and connection problems should be directed to:
 - KPMG National Support Center, 1-800-576-4435
- Usage and report questions should be directed to:
 - Christine Meek, System Administrator, 219-423-6821

See Exhibit XV: OMS Input Form.

Product Deployment Model: Federal Tax

This provides a summary of how the federal tax product deployment model will operate:

ACTION	PARTICIPANTS
<ul style="list-style-type: none"> • Product is “packaged” • Identify Product Owner(s); if different from the Product Owner(s), National Technical Leader(s) identified; • Complete toolkit including white paper, targets (where appropriate), pricing strategy, etc. 	<ul style="list-style-type: none"> • Tax Innovation Center (“TIC”), Product Owner(s), National Marketing
<ul style="list-style-type: none"> • TIC notifies Jeff Stein/Wendy Klein (Federal Tax Marketing Leader) that a new “packaged product” is ready for deployment 	<ul style="list-style-type: none"> • TIC, Product Owner(s), J. Stein, W. Klein
<ul style="list-style-type: none"> • Tentative group decision regarding makeup of product deployment team (e.g. broad reach -- local product deployment teams; or narrow scope - national product deployment team) 	<ul style="list-style-type: none"> • TIC, J. Stein, “Product Owner(s)”
<ul style="list-style-type: none"> • Distribute advance copy of the Tax Product Alert and target lists (if appropriate) to J. Stein, W. Klein, Area Tax PICs, and others as necessary 	<ul style="list-style-type: none"> • TIC, National Marketing
<ul style="list-style-type: none"> • J. Stein schedules conference call with Area Tax PICs and others as appropriate to discuss new “packaged product” 	<ul style="list-style-type: none"> • J. Stein, TIC, “Product Owner(s),” National Technical Leader(s), Area Tax PICs, National Marketing

Product Deployment Model: Federal Tax

ACTION	PARTICIPANTS
<ul style="list-style-type: none"> • Conference call covers: • brief product overview; • recap of target criteria; • target list review (if appropriate), • recommended composition of product deployment team, • determination if additional local technical leaders must be identified/trained, or if National Technical Leader(s) will service all areas, • plans for national training session (e.g. Distance Learning, Kman site, etc.) 	<ul style="list-style-type: none"> • J. Stein, TIC, "Product Owner(s)," National Technical Leader(s), Area Tax PICs, National Marketing, Area Marketing and National Tax Sales Leader
<ul style="list-style-type: none"> • Broad distribution of TPA 	<ul style="list-style-type: none"> • TIC
<ul style="list-style-type: none"> • Area Tax PICs arrange conference call/meeting with local product deployment teams; ensure consistent deployment across all areas 	<ul style="list-style-type: none"> • J. Stein, Area Tax PICs, Area Marketing
<ul style="list-style-type: none"> • Conference call/meeting covers: • product overview, • target assignments, • date of national training session (e.g., Distance Learning), etc. 	<ul style="list-style-type: none"> • Area Tax PICs, Area Marketing, and Subgeographic leaders or local product deployment teams, depending on product, and product technical representatives.
<ul style="list-style-type: none"> • Local product deployment teams review materials on Kman site and TPA prior to national training session; come prepared with FAQs. 	<ul style="list-style-type: none"> • Area Tax PICs, deployment team, Area marketing

Product Deployment Model: Federal Tax

ACTION	PARTICIPANTS
<ul style="list-style-type: none"> • Conference call/meeting with local product deployment teams following national training session 	<ul style="list-style-type: none"> • Area Tax PICs, product deployment team, Area Marketing
<ul style="list-style-type: none"> • During conference call/meeting local product deployment teams given target assignments and delivery dates. 	<ul style="list-style-type: none"> • Area Tax PICs, local product deployment teams, Area Marketing
<ul style="list-style-type: none"> • Track local product deployment teams progress 	<ul style="list-style-type: none"> • Area Tax PIC, Subgeographic Leaders, if appropriate, Area Marketing
<ul style="list-style-type: none"> • Set up feedback mechanism to gather and share comments arising from marketplace experience/sales calls. 	<ul style="list-style-type: none"> • Product Owner(s) and/or National Technical Leaders, Area PICs, TIC,
<ul style="list-style-type: none"> • Data entry in OMS 	<ul style="list-style-type: none"> • Area Marketing
<ul style="list-style-type: none"> • Share successes, learning, best practices via Kman, newsletters, etc. 	<ul style="list-style-type: none"> • Area Tax PICs, National Marketing, Area Marketing

MEALS
Meals & Entertainment Advisory & Logistics Services
Script for Initial Call to Introduce MEALS

Who To Contact

Tax Director

MEALS

I. Introduction

- A. Identify caller and callee
- B. Introduce firm
- C. General background

The Call

- My name is _____ and I am with KPMG. I work with *(name of professional)*. The reason I am calling is to share a strategy that KPMG has designed to assist you in obtaining a **permanent** tax savings on your meals and entertainment account. This can be achieved by conducting a review of your company's meals and entertainment accounting procedures. Our Washington National Tax department is part of the solution design team and will be a resource to the delivery team.

- May I ask you a couple of questions?
Is your company's meals and entertainment account at least \$1 million?
 - If yes - continue with the call.
 - If no - can you give me an idea of the amount in your meals and entertainment account?
(If the amount is less than \$1 million discontinue).
When discontinuing the call ask the Tax Director if you could follow up with him at a later date when it may be more beneficial to him to maximize the benefit.

Close

Once you have determined that the company meets the minimum of \$1 million ask the Tax Director to verify his schedule to book the ICV.

Possible Objections/Questions:

1. How can KPMG help me?

In general, taxpayers must limit their tax deductions for meals and entertainment expenses to 50% of amounts incurred. However, various exceptions to the 50% limitation permit a client to deduct 100% of certain expenses. Many companies pay too much income tax by incorrectly limiting their meals and entertainment deductions. KPMG can assist you in identifying and correcting expenses that are misclassified.

2. Why KPMG?

Permanent Subcommittee on Investigations

EXHIBIT #97ff

XX-002009

KPMG has developed a unique four-phase approach that offers your company significant advantages.

- KPMG will conduct a feasibility study at no cost to your company.
- KPMG uses statistical sampling which helps accelerates the review and offers sound justification for the reclassification amount.
 - KPMG applies the information learned from the statistical sampling to your current year's expenses to provide appropriate rationale for the reclassification amount.
- KPMG helps you redesign your company's meals and entertainment expense report to improve future expense classification.
- KPMG designs an audit defense manual for you which documents work programs, procedures, etc.

3. Will KPMG have to come back every year?

No, KPMG will assist you in setting up a recordkeeping system that helps you classify future meals and entertainment expenses correctly.

4. Will this work for our company?

This strategy is designed for companies in all lines of business.

5. How is KPMG different from the competition?

- KPMG has a national team who is experienced in delivering meals and entertainment reclassification to many companies.
- KPMG uses statistical sampling which helps accelerate the process and offers sound justification for the reclassification amount.
- KPMG is equipped to implement.
- KPMG sets up procedures for your people to follow so your company can realize future benefits.

6. Does this apply to past years?

- If you have open years with the IRS the meals and entertainment reclassification can be applied retroactively.

7. Can you tell me more about how this would work and the savings my company would realize?

- If your company has \$2 million in meals and entertainment, the IRS requires a 50% reduction to the amount (e.g. with \$2 million gross, you get a deduction for only \$1 million). Our strategy tries to reclassify the remaining \$1 million to a deductible expense. If we reclassify 40% you take \$400,000x35% tax rate and the savings realized is \$140,000 per year. And of course we implement for you!

8. How much of my time/my staff's time is this going to take?

- This requires very little of your or your staff's time. We will need to spend approximately 1 - 2 hours with someone in Accounts Payable. We are prepared to do statistical sampling of expense reports.

DRAFT - Subject to Change
APPENDIX A

<p>Client Name: _____ Engagement Partner: _____ Phone: _____</p> <p>Please insert the following information:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">1. Net Tax Savings</td> <td style="width: 50%; text-align: right;">\$175,000,000</td> </tr> <tr> <td>2. Opinion Variable (if none, insert 0) <small>(For our example we assume a "more likely than not" adjustment of -10%.)</small></td> <td style="text-align: right;">-0.15</td> </tr> <tr> <td>3. Complexity Variable (see Table B.) <small>(For our example we assume a "high complexity" variable (10%))</small></td> <td style="text-align: right;">0.10</td> </tr> <tr> <td>4. Estimated number of engagement ho</td> <td style="text-align: right;">5,000</td> </tr> <tr> <td>5. Standard average hourly rate</td> <td style="text-align: right;">\$250</td> </tr> </table>	1. Net Tax Savings	\$175,000,000	2. Opinion Variable (if none, insert 0) <small>(For our example we assume a "more likely than not" adjustment of -10%.)</small>	-0.15	3. Complexity Variable (see Table B.) <small>(For our example we assume a "high complexity" variable (10%))</small>	0.10	4. Estimated number of engagement ho	5,000	5. Standard average hourly rate	\$250	<p style="text-align: center;">COMPUTATION OF ENGAGEMENT FEE</p> <p>1. Unadjusted Fee</p> <p style="margin-left: 20px;">A. Net Tax Savings \$175,000,000</p> <p style="margin-left: 20px;">B. Calculated Unadjusted Fee \$13,750,000</p> <p style="margin-left: 20px;">- see Table A. Sliding Fee Scale</p> <p style="margin-left: 20px;">Note: \$13,750,000 equals 7.6% of \$175,000,000</p> <p>2. Modified Fee</p> <p style="margin-left: 20px;">A. Opinion Variable Adjustment (\$2,062,500)</p> <p style="margin-left: 20px;">B. Complexity Variable Adjustment \$1,375,000</p> <p style="margin-left: 20px;">- see Table B. Complexity Adjustments</p> <p style="margin-left: 20px;">C. Fee Adjusted for Opinion and Complexity Variables Modified Fee \$15,062,500</p> <p>3. Model Fee</p> <p style="margin-left: 20px;">A. Fee based on estimated number of engagement hours times 125% of standard average hourly rate. \$1,562,500</p> <p>4. Engagement Fee</p> <p style="margin-left: 20px;">- The greater of the Modified Fee or Model Fee. \$15,062,500</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">Table A. Sliding Fee Scale</th> </tr> <tr> <th colspan="3" style="text-align: center;">Net Tax Savings: \$175,000,000</th> </tr> <tr> <th style="text-align: center;">NTS Range</th> <th style="text-align: center;">Unadjusted Fee (as % of NTS)</th> <th style="text-align: center;">Dollar Fee Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">≤ \$10 m</td> <td style="text-align: center;">25%</td> <td style="text-align: right;">2,500,000</td> </tr> <tr> <td style="text-align: center;">> \$10 m ≤ \$20 m</td> <td style="text-align: center;">20%</td> <td style="text-align: right;">2,000,000</td> </tr> <tr> <td style="text-align: center;">> \$20 m ≤ \$30 m</td> <td style="text-align: center;">15%</td> <td style="text-align: right;">1,500,000</td> </tr> <tr> <td style="text-align: center;">> \$30 m ≤ \$40 m</td> <td style="text-align: center;">10%</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td style="text-align: center;">> \$40 m</td> <td style="text-align: center;">8%</td> <td style="text-align: right;">6,750,000</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right;">Unadjusted Fee \$13,750,000</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Table B. Complexity Adjustments</th> </tr> <tr> <th style="text-align: center;">Level of Complexity</th> <th style="text-align: center;">Adjustment</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Very Low</td> <td style="text-align: center;">-25%</td> </tr> <tr> <td style="text-align: center;">Low</td> <td style="text-align: center;">-10%</td> </tr> <tr> <td style="text-align: center;">Average</td> <td style="text-align: center;">0</td> </tr> <tr> <td style="text-align: center;">High</td> <td style="text-align: center;">10%</td> </tr> <tr> <td style="text-align: center;">Very High</td> <td style="text-align: center;">25%</td> </tr> </tbody> </table>	Table A. Sliding Fee Scale			Net Tax Savings: \$175,000,000			NTS Range	Unadjusted Fee (as % of NTS)	Dollar Fee Amount	≤ \$10 m	25%	2,500,000	> \$10 m ≤ \$20 m	20%	2,000,000	> \$20 m ≤ \$30 m	15%	1,500,000	> \$30 m ≤ \$40 m	10%	1,000,000	> \$40 m	8%	6,750,000			Unadjusted Fee \$13,750,000	Table B. Complexity Adjustments		Level of Complexity	Adjustment	Very Low	-25%	Low	-10%	Average	0	High	10%	Very High	25%
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Permanent Subcommittee on Investigations
EXHIBIT #97gg

XX-002003

KMatch Push Feature Campaign

**Marsha Peters
Tax Innovation Center**

**FOR INTERNAL USE ONLY --
NOT TO BE USED FOR CLIENT PRESENTATIONS**

What is KMatch?

- An interactive software program that asks a user a series of questions about a client's business and tax situation
- KMatch logic sorts through the answers to identify *Tax Solution Alerts* and *Tax Service Ideas* that likely are appropriate for the client

V

2

KMatch Capabilities

- Pull technology – allows professionals to search the KMatch database for solutions and ideas
- Push technology (NEW) – sends solutions and ideas to professionals' desktops

V

3

How the Push Feature Works

- After a KMatch user answers questions and saves client data, he/she is notified by email of new solutions and ideas that match the client's profile.
- Similarly, we can "push" previously posted solutions and ideas that the tax practice wants to promote, e.g.:

Special initiatives, such as cash flow drive period strategies

Year-end strategies

"Revisited" Solutions

V

4

XX-001514

Campaign to Get Client Data into KMatch

- Recommended for all clients
- Required by 1/15 for:
 - Americas Accounts
 - Priority Area Accounts
 - Other accounts with annual tax consulting fees > \$100K
- Progress report to AMPs/BUPICs in early January

V

5

XX-001515

What Should You Do

- Enter Basic Client Data
 - > Type of entity
 - > Industry
 - > Select “all areas of practice”
 - > Select all relevant business issues
- Answer Questions
 - > Not required, but answering questions allows KMatch to more accurately filter new solutions and ideas
- Save file as the “push” file
 - > Use other KMatch data files for the same client to target specific business issues or areas of practice
- Enter email address for team member to be notified of pushed solutions and ideas

V

6

Should You Have Questions or Problems

- For questions about the KMatch technology, call the KPMG Help Desk
- For questions or comments about the KMatch content, email the US-Tax Innovation Center inbox

V

7

**KMatch Push Feature
Campaign**

Marsha Peters
Tax Innovation Center

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5

XX-001515

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V

7

XX-001517

**Telemarketing and/or BDM Deployment Model
"Top Down" Approach Timetable**

Key Steps	Week 1	Week 2	Week 3	Week 4
Refine targets	X	X		
"Script" development/approval	X			
Local Owners identified/Calendars coordinated	X			
Communication to Practice Partners/Managers	X			
Channel conflict		X		
Telemarketing kickoff			X	
Tracking				X

XX-002179

Permanent Subcommittee on Investigations

EXHIBIT #97ii

**Telemarketing and/or BDM Deployment Model
"Top Down"**

Key Steps	Individual(s) Responsible	Example (Flex Op)
<ul style="list-style-type: none"> Discuss new product-related marketing issues and strategy (e.g., owners, targeting, sales, telemarketing) 	<ul style="list-style-type: none"> National Product Marketing Director National Product Owner TIC-Representative(s) Director of Sales Director of Telemarketing TIC Marketing Leader 	<ul style="list-style-type: none"> Wendy Klein Seth Rosen Mark Springer, <i>et al</i> Alec Wilson Sandra Cockrell Colleen Clowers
<ul style="list-style-type: none"> Develop marketing plan 	<ul style="list-style-type: none"> National Product Marketing Director 	<ul style="list-style-type: none"> Wendy Klein
<ul style="list-style-type: none"> Approve marketing plan 	<ul style="list-style-type: none"> National Product Owner National Practice Leader 	<ul style="list-style-type: none"> Seth Rosen Peter Elinsky
<ul style="list-style-type: none"> Confirm capacity and scheduling 	<ul style="list-style-type: none"> National Product Marketing Director National Director of Marketing-Tax Director of Telemarketing Director of Sales 	<ul style="list-style-type: none"> Wendy Klein Pat Neil Sandra Cockrell Alec Wilson
<ul style="list-style-type: none"> National Tax Leaders approve marketing plan (pre-Monday night conference call at least one week in advance of product introduction) 	<ul style="list-style-type: none"> National Product Marketing Director National Product Owner Director of Sales Vice Chairman-Tax Operations National Tax PIC TIC Representative(s) 	<ul style="list-style-type: none"> Wendy Klein Seth Rosen Alec Wilson Jeff Stein Mike Lippman Mark Springer, <i>et al</i>
<ul style="list-style-type: none"> Alert sales/telemarketing teams and advise of marketing plan/sales approach 	<ul style="list-style-type: none"> Director of Telemarketing Director of Sales 	<ul style="list-style-type: none"> Sandra Cockrell Alec Wilson
<ul style="list-style-type: none"> Communicate product marketing strategy on Monday night call/product roll out 	<ul style="list-style-type: none"> National Product Owner National Product Marketing Director 	<ul style="list-style-type: none"> Seth Rosen Wendy Klein
<ul style="list-style-type: none"> Formal kick-off involving AMPs/BUPICs/Product Group Leaders/Area Marketing Leader - Tax 	<ul style="list-style-type: none"> National Product Marketing Director 	<ul style="list-style-type: none"> Wendy Klein

Telemarketing and/or BDM Deployment Model
"Top Down"
Tasks: Marketing/Sales/Telemarketing

Key Steps	Individual(s) Responsible	Example (Flex Op)
<ul style="list-style-type: none"> Further refine target list, if necessary 	<ul style="list-style-type: none"> National Product Marketing Director Director of Telemarketing Director of Research 	<ul style="list-style-type: none"> Wendy Klein Sandra Cockrell David Kull
<ul style="list-style-type: none"> Confirm Local Area Product Owners 	<ul style="list-style-type: none"> National Product Owner 	<ul style="list-style-type: none"> Seth Rosen
<ul style="list-style-type: none"> Conduct Product "Tutorial" 	<ul style="list-style-type: none"> National Product Owner BDMs/Telemarketing 	<ul style="list-style-type: none"> Seth Rosen Team
<ul style="list-style-type: none"> Develop Product "Script" for approval 	<ul style="list-style-type: none"> Director of Telemarketing/Sales National Product Marketing Director National Product Owner 	<ul style="list-style-type: none"> Sandra Cockrell/Alec Wilson Wendy Klein Seth Rosen
<ul style="list-style-type: none"> Conduct "Channel Conflict" 	<ul style="list-style-type: none"> National Product Marketing Director AMPs/BUPICs 	<ul style="list-style-type: none"> Wendy Klein AMPS/BUPICs
<ul style="list-style-type: none"> Finalize list/tag accounts in OMS 	<ul style="list-style-type: none"> National Product Marketing Director OMS Director 	<ul style="list-style-type: none"> Wendy Klein Sandra Cockrell
<ul style="list-style-type: none"> Coordinate calendars with Local Product Owners and/or TSPs 	<ul style="list-style-type: none"> Director of Telemarketing/BDMs 	<ul style="list-style-type: none"> Sandra Cockrell BDMs
<ul style="list-style-type: none"> Track results via OMS 	<ul style="list-style-type: none"> OMS Director Director of Telemarketing/BDMs Area Marketing Leader-Tax Local Product Owners TSPs 	<ul style="list-style-type: none"> Sandra Cockrell All
<ul style="list-style-type: none"> Share wins/losses with practice 	<ul style="list-style-type: none"> National Product Marketing Director 	<ul style="list-style-type: none"> Wendy Klein

2171

**Telemarketing Deployment Model
"Bottom Up" Approach Timetable**

Key Steps	Week 1	Week 2	Week 3	Week 4
AMP/Area Product Group Leader approve effort	X			
Refine targets	X	X		
Product "script" approval	X			
Target list approval	X			
Coordinate calendars	X			
Telemarketing kickoff			X	
Tracking				X

XX-002182

**Telemarketing Deployment Model
"Bottom Up"**

Key Steps	Individual(s) Responsible	Example (NUPS)
• TSP (partner/manager) requests assistance	• TSP	• SALT partner (Minn.)
• TSP directed to Area marketing Leader-Tax	• AML - Tax	• Janine Rudow - Chicago
• Gain approval from Area Tax Leadership	• AML - Tax • AMP - Tax or Area Product Group Leader	• Janine Rudow • Jim Brasher/ Ed McCarthy
• Contact National Product Marketing Director	• AML - Tax	• Janine Rudow
• Discuss request with and secure go-ahead from National Product Owner and Practice Leader	• National Product Marketing Director • National Product Owner • Product Group Leader	• Jill Ronda • Michelle Andre • Bob Peters
• Determine if program can be leveraged	• National Product Marketing Director • National Product Owner	• Jill Ronda • Michelle Andre
• Confirm capacity/scheduling	• National Product Marketing Director • National Director Marketing - Tax • Director of Telemarketing	• Jill Ronda • Pat Neil • Sandra Cockrell
• Notify AML - Tax to proceed	• National Product Marketing Director	• Jill Ronda
• Track results	• AML - Tax • National Product Marketing Director	• Janine Rudow • Jill Ronda
• Leverage program, if appropriate	• National Product Marketing Director	• Jill Ronda

**Telemarketing and/or BDM Deployment Model
"Bottom Up"
Tasks: Marketing/Telemarketing**

Key Step	Individual Responsible	Example (NUPS)
<ul style="list-style-type: none"> Conduct "Tutorial" 	<ul style="list-style-type: none"> Area Product Owner AML - Tax Director of Telemarketing 	<ul style="list-style-type: none"> Michelle Andre Janine Rudow Sandra Cockrell
<ul style="list-style-type: none"> Develop "script" for approval 	<ul style="list-style-type: none"> Director of Telemarketing National Product Marketing Director National Product Owner 	<ul style="list-style-type: none"> Sandra Cockrell Jill Ronda Michelle Andre
<ul style="list-style-type: none"> Review target list 	<ul style="list-style-type: none"> AML - Tax AMP - Tax 	<ul style="list-style-type: none"> Janine Rudow Jim Brasher
<ul style="list-style-type: none"> Refine target list, if necessary 	<ul style="list-style-type: none"> Director of Telemarketing AML - Tax 	<ul style="list-style-type: none"> Sandra Cockrell Janine Rudow
<ul style="list-style-type: none"> Forward list to Telemarketing/tag in OMS 	<ul style="list-style-type: none"> AML - Tax OMS Director 	<ul style="list-style-type: none"> Janine Rudow Sandra Cockrell
<ul style="list-style-type: none"> Coordinate Calendars 	<ul style="list-style-type: none"> Director of Telemarketing 	<ul style="list-style-type: none"> Sandra Cockrell

kpmgPeat Marwick LLP

To KPMG Tax Partners

Date November 24, 1998

From Jeffrey M. Stein
New York

Steno amc

Ref c:\windows\temp\bdmorg6.doc

cc J. Lanning

Tax Sales Organization and Telemarketing

TAX SALES ORGANIZATION

Over the past several months we have been building our Tax Sales Organization. We recognize that a solid sales team dedicated to Tax is critical to our marketplace success. The Tax Sales Organization is expected to generate incremental revenue of \$200M by the end of the next fiscal year. With increased resources in the sales organization, we are now in a position to align the Business Development Managers (BDMs) more closely with Federal Tax Service Partners and the Product Groups. Additionally we have identified our highest value opportunities and want to focus our BDMs against these initiatives. It is critical that we maintain this strategic focus and execute against it consistently across all areas.

To ensure that our movement to our new operational model is accomplished swiftly and effectively, I would like to share the details of it with each of you. Remember, the sales organization is a resource dedicated to you—they are committed to accelerating Tax sales opportunities and significantly increasing our engagement closure and revenue generation. To make the sales organization successful, we must all work together and drive toward these same goals.

Above all, remember that the BDM adds value when he/she is recognized as an integral member of the "team." You should be involving your Area or Product EDM, to the extent possible, on all sales calls, whether to a client or target. Obviously, since the Tax Sales Organization is only a few months old, we do not have the necessary number of BDMs in place to meet the demands of accompanying our tax partners on all sales calls. Therefore, until we are fully staffed we will have to prioritize their time and focus their efforts on the highest opportunities that will yield the firm the greatest return. Ultimately, we will have sufficient BDMs to assist you on every sales call. Their skills and experience offer significant value in identifying and qualifying opportunities, offering added urgency to the sales cycle, influencing the negotiation and assisting in closing the deal. BDMs will help us unlock our target accounts and build ongoing relationships with them so we can introduce our new products more quickly and capitalize on future opportunities. Finally, the BDMs will help us strengthen our relationships with our current client base. Any perception that a BDM adds value only "by getting me into accounts where we have no relationship" is a limited view and does not support the overall BDM initiative and our overall Tax practice goals.

XX-002203

EXHIBIT
3

Permanent Subcommittee on Investigations
EXHIBIT #97jj

KPMG Peat Marwick LLP

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Tax Sales Force Structure

Director of Business Development Managers

Alec Wilson, who joined us approximately six months ago, serves as the Partner-in-Charge of the Tax Business Development Managers. Alec is based in New York. Over the past several months, he has been focused on building the sales organization and has actively recruited skilled professionals with diverse sales backgrounds. All of the new hires have extensive sales experience and a track record for driving substantial revenue. The new sales team members are geographically dispersed throughout the tax practice. Alec will continue to recruit aggressively to provide the level of resources the tax practice requires. By June 30, we will have 35-40 BDMs. Additionally, Alec is primarily responsible for working directly with the TTM practice to identify market opportunities and assist in closing the deals.

Area Sales Director (ASD)

There will be a total of six Area Sales Directors, one for each geography. With the rapid growth of the sales function to date, as well as the expected growth in the future, it is essential that the Area Sales Directors make sure that the BDMs are pursuing the identified strategic direction in a respective area and are operating at maximum productivity. The Area Sales Directors will work closely with their respective Area Managing Partner-Tax (AMP-Tax) and will assume the lead sales role on at least five major accounts in their local market. The ASD is responsible for ensuring that we meet the Area BDM revenue quota, coordinating the best resources among the BDMs to close sales opportunities, recruiting, training and leading the BDMs and playing a leadership role in terms of strategizing with the Area BDMs on our largest opportunities.

Currently five of the six Area Sales Directors have been identified. The remaining director will be named shortly.

Area	Area Sales Director
Northeast	Rick Stile, New York
Midatlantic	Open
Midwest	Mike Hagenhoff, St. Louis
Southeast	Paul Parker, Charlotte
Southwest	Toby Gilman, Dallas
West	Jim Sparkman, Los Angeles

Area Business Development Managers

The Area BDMs will report directly to the Area Sales Directors. Their primary focus will be to team with the Tax Service Partners (TSPs) to promote a specific portfolio of tax products including select new tax initiatives as they are developed by the Tax Innovation Center (TIC). These products have been identified by the National Tax Leadership Team and the AMPs-Tax. They are limited to those products that are

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perceived to be our highest opportunities—those where the BDM is believed to be able to provide significant value. We will continue to monitor and recommend additions/deletions to this list throughout the year as new products are issued.

Each Area BDM will be aligned with a Business Unit. TSPs must actively collaborate with the Area BDMs and jointly pursue opportunities. The TSPs should be accompanied by a BDM on all client/target sales call that represent the highest opportunity.

The designated portfolio of products includes:

Acumen	Repatriation Strategies (RS)
Acquisition Cost Recovery Analysis (ACRA)	Retirement Plan Risk Assessment
Capital Loss Conversion	Subsidiary Acquisition Cost Recovery Analysis (Sub-ACRA)
Capital Transaction Strategies (CaTS)	Supplemental Unemployment Benefit (SUB) Plans
Cash Flow Enhancement Strategy (CFES)	Tax Account Analysis Review Program (TAARP™)
Export Tax Minimization (ETM)	Tax Management Solutions (TMS)
Foreign Tax Credit Strategies (FTCS)	Trade and Customs
Global Interest Netting Strategies (GINS)	A Window of Opportunity for Worldwide Savings (WOWS)
Mark-to-Market Replacement Strategies (MMaRS)	
National Unclaimed Property Services	
ProACT	

A description of each product in the portfolio is included as an appendix to this memorandum.

In addition to those products listed above, the Area BDMs will also have a thorough knowledge of the national tax products to which we have dedicated Product BDMs. For these products it is expected that the Area BDMs will help identify opportunities in their region, notify the Product BDM and coordinate with him/her to determine how the target should best be pursued. Depending upon the specific situation the Area or Product BDM will assume the lead role. For example, on our largest opportunities, it is expected that the Product BDM would assume that role. On smaller opportunities or where the Area BDM has established a very strong relationship with the target, it may be appropriate for the Area BDM to take the lead. In all instances the effort will be collaborative. Those national products with dedicated BDMs include:

TTM	Strategic-Relocation &
STM	Expansion Services
IES/Expatriate Cost Minimization	

Again, as appropriate, we will recommend additions/deletions to the National Product list as well.

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There are a total of 21 Area BDMs; plans are to expand to 30 by June 30, 1999. In some areas an Area BDM will cover more than one Business Unit until additional BDM resources are retained. Current assignments are as follows:

Midatlantic		Midwest	
Philadelphia	David Foody	Chicago	Mark Billhymer
Baltimore/DC	Open (Jeffrey Rice)*	Chicago	Paul Jenkins
Richmond	Jeffrey Rice	Chicago	Louis Ebling
Northeast		Cleveland	Brian Cox
Boston	Fred Steeves	Minneapolis	Chip Longacre
Connecticut/	Steve Mullen/	St. Louis	Open (Mike Hagenhoff)*
Upstate NY	Mike Chuma		
Short Hills	Open (Mike Mikulski)*	Detroit	Melinda Dobbs
Manhattan 1	Peter Martin	Southwest	
Manhattan 2	Steven Clayback	Dallas	Open (Dennis Kirkpatrick)
Manhattan 3	Carroll Carter	Houston 1	Mark Pickle
		Houston 2	Don Allison
Southeast		Denver	Open (Toby Gilman)
Miami	Bob Roth		
Tampa	Open (Bob Roth)*	West	
Atlanta	Larry Fussel	Los Angeles	John Wilson
Atlanta	Ron Bouterse	Mountain View	Open (John Wilson)
Atlanta	Jonathan Cahill	Seattle	Open (Sean Coughlin)*

*Denotes BDM who has been temporarily assigned to cover area until position filled.

Product Business Development Managers

Product Business Development Managers will be dedicated to and responsible for a select number of national tax products. They will link closely with the national product owner and will cover all six geographies. The Product BDM will also work directly with the Area BDMs. For example, the Product BDM will liaise and strategize with specific Area BDMs according to the area where the target for a particular product is located. Depending upon the particular complexities of the situation, either the Product or Area BDM will assume the lead—in all cases the effort will be coordinated.

At present, plans are to have 6 dedicated Product BDMs. They will be assigned to products that are perceived to yield the greatest return and represent our highest opportunities. Again, with additional resources the number of dedicated Product BDMs will be expanded.

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Product	Product BDM	Office
TTM (1)	Alec Wilson	New York
STM (3)	Dennis Kirkpatrick TBD TBD	Dallas
IES/ECM (1)	Sean Coughlin	Seattle
SRES(1)	Mike Mikulski	Radnor

We will maintain the sales infrastructure for Property Tax that has existed for the past few years:

Property Tax(4)	Lori Fields Brian Brogan Barry Schnell Mark Magnuson	Atlanta Phoenix New York Los Angeles
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TELEMARKETING

The Tax practice has also made a significant investment in building our marketing capabilities and has expanded our telemarketing resources to support our national services and initiatives. The telemarketers are a specially trained group of professionals who will assist our practice in securing initial client visits with the key decision makers at target companies. The telemarketers already have an impressive track record; they have played a critical role in our SALT practice and most recently helped drive the COLI and Export Tax Minimization product "blitzes." This group can also be instrumental in performing research to obtain information that is not publicly available. This helps in the process of qualifying prospects. Of course, we also have a dedicated research group resident in Montvale, N.J. Wayne who are intimately involved with developing the target list for each of our products. Both telemarketing and research are part of Tax Marketing organization.

To maximize our return on our telemarketing resources, we also will be focusing them on products where they can add significant value. We will be taking both a "top down" and a "bottom up" approach to coordinate telemarketing on a national basis. Regarding the "top down," the Tax Leadership Team and National Marketing will identify specific products introduced by the TIC that will receive telemarketing support. The market release of these select products will be coordinated by the National Product Owners and communicated to all Tax professionals via the AMPs-Tax. For existing products, telemarketing support will be coordinated through the National Marketing Leaders.

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In certain instances, an initiative may arise at the area level, whereby Tax professionals seek telemarketing support. Tax professionals who wish to utilize telemarketers from the "bottom up" must coordinate these initiatives through their Area Marketing Leader-Tax and AMP-Tax. Again, we must leverage our resources and avoid deploying our telemarketers on *ad hoc* efforts.

OPPORTUNITY MANAGEMENT SYSTEM

The Opportunity Management System (OMS) will serve as the Tax practice's central database for all sales activity. It is essential that we have one system that captures the activity of the BDMs, Telemarketers and our professionals. This will ensure that we leverage our relationships and coordinate our sales efforts for increased success. The BDMs, Telemarketers and Marketing already use OMS as their repository for all information. And plans are to make OMS available to all Tax partners on a read only basis by the beginning of December. Again we need your cooperation in making this resource as valuable as possible. You must be sure to report your individual sales activity to your Area Marketing Leader-Tax for input into the system. Reports generated from OMS are the tool the Tax Leadership Team will be using to measure individual partner activity.

■ ■ ■ ■

In closing, it should be noted that KPMG Consulting has very effectively developed, deployed and institutionalized a sales organization and culture within KPMG. Consulting BDMs are expected to generate in excess of \$750M in incremental revenue this fiscal year. It is this very same approach and model, requiring the collective efforts of all our TSPs, Product partners and BDMs, that we believe can and will generate the incremental revenue we have planned for our tax practice.

The AMPs-Tax are planning to discuss the new sales organization structure and our telemarketing resources at your upcoming area marketing meetings. Please refer any questions you may have to them. Building a sales organization and telemarketing unit is a huge challenge; however, our future success depends on getting it right. We need each of you to commit to helping them take off.

XX-002208

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To KPMG Tax Partners

Date November 16, 1998

From Jeffrey M. Stein
New York

Steno amc

Ref c:\windows\temp\bdmorg3.doc

cc J. Lanning

Tax Sales Organization and Telemarketing

TAX SALES ORGANIZATION

Over the past several months we have been building our Tax Sales Organization. We recognize that a solid sales team dedicated to Tax is critical to our marketplace success. The Tax Sales Organization is expected to generate incremental revenue of \$200M by the end of the next fiscal year. With increased resources in the sales organization, we are now in a position to align the Business Development Managers (BDMs) more closely with Federal Tax Service Partners and the Product Groups. Additionally we have identified our highest value opportunities and want to focus our BDMs against these initiatives. It is critical that we maintain this strategic focus and execute against it consistently across all areas.

To ensure that our movement to our new operational model is accomplished swiftly and effectively, I would like to share the details of it with each of you. Remember, the sales organization is a resource dedicated to you—they are committed to accelerating Tax sales opportunities and significantly increasing our engagement closure and revenue generation. To make the sales organization successful, we must all work together and drive toward these same goals.

Above all, remember that the BDM adds value when he/she is recognized as an integral member of the "team." You should be involving your Area or Product BDM, to the extent possible, on all sales calls, whether to a client or target. Obviously, given that the Tax Sales Organization is only a few months old, we do not have the necessary number of BDM's in place to meet the demands of accompanying our tax partners on all sales calls. Therefore, until we are fully staffed we will have to prioritize their time and focus their efforts on the highest opportunities that will yield the firm the greatest return. Ultimately, we will have sufficient BDMs to assist you on every sales call. Their skills and experience offer significant value in identifying and qualifying opportunities, offering added urgency to the sales cycle, influencing the negotiation and assisting in closing the deal. BDMs will help us unlock our target accounts and build on-going relationships with them so we can introduce our new products more quickly and capitalize on future opportunities. Finally, the BDMs will help us strengthen our relationship with our current client base. Any perception that a BDM adds value only "by getting me into accounts where we have no relationship" is a limited view and does not support the overall BDM initiative and our overall Tax practice goals.

Permanent Subcommittee on Investigations

EXHIBIT #97kk

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Tax Sales Force Structure

Director of Business Development Managers

Alec Wilson, who joined us approximately six months ago, serves as the Partner-in-Charge of the Tax Business Development Managers. Alec is based in New York. Over the past several months, he has been focused on building the sales organization and has actively recruited skilled professionals with diverse sales backgrounds. All of the new hires have extensive prior sales experience and a track record for driving substantial revenue. The new sales team members are geographically dispersed throughout the tax practice. Alec will continue to recruit aggressively to provide the level of resources the tax practice requires. By June 30, we will have 35-40 BDMs. Additionally, Alec is primarily responsible for working directly with the TTM practice to identify market opportunities and assist in closing the deals.

Area Sales Director (ASD)

There will be a total of six Area Sales Directors, one for each geography. With the rapid growth of the sales function to date, as well as the expected growth in the future, it is essential that the Area Sales Directors make sure that the BDMs are pursuing the identified strategic direction in a respective area and are operating at maximum productivity. The Area Sales Directors will work closely with their respective AMP - Tax and will assume the lead sales role on at least five major accounts in their local market. The ASD is responsible for ensuring that we meet the Area BDM revenue quota, coordinating the best resources among the BDMs to close sales opportunities, recruiting, training and leading the BDMs and playing a leadership role in terms of strategizing with the Area BDMs on our largest opportunities.

Currently five of the six area sales directors have been identified. The remaining director will be named shortly.

Area	Area Sales Director
Northeast	Rick Stile, New York
Midatlantic	Open
Midwest	Mike Hagenhoff, St. Louis
Southeast	Paul Parker, Charlotte
Southwest	Toby Gilman, Dallas
West	Jim Sparkman, Los Angeles

Area Business Development Managers

The Area BDMs will report directly to the Area Sales Directors. Their primary focus will be to team with the TSPs to promote a specific portfolio of tax products including select new tax initiatives as they are developed by the Tax Innovation Center (TIC). These products have been identified by the National Tax Leadership Team and the AMPs - Tax. They are limited to those products that are perceived to be our highest

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opportunities—those where the BDM is believed to be able to provide significant value. We will continue to monitor and recommend additions/deletions to this list throughout the year as new products are issued.

Each Area BDM will be aligned with a Business Unit. TSPs must actively collaborate with the Area BDMs and jointly pursue opportunities. The TSPs should be accompanied by a BDM on all client/target sales call that represent the highest opportunity.

The designated portfolio of products includes:

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APPENDIX

BDM Portfolio Product Descriptions

PRODUCT	DESCRIPTION
Acquisition Cost Recovery Analysis (ACRA)	<div data-bbox="727 583 1172 1346" style="border: 1px solid black; padding: 20px;"> <p>Redacted</p> <p>by</p> <p>Permanent Subcommittee</p> <p>on Investigations</p> </div>
Capital Loss Conversion	
Capital Transaction Strategies (CaTS)	
Cash Flow Enhancement Strategy (CFES)	
KPMG Export Advantage SM FSC Benefit Maximization Services	
Expatriate Cost Minimization (ECM) Foreign Tax Credit Strategies (FTCS)	
Global Interest Netting Strategies (GINS)	

Appendix
BDM Portfolio Product Descriptions

PRODUCT	DESCRIPTION
Mark-to-Market Replacement Strategies (MMaRS)	<div style="border: 2px solid black; padding: 20px; width: 80%; margin: auto;"> <p>Redacted</p> <p>by</p> <p>Permanent Subcommittee</p> <p>on Investigations</p> </div>
National Unclaimed Property Services	
Planning for the Repeal of Advance Corporation Tax (ProACT)	
Repatriation Strategies (RS)	
Retirement Plan Risk Assessment	
SRES	
State Tax Minimization	

Appendix
BDM Portfolio Product Descriptions

PRODUCT	DESCRIPTION
Subsidiary Acquisition Cost Recovery Analysis (Sub-ACRA)	<p>Redacted</p> <p>by</p> <p>Permanent Subcommittee</p> <p>on Investigations</p>
Supplemental Unemployment Benefit (SUB) Plans -- Severance Benefit FICA Tax Savings	
Tax Account Analysis Review Program (TAARP™)	
Tax Management Solutions (TMS)	
Trade and Customs A Window of Opportunity for Worldwide Savings (WOWS)	

'The Blueprint'

National BDM Tax Sales Initiative Objectives, Roles & Responsibilities



Objectives

- Significantly increase Tax revenue
 - Identify more opportunities
 - Identify opportunities earlier
 - Increase number of engagements
 - Increase closure rate
 - Increase engagement amount
 - Establish 'multiple' relationships



BDM revenue goal

FY 99	\$50M
FY 00	\$100M
FY 03	\$150M

2191



BDM Organization

Multi-Dimensional

- Area Sales Director
- Area BDMs
- Product BDMs

2192



BDM Organization

- Area Sales Director
 - Report to Alec Wilson
 - Aligned to AMP-Tax
 - Focus on high value opportunities
 - Responsible for all BDM revenue quota
 - Personally responsible for 5 major opportunities
 - Leadership role in major BDM opportunities
 - Coordinate best resources to close sales
 - Penetrate & maintain designated key relationships
 - Recruit train & lead BDMs



BDM Organization

■ Area BDM

- Report to Area Sales Director
- Aligned to BU PIC/TSP
- Focus on high value opportunities
- Sell 'portfolio' of Federal Tax products
- Sell select Tax initiatives (TIC)
- Opportunity qualification
- Management of sales cycle
- Coordinate best resources to close sales
- Penetrate key target accounts
- Create and maintain OMS records



BDM Organization

■ Product BDM

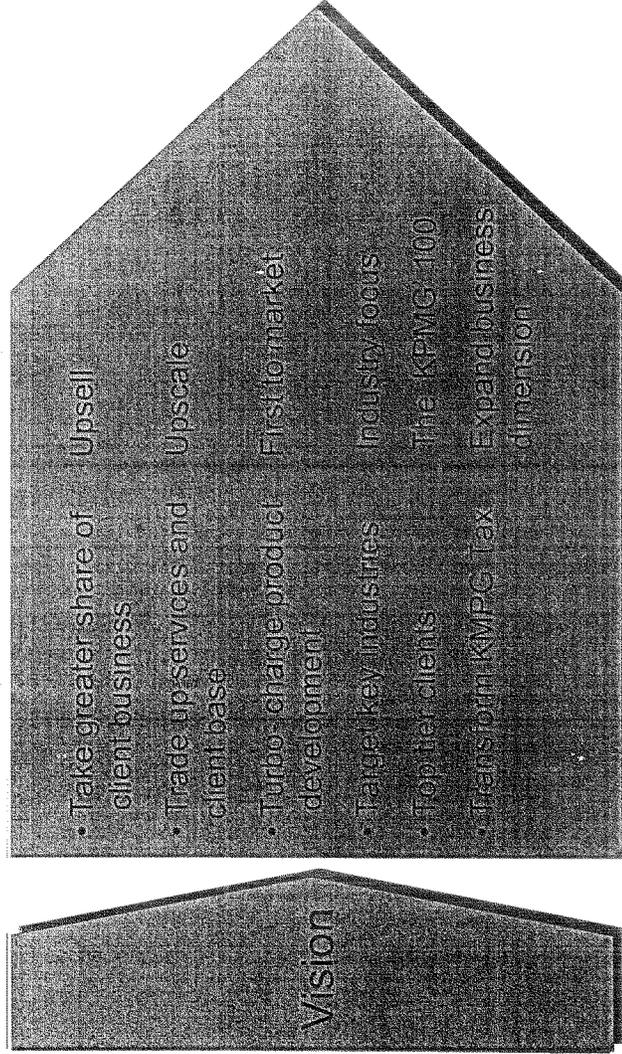
- Report to Area Sales Director
- Assigned to Product Owner
- Focus on high value opportunities
- Sell selected Tax product(s)
- Opportunity qualification
- Take lead role in product sale
- Team with Area BDM
- Penetrate key target accounts
- Create and maintain OMS records

2195



--- Exceed assigned revenue quota ---

The Tax T6 Strategies 'The BDM factor'



The Tax T6 Strategies The BDM factor



- Take greater share of ¹Upsell client business

- BDMs- develop client relationship(s) and win increased share of tax spend
- BDMs- Introduce constant stream of products from Tax Innovation Center
- BDMs- Set revenue goals by client/target

2197



The Tax T6 Strategies The BDM factor



- Trade up services and ² Upscale client base

2198

- BDMs- On-going assessment of client needs
- BDMs- Drive integrated solutions into client and targeted accounts
- BDMs- Search for opportunities to upgrade client investments



The Tax T6 Strategies The BDM factor



- Turbo charge product development
- ³ First to market

- BDMs- Leverage relationships and client knowledge for appropriate targets
- BDMs- Provide an aggressive distribution channel for product deployment
- BDMs- Establish references to accelerate additional opportunities



The Tax T6 Strategies The BDM factor



- Target key industries ⁴ Industry focus

- BDMs- Leverage knowledge and client relationships
- BDMs- Evangelize Firm expertise and reputation
- BDMs- Drive industry tax solutions into the market

2200



The Tax T6 Strategies The BDM factor



- Top tier clients

⁵The 'KPMG' 100

2201

- BDMs- Assist in creating business plans for KPMG 100
- BDMs- Assist elite service teams
- BDMs- Establish additional relationships



The Tax T6 Strategies The BDM factor



- Transform KPMG TAX ⁶ Expand business dimension

2202

- BDMs- Identify and feedback unique competitive activities
- BDMs- Share and transfer sales skills within the Firm
- BDMs- Help create an aggressive sales culture



Vision	Skills	Incentives	Resources	Action Plan	Result
✓	✓	✓	✓	✓	Change
NO	✓	✓	✓	✓	Confusion
✓	NO	✓	✓	✓	Anxiety
✓	✓	NO	✓	✓	Slow Change
✓	✓	✓	NO	✓	Frustration
✓	✓	✓	✓	NO	False Starts



BDM Tax Sales Organization Financial Trends

	<u>FY'99 Results</u>	<u>FY'00 Plan</u>	<u>FY'00 Results</u>	<u>FY'01 Plan</u>	<u>FY'01 Proj.</u>
<i>Sales Revenue</i>	\$33,500,000	\$78,875,000	\$109,227,000	\$125,100,000	\$125,100,000
<i>Average Sales per BDM</i>	\$790,000	\$1,500,000	\$2,180,000	\$2,317,000	\$2,407,000
<i>Total Cost of Sales</i>	\$4,992,000	\$11,106,000	\$13,850,000	\$15,147,000	\$13,800,000 **
<i>Cost of Sales Percentage</i>	14.90%	14.08%	12.68%	12.11%	11.03%

2204

** [Reflects reduced commission costs due to increasing number of contingent deals, plus significant increasing reimbursements from the Assurance Practice.]

BDM Tax Sales Organization

YTD Results and Projection Year-End Results

	Results	
	<u>YTD through P.8</u>	<u>Projected Year-End Results</u>
<i>Mid-Atlantic</i>	\$7,015,200	\$8,800,000
<i>Midwest</i>	\$7,827,530	\$15,000,000
<i>Northeast</i>	\$21,923,250	\$38,000,000
<i>Southeast</i>	\$5,322,033	\$15,000,000
<i>Southwest</i>	\$17,798,703	\$28,300,000
<i>West</i>	\$9,681,658	\$20,000,000
<i>Sub-Total</i>	<u>\$69,568,374</u>	<u>\$125,100,000</u>
One-time extraordinary Assurance engagement (5 yrs. @ \$15MM/yr.)	<u>\$15,000,000</u>	<u>\$15,000,000</u>
Total BDM Sales	<u>\$84,568,374</u>	<u>\$140,100,000</u>

[There are currently 114 contingent deals in the system. With an average booking amount in FY'01 of \$143,000, there is another \$16.3 million in potential revenue to recognize.]

BDM Tax Sales Organization Trends and Stats

FY'00

- 10 BDMs achieved at least \$4 million in sales results
- An additional 4 BDMs had more than \$3 million in sales
- Average Sales per BDM was \$2.218 million
- Average Deal was \$97,900
- 11 Deals at \$1 million or greater

FY'01

- 10 BDMs are projected to achieve over \$4 million in sales
- An additional 5 are projected to exceed \$3 million in sales
- Average Sales per BDM are projected at \$2.407 million
- Average Deal YTD is \$143,000
- 13 Deals YTD at \$1 million or greater, with 12 more in the pipeline

BDM Tax Sales Organization Cost Allocation

SALT

- Each ASD is working with each Area PIC to understand expectations, build the necessary pipeline, and deliver an ROI equivalent of 8-10 to 1
- Ian and Toby have also been in discussion with Peters to keep tabs on ROI to the SALT practice
- YTD BDM SALT revenue production is \$15.95 MM, with a pipeline that adds \$23.5 MM by Year-End
- BDM SALT production in FY'00 was \$31.6 MM

ICS

- LeSage and the Area PICs are in discussion with ASDs to formulate deployment and ROI expectations
- Some areas, such as the SW, have a "dedicated" BDM to develop strategy, push solutions, and gain access to Focus Accounts
- YTD BDM ICS revenue production is \$5.37MM
- All Area PICs and ASDs to regroup on April 4th

Stratecon

- Ian and Toby are working with Walter Duer and the overall Stratecon allocation will be reduced
- Consider Options for most effective approvals/signoffs
- BDMs are pushing heavily on SC2 and Gain Mitigation solutions, with a Year-End projection of \$15 MM

BDM Tax Sales Organization Sales by Category

<u>Account Type</u>	<u>Description</u>	<u>Sales Amount</u>	<u>Sales Percentage</u>
Category 1	Gain Account BDM initiated	\$43,062,787	61.7%
Category 2	Gain Account BDM on team	\$9,456,683	13.66%
Category 3	Retain Account BDM drives new Practice Solution	\$753,330	1.09%
Category 4	Retain Account BDM on team	<u>\$16,295,574</u>	<u>23.54%</u>
		\$69,568,374	100.00%

BDM Tax Sales Organization Best Practices of BDM Deployment

1. Top BDMs have a strong link to a single Partner or Practice
2. Top-performing BDMs are experienced, senior, aggressive Sales Professionals
3. Best performers come from a technical background or related business (e.g., Investment Banking)
4. Best results come from BDMs that have specific Partner, Geographic, Practice and target assignments
5. BDMs deployed as Relationship managers on accounts contribute to greater Pull-through/Cross-selling
6. Early ramp-up and long-term consistency are linked to a strong and extensive network of contacts (Rolodex)
7. Product-centric focused BDMs play a strong role for certain Practices/Solutions, but client-centric is also essential/required

2210

Tax Business Development
Stub Fiscal Year 2001 and Full Fiscal Year 2002
(15 Months Beginning July 1, 2001 and Ending September 30, 2002)
Compensation Plan Terms & Conditions

Purpose of the Compensation Plan

- Define compensation and the administration of compensation
- Define the duties and responsibilities which earn compensation
- Measure performance
- Provide motivation and incentive reward for exemplary performance

Term of Plan

The term of this Plan is the 15 Months Beginning July 1, 2001 and Ending September 30, 2002.

Eligibility

Staff classified and receiving a salary as a Tax Business Development Manager or a Tax Business Development Director (BDM) who have signed and returned a copy of the Compensation Plan are eligible to participate in the Plan.

Duties and Responsibilities

The duty of each Tax Business Development Manager is to produce the maximum revenue for the Firm. The Tax Business Development Manager's contribution to maximum revenue will be primarily via the sale of Tax Services to new and existing Clients. Normally, the BDM will:

- Lead or materially contribute to the sales effort
- Lead or materially contribute to the proposal effort
- Lead or contribute in engagement agreement negotiation
- Provide reasonable post-Sales Support in transitioning the client to service-delivery status
- Work diligently to pull through additional services of the Firm

In so doing the Tax Business Development Manager is to represent the Firm in a moral, ethical and positive fashion pursuant to the Firm's policies as set forth in the Firm's Personnel Manual. Each Tax Business Development Manager is assigned sales responsibilities for one or more of the following:

- A geographical territory
- A Client or group of Clients
- A partnership-defined opportunity or opportunities within a specified prospect
- A specified prospect or group of prospects
- A specified industry or group of industries
- A specified solution or group of solutions

The Tax Business Development Manager shall promote, maintain and increase the sale of Tax Consulting Services. Towards that end, the Tax Business Development Manager has a responsibility to assist in the sale of Tax Consulting Services outside their respective territory by:

- Working diligently to create a team approach to exploiting opportunities in organizations that span multiple geographic regions
- Sharing account information and leads with individuals responsible for organizational entities outside the Tax Business Development Manager's territory
- Working cooperatively to develop and execute cross-territory sales strategies

Each Tax Business Development Manager is assigned a sales quota.

The Firm reserves the right to revise, modify or reassign territories or quotas at any time during the year.

KC 00691

Confidential



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9/14/2001

Permanent Subcommittee on Investigations
EXHIBIT #97nn

When territory assignments are changed, the Area Managing Partner may, after discussion and concurrence with the respective Area Sales Director, reserve approved prospects for a period of time for the vacating Tax Business Development Manager.

From the date of booking a Sale to the date of the Firm's receipt of all *Collected Net Engagement Revenue* on such *Booked Sales*, each Tax Business Development Manager shall provide *Sales Support* to Clients in his or her assigned territory.

After the sale, the Tax Business Development Manager must ensure that new engagements successfully make the transition to utilizing the contracted services. During the critical account transition process, (from sale to commencement of service delivery) the Tax Development Manager must maintain reasonable personal contact with each account. Issues with the use of services can be expected following the sale of the engagement. The Tax Business Development Manager must promptly identify such issues and work with Firm personnel to ensure timely problem resolution. On-site visits for status reviews and the development of action plans to resolve such issues may be necessary.

Additional responsibilities are:

- Each Tax Business Development Manager shall maintain specific information on current Clients, prospects and their assigned sales territory
- Each Tax Business Development Manager shall provide this information and other reports as requested on a timely basis
- Account information is proprietary to KPMG and, as such, shall be kept confidential, and shall be surrendered to the Firm upon leaving the employ of KPMG

Definition of Terms

The following terms and definitions apply to the Compensation Plan:

Gain Account

An organization which has been approved and designated by the Area Sales Director and Area Managing Partner, to which a Tax Business Development Manager is assigned to generate incremental business, and which has not previously engaged KPMG Tax Services greater than \$50,000 in any one year. Gain Accounts maintain that designation for twelve periods after the first booking, then will revert to a standard Retain Account.

For strategic accounts, or those that constitute a key competitive win from among KPMG's Big Five competitors, the AMP and ASD have the join discretion to extend the period for which gain commissions are paid.

Retain Account

Any account not classified as a Gain Account.

Booking a Sale or a Booked Sale

Acceptance by the Firm of a Contractual Agreement for the delivery of Tax Consulting Services and Commissionable Revenue not previously contracted, which occurs within the Tax Business Development Manager's territory and in which the Tax Business Development Manager has participated as defined herein. For commission purposes, the Booking of a Sale will occur in the period in which the Required Documentation is submitted to Commission Accounting, and the Booked Sale Amount shall be the total revenue specified in the Contractual Agreement less 6% provision for the Firm's out-of-pocket expenses.

Required Documentation

The engagement submission form, the *Engagement Letter* or contract signed by a person having the authority to bind the Client and accepted by a Partner of the Firm, and written approval stating the BDM's involvement, the *Engagement Type* (as defined below in Commission Payment and Calculation), and the *Expected Engagement Realization Percentage (ERP)*.

The written approvals as to involvement, *Engagement Type*, and *Expected ERP* are to be made in such manner and by such individual(s) as defined by the appropriate Area Managing Partner. It is expected that the solution leader will approve the level of involvement, commission to be paid and *Expected ERP* on each engagement.

KC 00692

In the event there is no specification of engagement total revenue stated within the engagement letter, payment will be based on the Tax Service Partner's written estimation of total revenue less expenses.

In the absence of *Required Documentation*, commission payment may be made only upon receipt of approval to do so, in writing, from the Area Sales Director and Area Managing Partner – Tax.

Any Area Managing Partner or Practice Partner-In-Charge may institute additional approval requirements on engagements under his or her jurisdiction.

Commissionable Revenue

The total amount paid by the client less 6% to cover out of pocket expenses, unless the engagement letter provides specifically for the Client to pay the fee plus all KPMG out-of-pocket expenses, in which case it is the total amount paid by the Client not including KPMG out-of-pocket expenses.

Maximum Commission Percentage

The maximum percentage payable on any given engagement based upon the *Engagement Type*.

Commission Profitability Factor

The adjustment factor to the *Maximum Commission Percentage* based on the *Expected ERP*:

Engagements 40% or below *Expected ERP* = 0%

Engagements 75% or above *Expected ERP* = 100%

Engagements between 40% and 75% *Expected ERP* = pro rata difference between the limits:

$$\frac{\text{Expected ERP} - 40\%}{35 \text{ Percentage Points from 40 to 75}}$$

Engagements below 40% *Expected ERP* may be paid up to 20% of the *Maximum Commission %* at the discretion of the Area Managing Partner.

Engagements between 40% and 74% *Expected ERP* may be adjusted from the calculated *Profitability Factor* at the discretion of the Area Managing Partner, taking into account the reasons for the low expected realization and other extenuating factors (e.g. new client with substantial future opportunities).

Actual Commission Percentage

The *Maximum Commission %* as adjusted for the *Commission Profitability Factor*.

Commission Payable

The amount of commission which shall be paid the BDM in 9 equal monthly installments (or for so long as the BDM is in the employ of KPMG), commencing the month following the month in which the engagement is submitted and approved for booking. In the case of termination of a BDM, the commission will be deemed earned only through the last full month of employment.

Contractual Agreements or an Addendum

Contractual arrangement between KPMG and a client for additional Tax Consulting Services, signed by a person having the authority to bind the Client and accepted by a Partner of the Firm. Also referred to as an Engagement Letter.

Sales Support

The combination of services to be provided by each Tax Business Development Manager before and after Booking a Sale. Sales Support includes the following:

- Client satisfaction – ensuring the Client's satisfaction and the Firm's ability to use the Client as a positive reference.
- Issue resolution – ensuring any Client issues are promptly diagnosed and resolved by appropriate Firm personnel.

Engagement Delivery Period

The time specified in the contractual agreement during which the services will be delivered.

KC 0069

Commissions

Payments to be made to the BDM as determined in accordance with the Compensation Plan.

Commissionable Period

Two consecutive KPMG Cycles as provided as provided in the FY'02 Commissions Timeline.

Splits

Percentage of Commissions to be paid as between one or more BDM's on a particular engagement. In the event a Tax Business Development Manager is significantly involved with another Tax Business Development Director in either a cross-territory engagement or a joint effort with another BDM in the same territory, it may be appropriate to split the earned commission for the engagement. If this occurs, the applicable Area Sales Director(s) and Area Managing Partner(s) shall determine the appropriate split.

Earn Through

A deficit in the BDM's commissions payable account which results from the individual BDM's base salary being higher than the standard base salary. The BDM must earn commissions equal to that deficit before any additional commissions paid. The balance remaining in a BDM's *Earn Through* account will be reflected on each monthly statement. Any balance remaining in the *Earn Through* account at the end of the term of the plan will carry forward to any future plan.

Adjustments to Booking or Bump-the Book

Booking amounts may be adjusted upward for commission purposes if the *Collected Net Engagement Revenue* exceeds the booking-to-date (including prior *Adjustments to Booking*). Such adjustments require the approval of the same nature as the original booking.

Any approved *Adjustment to Booking* which occurs during the course of the 9 month payout of commissions will trigger a catch-up payment to bring the payments current with what they would have been had the original booking amount been equal to the adjusted booking from inception, and the schedule of future payments revised to reflect the new monthly commission payment.

Compensation ComponentsSales Quotas

It is expected that each Tax Business Development Manager shall achieve at a minimum 100% of their sales quotas as defined in the FY'02 Tax Business Development Manager Compensation Plan. Quotas are prorated based on the number of full commissionable Periods of participation in the Plan.

Salaries and Benefits

Each Tax Business Development Manager receives a salary as specified in their individual Compensation Plan.

Each Tax Business Development Manager receives standard benefits described in the Personnel Manual, as it shall be amended from time to time.

Commissions

Each Tax Business Development Manager earns commission on *Booked Sales* and *Adjustments to Booking* as defined herein.

Draws

Draws may be issued in accordance with the terms of the offer letter, or otherwise approved by the Area Managing Partner. Draws are paid either as a "non-recoverable", or as a "recoverable", depending upon the terms of the offer letter or approval.

Draws in excess of six months must be approved in writing by the respective Area Managing Partner and Area Sales Director.

KC 00694

Should commission be earned during the period the BDM is receiving non-recoverable draws, the earnings for the commissionable period shall be the greater of commissions earned in the period, or the scheduled draw payment. All draws, whether recoverable or non-recoverable shall be deemed recoverable by the Firm should the BDM leave the Firm within one year of distribution.

Adjustments to Commissions

Adjustments to Commissions will be included as part of the total commission payment. Commission adjustments include but are not limited to the following (whether applicable to commissions earned under this Fiscal Year 2002 plan or an earlier year plan):

- Credits issued by the Firm against Commissionable Revenue upon which commissions have already been paid
- Deductions to commissions paid on Booked Sales, when Commissionable Revenue has not been received by the Firm within the Engagement \ Delivery Period or the contract has been canceled. A deduction may also be made to reflect the difference between the Booked Commissionable Fees and the total Commissionable Revenue, if the total Commissionable Revenue is less and is not received within 60 days of the end of the Engagement Delivery Period
- Adjustments will be made to Booked Commissionable Fees when the Collected Net Engagement Revenue exceeds the original Booked Fees value. These so-called "Bump-the-Book" adjustments are subject to review and require written approval by the Area Sales Director and Engagement Partner
- Deductions to commissions will be made in determining the net commissions payment in the event recoverable amounts are due the Firm for the current or any previous Commissionable Periods prior to any commission payment

Incentives

The Tax Business Development Manger may be eligible to earn additional incentive payments, which are approved from time to time by the Area Managing Partners and the Partner In Charge of Tax Business Development.

Commission Payment and Calculation

Commissions will be paid as following under one of the 6 Engagement Types:

TYPE I Gain

Gain Accounts where the BDM initiated the lead will be eligible for a Total Maximum Commission Percentage of 6% in commissions on Booked Sales, which will be adjusted to the Actual Commission Percentage based on the expected ERP. The maximum commission to be paid on this type of engagement is limited to \$100,000 on any given engagement.

TYPE II Gain

Gain Accounts where the BDM did not initiate the lead will be eligible for a Total Maximum Commission Percentage of 3.33% in commissions on Booked Sales, which will be adjusted to the Actual Commission Percentage based on the expected ERP. The maximum commission to be paid on this type of engagement is limited to \$66,600 on any given engagement.

TYPE III Retain

Retain Accounts in which the BDM introduces or helps introduce a new line of Tax work (i.e., SALT, Comp & Benefits, etc.) where KPMG has historically sold only one type of tax service (e.g., Federal Tax), will be eligible for a Total Maximum Commission Percentage of 6% in commissions on Booked Sales, which will be adjusted to the Actual Commission Percentage based on the expected ERP. The maximum commission to be paid on this type of engagement is limited to \$60,000 on any given engagement.

TYPE IV Retain

Standard Retain Accounts where a BDM is assisting the sale of new tax services into a historical tax client will be eligible for a Total Maximum Commission Percentage of 3.33% in commissions on Booked Sales, which will be adjusted to the Actual Commission Percentage based on the expected ERP. The maximum commission to be paid on this type of engagement is limited to \$33,300 on any given engagement.

KC 00695

CONTINGENCY

Any engagement qualifying under one of the four scenarios above but which is not approved for payment beginning at booking due to contingency language in the signed engagement letter will be paid the calculated Actual Commission Percentage in a lump sum at the time the engagement closes and the Firm has billed and collected all fees applicable to the engagement, subject to all the limitations otherwise applicable to the engagement as defined above.

ASSURANCE

An Assurance Engagement. Commission on such engagements shall be only in such amounts and on such schedule as is approved by the Area Managing Partner – Assurance. Further, Assurance must agree to reimburse Tax in order to pay such commissions. Sales credit will only be given for engagements fully approved.

Sample Commission Calculation:

Gain Account Type II (BDM did not initiate the lead)
 Booked for \$3,000,000 in *Commissionable Revenue*.
 The engagement type carries a credit cap of \$2 million.
 The Engagement Partner sets the *Expected ERP* at 65%.
 The engagement is submitted with all paperwork including approvals by the last day of Period 3:

$$3.33\% \text{ Total Maximum Commission \%} \times \left(\frac{65 \text{ percentage points} - 40 \text{ percentage points}}{35 \text{ percentage points between 40\% and 75\%}} \right) = 2.38\% \text{ Actual Commission \%}$$

Commission calculation (subject to \$2,000,000 credit cap):

$$2.38\% \text{ Actual Commission \%} \times \$2,000,000 = \$47,600 \text{ Total Commission Payable}$$

Payable in 9 equal monthly installments of \$5,316.67 commencing Period 4 and continuing through Period 12, but not deemed earned until the month of payment. (Leaving the employ of KPMG entails forfeiture of all future payments.)

(Had the engagement been a contingency, the entire commission would be paid at the time that at least \$2,000,000 in fees were collected from the client.)

The Tax Business Development Manager may specify tax-withholding amounts on commissions, however, at least the minimum applicable amounts as required by state and federal law will be withheld.

Multi-Year Engagements

Commissions to be paid within the initial year for Multi-Year Engagements will be limited to the extent that the firm's engagement revenue is expected to be recognized by the AMP and Solution PIC in the initial 12 months of the engagement. Any additional commissions related to subsequent firm revenues shall be treated as an *Adjustment to Booking* or *Bump-the Book* and will require the requisite approvals. Normally, approval will not be given that causes the total commissions over the life of the engagement to exceed the cap for the particular type engagement (e.g. Gain Type I).

Treatment for Sales Credit

Sales Credit for all purposes other than payment of commission (i.e. comparison to quota, recognition, stack rankings, etc.) shall be given as follows:

- On all Types (I, II, III, IV) of engagements, whether contingency or not, the sales credit shall be the actual *total* amount to be paid by the client (less 6% for out of pocket expenses) whether capped for commission calculation purposes or not, as adjusted for *Estimated ERP*. Thus a \$3,000,000 engagement limited to a \$1,000,000 cap for commission purposes, carrying a 65% *Estimated ERP*, would yield a sales credit as follows:

$$\left(\frac{65 \text{ percentage points} - 40 \text{ percentage points}}{35 \text{ percentage points between 40\% and 75\%}} \right) \times \$3,000,000 = \$2,142,857 \text{ Sales Credit}$$

KC 00696

- On multi-year engagements, Sales Credit to be given will match, both in amount and timing, the booked amount for commission purposes.
- On contingency engagements, Sales Credit is subject to the above calculation and is awarded in the year(s) in which revenue is collected.
- In the event the *Estimated ERP* is 40% or below, and thus the adjustment reduces the *Actual Commission %* to 0%, but the AMP agrees to pay an amount (up to 20%) of the *Total Maximum Commission %*, Sales Credit shall be given for the actual total amount to be paid by the client (less 6% for out-of-pocket expenses) multiplied by the percentage (up to 20%) of the *Total Maximum Commission %*. Thus a \$5,000,000 engagement carrying an *Expected ERP* of 35%, but for which the AMP agrees to pay 15% of the *Maximum Commission %*, would yield 15% of \$5,000,000; or \$750,000 Sales Credit.
- Sales Credit for Assurance engagements shall be only in such amounts as approved by the Area Managing Partner.
- This section deals with Sales Credit only for non-commission purposes stated above, and notwithstanding any wording in this section, the commissions shall be calculated as otherwise described in this agreement.

Treatment at Close of Engagement

At the end of the 9 month commission payment schedule, the BDM shall verify and submit documentation to the Area Sales Director that the engagement has fully billed and collected, unless the engagement is still open, in which case the documentation shall be due to the ASD at the time of the close of the engagement. Any material difference in collections from the original Booked Sales amount (any engagements with a 20% differential will be reviewed) may trigger, at the discretion of the Area Managing Partner, either a debit against past commissions paid or a credit for additional commissions to be paid on the engagement.

Differences in the actual *Earned Realization Percentage (ERP)* from the percentage projected at the time of booking will not be subject to review.

Performance Evaluation

Year-to-date and Annual quotas will be compared to year-to-date *Booked Sales* for purposes of periodic calculation of performance.

Other Terms & Conditions

KPMG Consulting Inc. Engagements

In no instance will commissions be paid on any engagements for KPMG Consulting Inc.

Payments Due under Prior Year Plans

Any commissions payable on engagements booked in prior Fiscal Years shall be made under the terms of the Plan in effect when the engagement was booked, subject to any adjustments provided for in that Plan.

Expenses

The Firm shall reimburse each Tax Business Development Manager for all actual and reasonable expenses incurred in his or her sales activities involving Firm business, in accordance with standard Firm policy, and after presentation of written itemized expense reports. Expense reports must be submitted within the guidelines specified in the Firm's Personnel Manual.

KC 00697

Modification

The Firm reserves the right at any time to modify or extend this Plan, in whole or in part, at its sole discretion, upon written notice to any participant affected thereby.

Termination

A terminating Tax Business Development Manager participates in the Plan only through the last complete Commissionable Period in which he or she is employed by the Firm. As to commissions payable under prior year plans, the Tax Business Development Manager will be paid commission only on *Booked Sales* (including any "Bump-the-Book") and only on *Billed Net Engagement Revenue*, and *Collected Net Engagement Revenue* received by the Firm from the Client through the last complete Period in which they are on quota. As to commissions payable under this plan, the Tax Business Development Manager will be paid commission earned under the terms of this plan through the last complete Period in which they are on quota.

Any payment to a terminating employee for salaries, commissions, etc., is subject to the clearing of advances, recoverable draws, adjustments and other amounts owed to the Firm.

Upon termination from the Plan, all Firm confidential information and all other Firm property, including but not limited to all Sales and promotional materials, are to be returned prior to the Firm providing any monies due the Tax Business Development Manager under the Plan. Included as Firm confidential information are:

- All copies of the Compensation Plan and the Compensation Plan Terms & Conditions
- Any other literature or communications marked "Confidential" and or for "Internal Use Only"
- All information and correspondence from clients and prospective clients
- Prospect lists and opportunity tracking information

General Provisions

Nothing in the Plan shall be construed to imply a guarantee of employment for any specified period of time. The Plan is a method of performance measurement, commission calculation and payment. The Firm reserves the unilateral right to separate any Tax Business Development Manager from the Plan at any time.

No Tax Business Development Manager will have any right to money accrued through the Plan unless or until all terms, provisions and conditions as set forth in the Plan are met.

The Tax Business Development Manager shall not solicit the sale of any Tax Consulting Services not approved by the Firm. Tax Consulting Services approved by the Firm shall be offered at the rates so stated in accordance with the Firm's published practices and policies.

Employment by the Firm precludes any activity by the Tax Business Development Manager as an agent or representative for any other Tax Consulting Services or companies.

No Tax Business Development Manager (other than a Tax Business Development Manager who is also a Partner) may execute verbally or in writing a binding obligation of the Firm. Representation, commitments or understandings that deviate from the information contained herein are not considered binding on the Firm until approved by the Partner In Charge of Tax Business Development.

Accounts may be specified as House Accounts by the Partner In Charge of Tax Business Development. These accounts will be dealt with by management and will carry no commissions for Tax Business Development Managers.

The Firm reserves the right to discontinue or add any Tax Consulting Services available to Clients through its Tax Business Development Manager at any time and from time to time, whether or not such discontinuance or addition of Tax Consulting Services shall diminish or eliminate future commissions to be paid to its Tax Business Development Managers. In such event, the Tax Business Development Manager shall have no right to be compensated in any manner for a diminution or elimination of prospective commissions.

KC 00699

Managers Agreement

This Tax Business Development Managers Agreement ("Agreement") is made by and between the partnership of KPMG LLP ("KPMG") and the Tax Business Development Manager ("BDM"), and is attached to and made a part of the Tax Business Development Manager Compensation Plan effective July 1, 2001.

In consideration of the mutual promises contained herein and of other good and valuable consideration, the adequacy, sufficiency, and receipt of which is hereby acknowledged, KPMG and BDM agree as follows:

FIRST: KPMG agrees to employ BDM and BDM agrees to work for KPMG under the terms and conditions set forth herein.

SECOND: The term of this Agreement shall begin on (RFOA-PROP-START-DATE), and shall continue until terminated by either party in accordance with Paragraph FIFTH of this Agreement.

THIRD: Effective (RFOA-PROP-START-DATE), KPMG will pay BDM an initial annualized salary of (RFOA-SALARY), payable semi-monthly. BDM may participate in employment benefits applicable to BDMs as described in KPMG's *Personal Benefits Binder*. If BDM is eligible to participate in an incentive compensation or commission plan, any payment to be awarded to BDM pursuant to such plans will be determined and paid in accordance with the terms of such incentive compensation or commission plans. From time to time, KPMG may adjust or modify BDM's compensation, incentive compensation or commission plan eligibility or participation, or employment benefits at its sole discretion.

FOURTH: During BDM's employment with KPMG, BDM agrees to devote all of BDM's professional time and effort to KPMG's business and to refrain from professional practice other than, on account of, and for the benefit of the firm. BDM agrees to perform to the best of BDM's ability any and all work assigned by KPMG at such times and in such places as KPMG may designate.

FIFTH: Notwithstanding any other provisions of this Agreement or any other oral or written agreement or understanding between the parties, KPMG may terminate BDM's employment upon written notice at any time and for any reason. BDM may terminate BDM's employment with KPMG upon written notice at any time and for any reason. The parties expressly acknowledge that BDM's employment with KPMG is terminable at will.

SIXTH: KPMG shall give written notice of BDM's termination by hand delivery to BDM or by certified mail to BDM's last known address on file at KPMG. BDM shall give written notice of termination by hand delivery to the BDM's Area or Performance Improvement Partner in Charge ("PIC") or by certified mail to the PIC's regular KPMG business address.

SEVENTH: If KPMG fails to give BDM at least 30 calendar days advance written notice of termination, KPMG shall pay BDM 1/12 of BDM's annualized salary except that no such payment shall be required if KPMG, in its sole discretion, determines that BDM has committed acts of professional misconduct, breach of trust or confidence, has committed illegal acts, or has engaged in activity contrary to applicable professional or ethical standards, has breached any provisions of this Agreement, or has breached any provision of the Agreement Regarding Confidential and Intellectual Property, or has committed any act that jeopardizes in any way the professional integrity, reputation, or client relationships of KPMG. BDM agrees to provide 30 calendar days written notice of termination with the intention of resignation from KPMG. If BDM does not give KPMG at least 30 calendar days advance written notice of termination, BDM shall pay KPMG 1/12 of BDM's annualized salary as liquidated damages for failure to give 30 days notice (not a penalty). For purposes of this Paragraph, 1/12 of BDM's annualized salary shall be calculated by dividing BDM's regular annualized salary at the time of notice of termination, excluding bonuses, if any, and other compensation, by twelve.

EIGHTH: After KPMG or BDM gives written notice of termination, KPMG will continue to pay BDM's regular salary through BDM's termination date. At KPMG's request, BDM must use BDM's accrued Personal Days prior to BDM's termination date. KPMG will separately pay BDM for any accrued but unused Personal Days remaining at BDM's termination date.

NINTH: BDM's employment benefits shall cease as of BDM's termination date in accordance with the employment benefit terms in effect as of that date. Immediately upon the request of any KPMG Partner or Principal, but in no event any later than BDM's termination date, BDM shall return to KPMG all of KPMG's and its clients' property and information in BDM's possession or under BDM's control.

KC 00699

TENTH: BDM's employment by KPMG will result in BDM's exposure and access to KPMG's and its actual and prospective clients' confidential and proprietary information including, but not limited to, client lists, professional techniques, billing rates and information, client financial statements, and client records, to which BDM did not have access prior to employment with KPMG and which is of great value to KPMG and its clients. BDM shall not at any time during or after BDM's employment with KPMG (i) divulge, disclose, communicate, or otherwise make available such confidential or proprietary information to any person, firm, group, organization, or entity other than KPMG or the client which supplied their information, or (ii) use such confidential or proprietary information other than on KPMG's behalf or on behalf of the client who supplied the information, unless expressly authorized in writing to do so by the BDM's PIC or the PIC's designate. BDM shall continue to abide by the Agreement regarding Confidential and Intellectual Property executed by BDM, terms of which are expressly incorporated herein by reference and a copy of which is attached hereto as Exhibit A.

ELEVENTH: During BDM's employment with KPMG and for a period of two years thereafter, BDM shall not, other than on KPMG's behalf:

- (i) perform or cause or assist any other person or entity to perform audit or tax services for any KPMG client or prospective client;
- (ii) solicit or cause or assist any other person or entity to solicit audit or tax services from any KPMG client or prospective client; or
- (iii) solicit or cause or assist any other person or entity to solicit any KPMG partner or employee to perform services for any person or entity other than KPMG.

"KPMG client" is defined as any client of KPMG with respect to whom, during the past three years of BDM's employment with KPMG immediately preceding BDM's termination, BDM: (a) engaged in any client development, retention or marketing efforts on behalf of KPMG or assisted in any way in engaging in such efforts, or (b) has had substantial contact or acquired or had access to confidential or proprietary information as a result of or in connection with BDM's employment with KPMG. "KPMG prospective client" is defined as any person or entity (other than a client) with respect to whom, during the past two years of BDM's employment with KPMG immediately preceding BDM's termination: (a) KPMG has, with BDM's assistance, participation, or involvement, discussed the provision of professional services or engaged in any client development, retention or marketing efforts, or (b) BDM has substantial contact or acquired or had access to confidential or proprietary information as a result of or in connection with BDM's employment with KPMG.

TWELFTH: BDM acknowledges that the restrictions contained in Paragraphs TENTH and ELEVENTH are reasonable as to time and scope, necessary to protect the legitimate interests of KPMG, and are not unduly burdensome to BDM. Without limiting KPMG's right to pursue any other legal and/or equitable remedies available to it for any breach by BDM of the covenants contained in Paragraphs TENTH and ELEVENTH of this Agreement, BDM acknowledges that a breach of any of said covenants would cause a loss to KPMG that could not reasonably or adequately be compensated in damages in an action at law, that remedies other than injunctive relief could not fully compensate KPMG for a breach of said covenants and that, accordingly, KPMG shall be entitled to injunctive relief to prevent any breach or continuing breaches of BDM's covenants as set forth in Paragraphs TENTH and ELEVENTH. It is the intention of the parties hereto that if, in any action before any Court empowered to enforce such covenants, any term, restriction, covenant or promise is found to be unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such Court.

THIRTEENTH: During BDM's employment with KPMG and within one month thereafter, BDM agrees not to negotiate for or accept a position with any KPMG client without the express written consent of BDM's PIC, or the PIC's designate, whose consent shall not be unreasonably withheld.

FOURTEENTH: Except for alleged breach of Paragraphs TENTH and ELEVENTH for which KPMG may also seek injunctive relief in a Court of law, any claim or controversy arising out of or relating to this Agreement or the breach thereof including, but not limited to, any claim for damages for an alleged breach of Paragraphs TENTH and ELEVENTH, or any claim or controversy that in any way relates to the terms and conditions of KPMG's employment of BDM, shall be settled exclusively by arbitration under the rules of the American Arbitration Association. A panel of three arbitrators shall decide any claim brought under this Paragraph FOURTEENTH. The arbitration panel shall be selected as follows: Each party hereto shall designate an individual to act as arbitrator. The two arbitrators shall then jointly select a third arbitrator. Such arbitration shall be held in a location to be determined by KPMG.

KC 00700

FIFTEENTH: KPMG's waiver of a breach of any provision of this Agreement or failure to enforce any such provision shall not operate or be construed as a waiver of any subsequent breach of any such provision or of KPMG's right to enforce any such provision. No act or omission of KPMG shall constitute a waiver of any of its rights hereunder except for a written waiver signed by the Chairman of KPMG or the Chairman's designate.

SIXTEENTH: This Agreement and the Offer Letter embodies the entire agreement and understanding of the parties hereto with respect to the matters described herein and supersedes any and all prior and/or contemporaneous oral or written agreements or understandings between the parties. In the event that any term or provision of this Agreement shall be held invalid, void, or unenforceable, then the remainder of this Agreement shall not be affected, impaired, or invalidated and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement may be modified only by written agreement signed by BDM and the Chairman of KPMG or the Chairman's designate.

SEVENTEENTH: This Agreement, and all disputes under it, shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, notwithstanding any applicable conflict of laws rule.

EIGHTEENTH: The provisions of this Agreement including, but not limited to, the BDM's status as a BDM, are expressly conditioned upon BDM's execution of this Agreement. This Agreement may be signed in counterparts (duplicate).

IN THE WITNESS WHEREOF, the parties hereto have signed this Agreement, or caused it to be signed by their duly authorized representatives, effective July 1, 2001.

Redacted by Permanent Subcommittee
on Investigations

9/14/2001

KPMG LLP

Date

BUSINESS OR ASSURANCE DEVELOPMENT MANAGER

Redacted by Permanent Subcommittee
on Investigations

Redacted by Permanent Subcommittee
on Investigations

Name

Social Security Number

Signature

Date

V. BDM Comp. Plan Analysis
Revised 06/30/00

A. Issues Raised for Consideration

1. BDM Potential Earnings—High-performing BDMs make too much when compared to earnings of a new Partner.
2. Windfall Commission Checks—A conflict can be created when a TEAM achieves a big win, but the BDM is the only team member getting “immediate” compensation.
3. Levels of “Involvement”—How much sales “contribution” is enough?
4. Profitability of Engagements—The paying of BDM commission on deals that have slim margins.

In consideration of these issues, it seems appropriate to examine our current BDM compensation structure. To understand it, and then to consider how it might either be improved or modified to diminish some of the misunderstanding and/or conflicts.

B. Current BDM Compensation Plan for FY’00

1. Base Salary—\$90,000 for each BDM [some significantly higher bases for a few NYC BDMs]
2. Quota and Commission—\$3 million quota under a three-tiered commission structure
 - a. Commission potential on Retain accounts— $\$3MM \times 3.33\% = \$100,000$
 - b. Commission potential on Regain accounts— $\$3MM \times 4.00\% = \$120,000$
 - c. Commission potential on Gain accounts — $\$3MM \times 6.00\% = \$180,000$
 - d. Expected Commission yield (on avg.) — $\$3MM \times 4.665\% = \$139,950$
3. Payment Schedule—A three part commission schedule for Booking, Billing, and Collections. Expected payout in any one year for the “quota BDMs” (\$3 million) and top-performing BDMs (\$4 million) would likely be 100% of Bookings, but only about 60% of Billings and 60% of Collections. So, the range of probable annual income for these BDMs would be—

Top performer	\$217,680—\$324,000
“Quota” performer	\$163,260—\$243,360

C. Proposed BDM Commission Schedule (eff. 07/01/00), and Overall Recommendations

Category	Category Description	Commission Rate	“Cap” on credit given	Maximum Commission
I.	Gain account where BDM initiates lead	6%	No cap	Unlimited
II.	Gain account where BDM does not initiate lead	3.33% (see 3(a), below)	\$3 million per deal	\$100,000
III.	Retain account with new Tax Service lines sold	6% (see 3(b), below)	\$1 million per deal	\$60,000
IV.	Standard Retain account	3.33%	\$1 million per deal	\$33,333

Notes/Recommendations:

1. Continue to operate under a leveraged model, to drive aggressive sales behavior.
2. Place commission "caps" on sizable deals secured at Retain Accounts (e.g., no commissions paid in excess of a \$1 million per deal plateau).
3. Additional "Gain" considerations:
 - (a) To further encourage "incremental" thinking and sales behavior from our Sales Force, do not pay a "gain" bonus to the respective BDM on what would ordinarily qualify as a "gain" account (by definition under the current Comp. Plan) if the BDM has not identified the lead. Instead pay 3.33%, with a gain bonus only at AMP/ASD discretion if it is determined the BDM played a significant role in strategizing the deal, leading the team, or closing the deal.
 - (b) In order to encourage optimum multi-discipline teaming and greater account pull-through, allow a "gain" commission bonus to be paid on an existing client (i.e., "Retain" account) when a BDM introduces and successfully closes new business from a functional group or product suite that has never been sold to that account. For example, if a longstanding account has purchased only SALT historically, pay a "gain" bonus if new PFP, Fed Tax, FCS, or International engagements are created by a BDM at this account.
4. Have varying quotas and commissions dependent on whether a BDM manages existing accounts, or is deployed expressly to grow market share by developing new relationships in Gain Accounts. For example—One tier of BDMs who have demonstrated capability at managing accounts through multiple contact points, and for maximum pull-through, would get a higher base salary, a \$3-4 million quota, and a lower commission percentage. A second tier of BDMs—with more of a "hunter" mentality—would focus on prospecting new accounts. They might get the existing \$90,000 base, a \$1.5 to \$2.0 million quota, and a higher commission percentage.]
5. At less than 1% of deals in FY'00, eliminate the "Re-gain" commission category.

February 27, 2002

Redacted by Permanent Subcommittee
on Investigations

Dear

Redacted by Permanent Subcommittee
on Investigations

On behalf of Deloitte & Touche, it is my pleasure to confirm our offer of employment to you as a Business Development Manager, Grade 15, with the Tax practice of our firm. You will be located in the [REDACTED] office and will work closely with [REDACTED], the Partner in Charge of Tax Services in [REDACTED]. We extend this offer, and the opportunity it represents, with great confidence in your abilities. You made a very favorable impression with everyone you met and we are excited about the possibility of you joining our firm.

Your base salary will be at the annual rate of \$[REDACTED], payable in bi-weekly installments of \$[REDACTED]. In addition to your base salary, you will be eligible to qualify for sales incentives to be paid quarterly under the Deloitte & Touche Business Development Manager Sales Incentive Program ("Sales Incentive Program"). The sales incentives you receive will depend on how well you meet the performance goals established for you each fiscal year and will be determined based on the terms of the Sales Incentive Program then in effect. For the current fiscal year, your performance goals will include a pro-rated sales revenue goal of \$3 million dollars and a sales incentive rate of 4% of the sales revenue generated as a result of your substantial involvement. Thus, if you successfully meet your performance goals for this fiscal year and the terms of the Sales Incentive Program are satisfied, your total compensation could be \$[REDACTED]. At \$4 million dollars of revenue, your total compensation could be [REDACTED]. Beginning in Fiscal Year 2002, all disputes relating to sales incentives will be subject to mandatory arbitration.

You will also receive such benefits as are generally accorded to a Business Development Manager of Deloitte & Touche, subject to firm policy. The firm's current benefit program covers group insurance and retirement benefits, payroll deduction plans, and a time off program. The comprehensive group insurance benefit program includes multiple medical plan options, dental, discount vision care, basic and supplemental long term disability, basic, optional and dependent life insurance options, business travel/elective accident insurance, and a flexible spending plan. Retirement benefits are provided through a non-contributory defined

KC 02549

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EXHIBIT #97pp

February 27, 2002
Mr. Keenan Carstens
Page 2

benefit pension plan and a voluntary 401(k) plan with matching contributions. The payroll deduction plans offer long-term care insurance and auto/home owners insurance. In addition to paid holidays and short-term disability coverage, the firm provides a Personal Time Off (PTO) Program that combines sick days, vacation days, and personal days into a single total. You will accrue 28 PTO days per calendar year in accordance with firm policy.

Deloitte & Touche intends to provide you with outstanding continuing education programs and assignments to assist in your professional development. You will also receive periodic performance and compensation reviews.

As you know, Deloitte & Touche performs financial audits for its clients and is subject to the independence rules of the Securities and Exchange Commission and the American Institute of Certified Public Accountants (AICPA). These rules require that all of our professionals be independent of our clients. Certain relationships by our professionals or their relatives may impair that independence. Upon joining the firm, you will be asked to review a listing of our clients and disclose any relationships or holdings that you or your immediate family may have that could affect the firm's independence. You will also be expected to abide by professional, ethical, and firm requirements, rules, regulations, policies, and practices, including, without limitation, Deloitte & Touche's Code of Professional Conduct. To the extent that you are subject to a non-compete agreement with another party, we expect that you will abide by all provisions of that agreement.

This offer and your employment with our firm are conditional upon the satisfactory completion of a background check. In order to comply with the Immigration Reform and Control Act of 1986, it will be necessary for you to provide documentation verifying your employment eligibility. You will also be required to sign the firm's non-compete agreement when appropriate. Although your employment will be at-will and this offer does not create a contract of employment or employment for a specified term, it is our hope that your acceptance of our offer will be just the beginning of a mutually beneficial relationship with our firm.

This letter and the non-compete agreement are intended to be the final, complete, and exclusive statement of the terms of the offer of employment to you. To accept our offer and the terms of this letter, please sign below in the space provided, complete the enclosed forms, and use the pre-addressed, postage paid envelope to forward them to us.

We look forward to hearing from you. For planning purposes, we would appreciate your response to our offer by the close of business Tuesday, March 19th 2002, or sooner. Please contact me if you would like to discuss any aspects of this offer prior to making your decision.

KC 02550

March 27, 1998

Mr. Jeffrey Greenstein
 CEO
 Quadra Advisors, LLC
 999 Third Avenue
 Suite 4150
 Seattle, WA 98104

Dear Jeff,

We are writing to discuss the applicability to the Redemption Transaction of requirements to register tax shelters with the IRS and related penalties as well as other penalties that the IRS can assert with respect to the organization, promotion and sale of interests in a tax shelter.

Issues

1. Does the Redemption Transaction qualify as a tax shelter?
2. Does the Redemption Transaction have to be registered with the IRS?
3. What are the potential penalties that could be asserted by the IRS if the Redemption Transaction is not registered, and what other penalties could be asserted by the IRS?

Conclusions

1. We believe that the Redemption Transaction qualifies as a tax shelter under IRC Section 6111.
2. We believe a reasonable position is that the Redemption Transaction will qualify as a foreign tax shelter and therefore is not required to be registered.
3. The penalty for failure to register a tax shelter provided in Section 6707(a)(1) and (a)(2) can be asserted by the IRS. The amount of this penalty is equal to the greater of 1 percent of the aggregate amount invested in the transactions or \$500. Other penalties that the IRS could assert, as applicable, are those provided in: Section 6707(b) for failure to furnish a tax shelter identification number, Section 6700 for activities in connection with the promotion of abusive tax shelters, Section 6701 for aiding and abetting in the understatement of tax liability and Section 6708(a) for failing to keep lists of investors.

Analysis

Pursuant to Internal Revenue Code ("IRC") Section 6111, any tax shelter organizer must register the shelter with the IRS not later than the day of the first offering of sales of interests in such tax shelter. A "tax shelter" is defined under that section as any investment that is expected to

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Mr. Jeffrey Greenstein
Quadra Advisors, LLC

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produce cumulative U.S. tax deductions which are greater than twice the cumulative investment at any time during the first five years following the date the investment is first offered for sale; and which investment is:

- a) required to be registered under a Federal or State law regulating securities;
- b) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities; or
- c) a substantial investment, defined to be an investment for which the aggregate amounts offered for sale exceed \$250,000, and for which there are expected to be five or more investors.

The Redemption Transaction will clearly produce U.S. tax deductions of greater than twice the investment. The Redemption Transaction is not subject to Federal or State registration requirements, but does meet the definition of a substantial investment.

Foreign Tax Shelters

Section 6111(f)(4) states that the "Secretary may prescribe regulations which provide such rules as may be necessary or appropriate to carry out the purposes of this section in the case of foreign tax shelters".

The question of what is a "foreign tax shelter" and the registration requirements if any, for foreign tax shelters in the absence of such regulations is unanswered. Temporary Regulations issued pursuant to Section 6111 which were released on August 13, 1984 do not address the issue of foreign tax shelters.

We believe that until and unless applicable regulations are issued, a position that the registration of the Redemption Transaction with the IRS is not required (because it is a foreign tax shelter) is reasonable.

Penalties for Failure to Register

Section 6707(a)(1) and (a)(2) provide for a penalty equal to the greater of 1 percent of the aggregate amount invested in a "tax shelter" or \$500 for failure to timely register a tax shelter or for the filing of false or incomplete information with respect to a tax shelter registration. Regulation 301.6707-1T, A-1, provides that the amount invested is computed in accordance with Regulation 301.6111-1T. The latter Section provides that the investment amount includes all cash paid, the fair market value of any property transferred and the principal amount of indebtedness incurred by the investor to acquire the investment interest.

Corporate Investments Offered Under Terms of Confidentiality

Section 6111(j) enacted as part of the Taxpayer Relief Act of 1997 expands the definitions of the term "tax shelter" to include certain investments offered expressly or implicitly under conditions

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Mr. Jeffrey Greenstein
 Quadra Advisors, LLC

Page 3

of confidentiality which have a significant purpose of reducing the tax liability of a corporate taxpayer. The rules provided in this section are applicable to any such tax shelter interest which is offered for sale after the IRS prescribes guidance with respect to this new section.

Section 6707(a)(3) provides that penalties for failure to register a tax shelter offered under terms of confidentiality described in 6111(d), or for providing false or incomplete information to the IRS with respect to such registration, is the greater of 50 percent of the fees paid to all promoters or \$10,000. The penalty limit will increase to 75 percent of the fees if the failure is intentional. Sections 6111(d)(3) and 6707(a)(3) expand the parties potentially liable to register tax shelters to include each U.S. person who discussed participation in the tax shelter, but only to the extent of 50 percent of the fees paid by the participant to all promoters.

Aggregate Amount Invested

Absent any regulation providing special rules for foreign tax shelters, the aggregate amount invested should be limited to amounts paid and debt incurred by U.S. investors. The stock investments and financing transactions of a foreign corporation should not be relevant. Therefore, in the case of the Redemption Transaction, the aggregate amount invested should be equal to the cost of the warrant plus the cost of any securities purchased. The penalty amount should be equal to 1% of such amount.

Failure to Furnish a Tax Shelter Identification Number

Section 6707(b) provides a penalty of \$100 for each failure to furnish a tax shelter identification number.

Other Tax Shelter Related Penalties

Other possible penalties which the IRS can assert with respect to tax shelters include:

- a) Section 6700 which provides penalties for activities in connection with the promotion or sale of interests in abusive tax shelters. These penalties are limited to \$1,000 per activity and only apply where an organizer, promoter or seller makes or furnishes a statement with respect to the availability of any tax benefit which it knows or has reason to know is false or fraudulent as to any material matter or makes a "gross valuation overstatement" as to any material matter. We do not believe the Redemption Transaction will be considered an abusive tax shelter.
- b) Section 6701 which provides penalties for aiding and abetting in the understatement of tax liability which is limited to \$10,000 with respect to an understatement of the liability of a corporation and \$1,000 with respect to an understatement of the liability of other taxpayers. This section is applicable to any person in connection with the preparation or presentation of any portion of a document who knows or has reason to believe that such portion will be used in connection with a material tax matter, and that if so used, will result in the understatement of another person's tax liability. The penalties can be applied on a document by document.

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Mr. Jeffrey Greenstein
Quadra Advisors, LLC

basis, but are limited to the amounts stated above for each taxpayer, for each of the taxpayer's taxable periods. No penalty shall be assessed under Section 6700 with respect to promoting abusive tax shelters on any person with respect to any document for which a penalty is assessed on such person under Section 6701. This penalty is typically imposed on tax preparers who give tax advice with respect to the preparation of tax returns, not tax shelter organizations.

- e) Section 6708(a) which provides that where an organizer or seller of a potentially abusive tax shelter fails to keep lists of investors as required under Section 6112; a penalty of \$50 for each person with respect to which such failure occurred will apply.
- d) Regulation 301.6111-1T, A-2 in reply to the question "Are penalties provided for failure to comply with the requirements of tax shelter registration?", discusses the penalties under Section 6707 described above. It is stated therein that "In addition, criminal penalties may be imposed for willful noncompliance with the requirements of tax shelter registration" citing Section 7203, relating to willful failure to supply information and Section 7206, relating to fraudulent and false statements. Penalties under the later two sections would of course not be relevant to the Redemption Transaction.

Please note that the information provided herein is based on facts as stated and authorities that are subject to change or differing interpretations.

Feel free to call me at 212-259-3025 if you have any questions or comments.

Sincerely,

Michael Schwartz

11RS000043

2229



To Jeffrey N. Stein
Date May 26, 1998

From Gregg W. Ritchie
Los Angeles/Woodland Hills
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cc Distribution List

OPIS Tax Shelter Registration

Attached is a memorandum from Jeff Zysik (Tax Innovation Center) concerning the potential financial consequences associated with failing to register a tax shelter under IRC section 6111. For purposes of this discussion, I will *assume* that we will conclude that the OPIS product meets the definition of a tax shelter under IRC section 6111(c).

Based on this assumption, the following are my conclusions and recommendation as to why KPMG should make the business/strategic decision not to register the OPIS product as a tax shelter. My conclusions and resulting recommendation are based upon the immediate negative impact on the Firm's strategic initiative to develop a sustainable tax products practice and the long-term implications of establishing a precedent in registering such a product.

First, the financial exposure to the Firm is minimal. Based upon our analysis of the applicable penalty sections, we conclude that the penalties would be no greater than \$14,000 per \$100,000 in KPMG fees. Furthermore, as the size of the deal increases, our exposure to the penalties decreases as a percentage of our fees. For example, our average deal would result in KPMG fees of \$360,000 with a maximum penalty exposure of only \$31,000.

This further assumes that KPMG would bear 100 percent of the penalty. In fact, as explained in the attached memo, the penalty is *joint and several* with respect to anyone involved in the product who was required to register. Given that, at a minimum, Presidio would also be required to register, our share of the penalties could be viewed as being only one-half of the amounts noted above. If other OPIS participants (e.g., Deutsche Bank, Brown & Wood, etc.) were also found to be promoters subject to the registration requirements, KPMG's exposure would be further minimized. Finally, any ultimate exposure to the penalties are abatable if it can be shown that we had reasonable cause.

Second, the rules under section 6111(c) have not changed significantly since they were imposed in 1984. While there was an addition to section 6111 in the 1997 Tax Act, it only applies to products marketed to corporate investors under limited

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 Peat Marwick LLP

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May 28, 1998

circumstances. To my knowledge, the Firm has never registered a product under section 6111.

Third, the tax community at large continues to avoid registration of all products. Based on my knowledge, the representations made by Presidio and Quadra, and Larry DeLap's discussions with his counterparts at other Big 6 firms, *there are no tax products marketed to individuals by our competitors which are registered.* This includes income conversion strategies, loss generation techniques, and other related strategies.

Should KPMG decide to begin to register its tax products, I believe that it will position us with a severe competitive disadvantage in light of industry norms to such degree that we will not be able to compete in the tax advantaged products market.

Fourth, there has been (and, apparently, continues to be) a lack of enthusiasm on the part of the Service to enforce section 6111. In speaking with KPMG individuals who were at the Service (e.g., Richard Smith), the Service has apparently *purposefully* ignored enforcement efforts related to section 6111. In informal discussions with individuals currently at the Service, WNT has confirmed that there are not many registration applications submitted and they do not have the resources to dedicate to this area.

Finally, the guidance from Congress, the Treasury, and the Service is minimal, unclear, and extremely difficult to interpret when attempting to apply it to "tax planning" products. The Code section, regulations and related material were clearly written with a view toward the sale of "traditional" tax shelters. That is, the rules anticipate that there will be the sale of a partnership interest by a promoter which purports to allow an investor to claim deductions significantly in excess of their investment. While the rules are written broadly enough to arguably include OPIS and other purely tax planning products, they are not easily applied to the marketing of an idea or strategy to a client which carries with it tax advantage.

Although OPIS includes the purchase of securities by the investor, the tax results are driven simply by an interpretation of the application of Code section 302 and the regulations thereunder. When coupled with the Service's apparent lack of enforcement effort, the lack of specific guidance is a further indication that the risk of noncompliance with the rules could be excused.

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 Peat Marwick LLP

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Based on the above arguments, it is my recommendation that KPMG *does not* register the OPIS product as a tax shelter. Any financial exposure that may be applicable can easily be dealt with by setting up a reserve against fees collected. Given the relatively nominal amount of such potential penalties, the Firm's financial results should not be affected by this decision.

In summary, I believe that the rewards of a successful marketing of the OPIS product (and the competitive disadvantages which may result from registration) far exceed the financial exposure to penalties that may arise. Once you have had an opportunity to review this information, I request that we have a conference with the persons on the distribution list (and any other relevant parties) to come to a conclusion with respect to my recommendation. As you know, we must immediately deal with this issue in order to proceed with the OPIS product.

Distribution List:

Mark Springer
Doug Ammerman
Walter Duer

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KPMG 0012203



To Gregg Ritchie
Warner Center

Date May 26, 1998

From Jeffrey C. Zysik
Washington National Tax - Tax Innovation Center

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Registration

Issue: What is the financial consequence of failing to register a tax shelter, as required by section 6111 of the Internal Revenue Code (Code)?

Answer: Section 6111(a) requires a "tax shelter organizer" to register a tax shelter in the manner provided for by the Secretary not later than the first day on which the shelter is for sale. Failure to register a tax shelter as defined in sec. 6111(c) may result in a penalty equal to the greater of \$500 or 1 percent of the "aggregate amount invested" in the tax shelter.¹ Sec. 6707(a)(2). Pursuant to Temp. Regs. 301.6707-1T Q/A-1, "aggregate amount" is determined in the same manner as prescribed in temp. regs. 301.6111-1T Q/A-21. Q/A-21 defines "aggregate amount" as the amount "to be received from the sale of interests in the investment and includes all cash, the fair market value of all property contributed, and the principal amount of all indebtedness received in exchange for interest in the investment . . ."

There is no authority that treats the amount of the deduction allowable by reason of the investment as the "aggregate amount invested" for purposes of the sec. 6707 penalty. Furthermore, because the amount of deductions potentially allowable by reason of an investment in a tax shelter is a key concept in determining if a tax shelter must be registered under sec. 6111(c) (it is used to calculate the tax shelter ratio, see sec. 6111(c)(2) and temp. regs. 301.6111-1T Q/A-5&6), sec. 6707 could easily have referenced this amount as a factor in calculating the penalty. Since sec. 6707 does not reference the possible deductions allowable as a factor in determining the penalty, the amount of deductions generated appears to be irrelevant in calculating the penalty.

Issue: Who bears the burden of the penalty?

Answer: The liability is joint and several among all persons who had a duty to register. Temp. Regs. 301.6707-1T Q/A-9.

Issue: Is there a reasonable cause exception to the penalty?

Answer: Yes, there is a reasonable cause exception to registration. Sec. 6707(a)(1), last sentence. Existence of reasonable cause is a factual question. All representations known (or

¹ Contrast this penalty to that applicable to confidential corporate tax shelters. Failure to register a confidential corporate tax shelter (defined at 6111(d)) may result in a penalty equal to the greater of \$10,000 or 50 percent (75 percent if the failure is intentional) of the fees paid to all promoters. Sec. 6707(a)(3).

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Gregg Ritchie
Warner Center
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which should have been known) by a tax shelter organizer must be taken into account in determining if reasonable cause exists. A tax shelter organizer is deemed to know all representations known by sellers of the shelter. Temp. Regs. 301.6707-1T Q/A-4.

Issue: Are there other penalties which could apply in this circumstance?

Answer: It is also possible that the sec. 6700 penalty for promotion of an "abuse tax shelter" would apply. This penalty is the lesser of \$1,000 or 100 percent of the gross income derived (or to be derived) by the promoter for each activity related to the shelter. The statute does not define "activity" and no regulations have been issued under this section. Sec. 6700(a).

Issue: Did the sec. 6111 registration requirements change as a result of 1997 legislation?

Answer: Yes, but not with respect to the requirement to register a product which is marketed to individuals. The definition of a sec. 6111 tax shelter was broadened with respect to corporate taxpayers. Pursuant to new sec. 6111(d), if an entity, plan, arrangement or transaction has a significant purpose of avoidance or evasion of federal income tax; is offered under terms of confidentiality; and the promoters may receive aggregate fees in excess of \$100,000; the entity, plan, arrangement, or transaction must be registered. This provision does not apply to a product which is marketed to individuals provided it is not also offered to corporate taxpayers. Further, even if offered to corporate taxpayers, 6111(d) registration is *not applicable* until regulations or other guidance is issued and, even then, would be applicable only if offered under conditions of confidentiality. No such guidance has yet been issued.



To Gregg Ritchie
Warner Center

Date May 26, 1998

From Jeffrey C. Zysik
Washington National Tax - Tax Innovation Center

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Registration

Issue: What is the financial consequence of failing to register a tax shelter, as required by section 6111 of the Internal Revenue Code (Code)?

Answer: Section 6111(a) requires a "tax shelter organizer" to register a tax shelter in the manner provided for by the Secretary not later than the first day on which the shelter is for sale. Failure to register a tax shelter as defined in sec. 6111(c) may result in a penalty equal to the greater of \$500 or 1 percent of the "aggregate amount invested" in the tax shelter.¹ Sec. 6707(a)(2). Pursuant to Temp. Regs. 301.6707-1T Q/A-1, "aggregate amount" is determined in the same manner as prescribed in temp. regs. 301.6111-1T Q/A-21. Q/A-21 defines "aggregate amount" as the amount "to be received from the sale of interests in the investment and includes all cash, the fair market value of all property contributed, and the principal amount of all indebtedness received in exchange for interest in the investment . . ."

There is no authority that treats the amount of the deduction allowable by reason of the investment as the "aggregate amount invested" for purposes of the sec. 6707 penalty. Furthermore, because the amount of deductions potentially allowable by reason of an investment in a tax shelter is a key concept in determining if a tax shelter must be registered under sec. 6111(c) (it is used to calculate the tax shelter ratio, see sec. 6111(c)(2) and temp. regs. 301.6111-1T Q/A-5&6), sec. 6707 could easily have referenced this amount as a factor in calculating the penalty. Since sec. 6707 does not reference the possible deductions allowable as a factor in determining the penalty, the amount of deductions generated appears to be irrelevant in calculating the penalty.

Issue: Who bears the burden of the penalty?

Answer: The liability is joint and several among all persons who had a duty to register. Temp. Regs. 301.6707-1T Q/A-9.

Issue: Is there a reasonable cause exception to the penalty?

Answer: Yes, there is a reasonable cause exception to registration. Sec. 6707(a)(1), last sentence. Existence of reasonable cause is a factual question. All representations known (or

¹ Contrast this penalty to that applicable to confidential corporate tax shelters. Failure to register a confidential corporate tax shelter (defined at 6111(d)) may result in a penalty equal to the greater of \$10,000 or 50 percent (75 percent if the failure is intentional) of the fees paid to all promoters. Sec. 6707(a)(3).

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 Peat Marwick LLP

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Warner Center
~~May 28, 1998~~ May 26, 1998

which should have been known) by a tax shelter organizer must be taken into account in determining if reasonable cause exists. A tax shelter organizer is deemed to know all representations known by sellers of the shelter. Temp. Regs. 301.6707-1T Q/A-4.

Issue: Are there other penalties which could apply in this circumstance?

Answer: It is also possible that the sec. 6700 penalty for promotion of an "abuse tax shelter" would apply. This penalty is the lesser of \$1,000 or 100 percent of the gross income derived (or to be derived) by the promoter for each activity related to the shelter. The statute does not define "activity" and no regulations have been issued under this section. Sec. 6700(a).

Issue: Did the sec. 6111 registration requirements change as a result of 1997 legislation?

Answer: Yes, but not with respect to the requirement to register a product which is marketed to individuals. The definition of a sec. 6111 tax shelter was broadened with respect to corporate taxpayers. Pursuant to new sec. 6111(d), if an entity, plan, arrangement or transaction has a significant purpose of avoidance or evasion of federal income tax; is offered under terms of confidentiality; and the promoters may receive aggregate fees in excess of \$100,000; the entity, plan, arrangement, or transaction must be registered. This provision does not apply to a product which is marketed to individuals provided it is not also offered to corporate taxpayers. Further, even if offered to corporate taxpayers, 6111(d) registration is *not applicable* until regulations or other guidance is issued and, even then, would be applicable only if offered under conditions of confidentiality. No such guidance has yet been issued.

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KPMG 0012207

Form **8264** Application for Registration of a Tax Shelter OMB No. 1545-0455
 (Rev. April 1996) Department of the Treasury Internal Revenue Service For IRS use only

If this is an amended form, enter the tax shelter registration number previously issued to the tax shelter. See Amended Forms 8264 on page 2 of the instructions.

Part I Identifying Information Note: The tax shelter registration number will be sent to the organizer's address below.

Tax shelter name: **QA Investments, LLC** Tax shelter organizer's name: **QA Investments, LLC**
 Number, street, and room or suite no.: **999 Third Avenue, Suite 4150** Number, street, and room or suite no.: **999 Third Avenue, Suite 4150**
 City or town: **Seattle** State: **WA** ZIP code: **98104** City or town: **Seattle** State: **WA** ZIP code: **98104**
 Identifying number: **(206) 442-9292** Identifying number: **(206) 442-9292**

1a Type of business organization: Partnership (including a limited partnership) Trust S corporation Schedule C or F activity (Form 1040) Other (specify) **C Corporation** b Is this offering subject to the aggregation rules in the regulations? Yes No

2a Principal business activity code. See page 7 of the instructions. **6748** b Secondary business activity code. If not applicable, enter N/A. **N/A**

3a Type of principal asset acquired (or to be acquired): **Securities** b Was acquisition from a related party? Yes No

c(1) Cost (actual or projected) to tax shelter: **See explanation** c(2) Cost to related party: **See explanation** d Is the asset located in a foreign country? Yes No Country: **---**

e Means of acquisition: Purchase Construction Lease Other (specify) **---** f(1) Date acquired: **6/1/98 or later** f(2) Date placed in service: **6/1/98 or later**

4 Accounting method: Cash Accrual Hybrid Other (specify) **---**

5a Is the tax shelter offering required to be registered with Federal or state agencies? Yes No b Is the tax shelter offering exempt from Federal or state agency registration but filing of notice is required? Yes No

c If you checked "Yes" in either item 5a or 5b, check the appropriate boxes in item c(1) and/or enter the names of the states in item c(2).

c(1) Federal: SEC HUD CFTC Other **---** c(2) States: **---**

6 Tax shelter registration number of other registered tax shelters. See page 4 of the instructions.

Note: Complete items 7a through 9c for a minimum investment unit. See instructions for item 7a beginning on page 4.

7a Method of financing. Check applicable box and enter dollar amount. (1) Cash **\$1,300,000** (2) Property contributions (3) Recourse debt (4) Nonrecourse debt (5) Other (specify) **---** b Length of financing: **---** c Is any financing collateralized by letters of credit? Yes No

d Source of financing: Unrelated party Related party Foreign-connected financing. If none, check this box otherwise, enter: **---** Country: **---**

8a Gross deductions: **\$1,000,000** b Deduction codes: **99** c Total credits: **\$ 0** d Credit codes: **N/A**

9 Tax shelter ratio. Complete the worksheet on the back of this form.
 a Year 1: **1.6** b Year 2: **8.2** c Year 3: **---** d Year 4: **---** e Year 5: **---**

10 Aggregate amount from sale of investment units: **See explanation**

11a Maximum number of investors: **See explanation** b Maximum number of investment units: **See explanation** 12 Date investment unit was first offered for sale: **6/1/98**

Please Sign Here: **David L. Smith** Date: **10-1-98** Title: **EXECUTIVE VICE PRESIDENT**

Preparer's Use Only: Preparer's signature: **---** Date: **---** Check if self-employed: Preparer's social security number: **---** Firm's name (or yours if self-employed), address and ZIP code: **---** EIN #: **---** Telephone number #: **---**

For Paperwork Reduction Act Notice, see separate instructions. Col. No. 618CJD Form 8264 (Rev. 4-96)

Permanent Subcommittee on Investigations
EXHIBIT #98c

UBS000044

Tax Shelter Ratio Worksheet

Part I	Tax Benefits	(a) Year 1	(b) Year 2	(c) Year 3	(d) Year 4	(e) Year 5
1	Current year's gross deductions	9.866mil	8.33mil			
		line 3, col. (a)	line 3, col. (b)	line 3, col. (c)	line 3, col. (d)	line 3, col. (e)
2	Prior years' gross deductions		9.866mil			
3	Cumulative gross deductions. Add lines 1 and 2	9.866mil	10.7mil			
4	Current year's credits					
5	Prior years' credits					
6a	Cumulative credits. Add lines 4 and 5					
b	Statutory factor	3.5	3.5	3.5	3.5	3.5
c	Multiply line 6a by line 6b					
7	Cumulative tax benefits. Add lines 3 and 6c	9.866mil	10.7mil			
Part II	Investment Base					
8	Cash contributed	1.3 mil				
9	Adjusted basis of property contributed					
10	Tentative investment base. Add lines 8 and 9	1.3 mil				
11	Reductions to investment base					
	Current year's investment base. Subtract line 11 from line 10	1.3 mil				
		line 14, col. (a)	line 14, col. (b)	line 14, col. (c)	line 14, col. (d)	line 14, col. (e)
12	Prior years' investment base		1.3 mil			
13	Cumulative investment base. Add lines 12 and 11	1.3 mil	1.3 mil			
14	Tax shelter ratio. Divide line 7 by line 14. Enter in the appropriate space on line 9 on the front of this form	7.6	8.2			

Explanation of Items

c(1): Cost dependent on amount of securities purchased

10: Aggregate amount dependent on number of transactions not subject to reasonable estimation.

11(a): Aggregate amount dependent on number of transactions not subject to reasonable estimation.

11(b): Aggregate amount dependent on number of transactions not subject to reasonable estimation.

August 2, 1998

**REASONABLE BASIS ANALYSIS OF THE IRC SECTION 6111(c) TAX
SHELTER REGISTRATION REQUIREMENTS FOR "OPIS"**

I. Summary

This memorandum considers whether KPMG Peat Marwick LLP ("KPMG") is required to register the Offshore Portfolio Investment Strategy ("OPIS") as a "tax shelter" with the Internal Revenue Service (the "Service" or "IRS") under section 6111(c) of the Internal Revenue Code (the "Code").¹ We believe there are credible arguments (*i.e.*, that there is a reasonable basis)² for the position that KPMG is not required to register OPIS under section 6111(c).

II. Overview of OPIS

OPIS is a strategy in which an individual U.S. investor, for business and other reasons, is able to generate a sizable capital loss for use in offsetting capital gain income. The strategy involves a number of other parties, including a foreign bank and a foreign limited partnership owned by a foreign individual and a foreign corporation.

OPIS is the initiative of Presidio Advisors, LLC ("Presidio"), an investment advisory firm. Presidio approached KPMG for certain services. These services were to include general tax advice with respect to OPIS to prospective investors and the rendering of a tax opinion to any OPIS investor on the merits of the transaction for federal income tax purposes. The law firm of Brown & Wood LLP also is planning to issue a tax opinion

¹ Unless otherwise indicated, all "section" or "§" references are to the Code and all "regulation" or "Treas. Reg. §" references are to Treasury regulations promulgated under the Code.

² The term "reasonable basis" is not defined for purposes of the tax shelter registration rules. In the accuracy-related and preparer penalty contexts, a return position has a "reasonable basis" if the position represents a level of accuracy that is significantly higher than "not frivolous" (*i.e.*, not patently improper) and lower than "realistic possibility of success" (*i.e.*, a one-in-three possibility of being sustained on its merits if challenged by the IRS). See, e.g., Treas. Reg. § 1.6662-7(d) and U.S. Treasury Department, "Summary of the Administration's Revenue Proposals," 68 (February 1993). Proposed Treasury regulations indicate that a return position generally satisfies the reasonable basis standard if the position is reasonably based on one or more of the "authorities" (such as a statute, committee report, or regulation) taken into account in determining whether substantial authority is present for purposes of the substantial understatement penalty in section 6662(b)(2) of the Code. See Prop. Treas. Reg. § 1.6662-3(b)(3).

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1

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concluding that the desired federal income tax results to the U.S. investor are more-likely-than-not the proper results under applicable U.S. tax laws.

OPIS is not required to be registered under a federal or state law regulating securities or sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state agency regulating the offering or sale of securities. KPMG's fees for its services will be a fixed fee computed on a value-added basis and will not be based on the amount of any actual loss sustained.

III. Technical Background

A. Brief History of Sections 6111(c) and 6707(a)(2) and Treasury Regulations

Section 6111(a) requires that a "tax shelter" within the meaning of section 6111(c) be registered with the Internal Revenue Service. Section 6707(a)(2) provides a penalty for not registering a section 6111(c) tax shelter properly or on time.

Congress enacted sections 6111 and 6707 in 1984 to curb a wide range of arrangements that it considered to be abusive under the tax laws. See § 141 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, and H. Rep. No. 861, 98th Cong., 2d Sess. 977-84 (1984) (the "Conference Report").³ In 1997, Congress added a new category of "tax shelter" to section 6111 (which is in new section 6111(d)), but did not change the rules regarding section 6111(c) tax shelters. See § 1028(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

Between 1984 and 1997, there was at least one attempt to repeal the section 6111 registration requirement. For example, in 1992 a bill, that was not enacted by Congress, recommended that the registration requirement be repealed on the grounds that it was no longer necessary and that the repeal would reduce paperwork burdens for taxpayers and the IRS. According to this bill:

"As a result of the passive loss provisions (and related provisions) of the Tax Reform Act of 1986, tax shelters are no longer being marketed as extensively as they were prior to that Act. Registration of tax shelters is therefore no longer necessary for the proper administration of the tax laws. Repeal of the registration

³ Congress made changes to sections 6111 and 6707 in 1986 that are not relevant to the analysis in this memorandum. See the following sections of the Tax Reform Act of 1986, Pub. L. No. 99-514: § 201(d)(13) (the definition of "related person" in section 6111(c)(3)(B)(ii) for purposes of computing the tax shelter ratio); § 1531(a) (the percentage of tax credits taken into account under section 6111(c)(2)(A) in computing the tax shelter ratio); § 1532(a) (the amount of the section 6707(a)(2) penalty for not registering); § 1533(a) (the amount of the section 6707(b)(2) penalty for failing to include a tax shelter registration number on a return); and § 1899A(54) (a typographical error).

requirements would reduce paperwork burdens for taxpayers and the IRS.”
 Technical Explanation of § 4907 of H.R. 4210, the Tax Fairness and Economic
 Growth Act of 1992.

In 1984, Treasury issued temporary regulations interpreting the section 6111 registration and the section 6707 penalty rules in an informal question and answer format. See Temp. Treas. Reg. § 301.6111-1T (consisting of 60 questions and answers) and § 301.6707-1T (consisting of 13 questions and answers), T.D. 7964 (August 13, 1984).⁴ These regulations have never been finalized. There is very little additional guidance.

B. General Section 6111(c) and 6707(a)(2) Rules

Any arrangement that is considered to be a “tax shelter” within the meaning of section 6111(c) must be registered with the Internal Revenue Service by the day the shelter is first offered for sale. See § 6111(a). For this purpose, a “tax shelter” is any investment with respect to which any person could reasonably infer from the representations made, or to be made, in connection with the offering for sale of interests in the investment, that the tax shelter ratio for any investor as of the close of any of the first five years ending after the date on which the investment is offered for sale may be greater than 2 to 1. See § 6111(c)(1)(A). The investment also must be required to be registered under a federal or state law regulating securities, sold pursuant to an exemption from registration requiring the filing of a notice with a regulatory authority, or a substantial investment. See § 6111(c)(1)(B).

The duty to register is imposed on the “tax shelter organizer.” See § 6111(a)(1). This term is defined expansively to include the person principally responsible for organizing the shelter, as well as any person participating in the organization, sale or management of the shelter. See § 6111(e)(1) and Temp. Treas. Reg. § 301.6111-1T, Q&A 25-31.

The penalty for not timely or accurately registering a section 6111(c) tax shelter is the greater of one percent of the aggregate amount invested in the shelter, or \$500. See § 6707(a)(2). If a tax shelter is required to be registered but is not registered on time or correctly, any tax shelter organizer may be liable for the penalty. See § 6707(a)(1), § 6111(a) and (e), and Temp. Treas. Reg. § 301.6707-1T, Q&A 1-3, and 9. There is a reasonable cause exception to the penalty. See § 6707(a)(1) and Temp. Treas. Reg. § 301.6707-1T, Q&A 6-7.

⁴The temporary regulations under section 6111 were amended in 1984 and 1986. See T.D. 7990 (October 26, 1984) and T.D. 8078 (March 3, 1986).

IV. Application to OPIS

A. Summary

There is a reasonable basis for concluding that OPIS does not have to be registered as a "tax shelter" under sections 6111(a) and (c) of the Code. This position is supported by both the spirit and letter of the section 6111 registration rules. In addition, it is reasonable to conclude that application of the registration rules in this case would violate basic tenets of fair and equitable tax administration. These matters are discussed below.

B. Intent of the Section 6111(c) Registration Rules -- Spirit of the Law

It is clear from the legislative history of the section 6111(c) registration rules that Congress was targeting syndicated investment offerings, not customized tax planning arrangements like OPIS, when Congress enacted section 6111(c) in 1984. The Senate Report stressed that:

"The committee is concerned that promoters of and investors in syndicated investments and tax shelters are profiting from the inability of the Treasury to effectively examine every return." (Emphasis added.) S. Rep. No. 169, 98th Cong., 2d Sess. 425-26 (Vol. 1 1984).⁵

This focus is supported by an example of a tax shelter subject to registration in the Conference Report and by other examples in the regulations, none of which identifies arrangements like OPIS. To the contrary, these examples suggest that Congress (and the Service) were targeting investments in pass-through entities, with the same or a similar price per investment unit, that involved tax benefits from tangible assets (like master-recordings or films) or service contracts or leases. See, e.g., the Conference Report at 979-980 and Temp. Treas. Reg. § 301.6111-1T Q&A 22 (involving 32 investors in 8 limited partnerships holding a separate master recording or film); Temp. Treas. Reg. § 301.6111-1T Q&A 24 (involving interests in a cattle feeding operation); Temp. Treas. Reg. § 301.6111-1T Q&A 45A (involving interests in a blind pool); Temp. Treas. Reg. § 301.6111-1T Q&A 46 (involving the sale of a building to five investors followed by a syndication of the building). See also *Mitchell v. United States*, 89-2 USTC Para. 9494 (Bankr. W. Dist. Wash. 1989) (upholding a section 6707 penalty for failure to register a section 6111(c) tax shelter involving 32 investors in a partnership holding a hydroelectric plant).⁶

⁵ The Conference Report does not contain a different emphasis. The Senate Report is cited, instead of the Conference Report, because the latter report does not include a part entitled "Reasons for Change."

⁶ This case's subsequent history, which involved a different issue, was as follows: *amended*, 90-1 USTC Para. 50040 (Bankr. W. Dist. Wash. 1989); *aff'd*, 90-2 USTC Para. 50495 (W. Dist. Wash. 1990); *rev'd*, 92-2 USTC Para. 50512 (9th Cir. 1992).

Congressional statements as to the type of information that should be reported on the registration forms also support this narrower reading of "tax shelter." According to the Conference Report:

"The conferees anticipate that the Internal Revenue Service will provide for registration using a form which will require that information such as the following be provided: . . . the type of business organization of the shelter and its accounting method, information concerning the business activities and principal asset of the shelter . . . the number and cost of investment units available, the acquisition cost per unit, and the date the first unit may be offered for sale." Conference Report, at 980.

It also is reasonable to assume that when Congress enacted section 6111(c) in 1984, Congress had its eyes on the types of tax-advantaged transactions typically marketed in the 1980s. An example of these would be a limited partnership with an overvalued lithographic plate that allowed investors (using non-recourse debt) to reap tax benefits in the form of investment tax credits, accelerated depreciation, and interest deductions far in excess of the cost of their investment units. This emphasis is consistent with the example in the Conference Report noted above of a tax shelter that consisted of several limited partnerships, each investing in a separate master recording or film. *See* Conference Report, at 979-980.

The intended coverage of the section 6111(c) registration rules also is illustrated by the reasons given for the proposed repeal of section 6111(c) in 1992. As indicated in Part III of this memorandum - Technical Background, above, the repeal was proposed in significant part because of changes made to the tax laws since 1984 (such as the passive loss and at-risk rules) that would limit the availability or use of flow-through benefits. *See* the Technical Explanation of § 4907 of H.R. 4210, the Tax Fairness and Economic Growth Act of 1992.

Moreover, reasonable limits on the definition of "tax shelter" are essential if the registration regime is to reflect Congress' focus on curbing syndicated pass-through investment offerings by shelter promoters. The definition of "tax shelter organizer" potentially is so broad that this definition (when read in tandem with a broad reading of the "tax shelter" definition) could encompass any tax adviser offering a tax planning idea for which the adviser received a value-added fee. The regulations provide that a person that participates in the organization, management, or sale of a tax shelter (e.g., by writing a tax opinion) will be viewed as a "tax shelter organizer" if the person shares in the entrepreneurial risk of the venture. A person is considered to share in this risk if:

"(e.g., the [person's] compensation is based in whole or in part upon (i) whether interests in the tax shelter are actually sold or (ii) the number or value of the units in the tax shelter that are sold), or if the person will receive an interest in the tax shelter as part or all of the person's compensation." Temp. Treas. Reg. § 301.6111-1T Q&A 30.

See also Conference Report, at 979. Clearly, if Congress had intended to focus to such an extent on the structure of advisors' fees in the federal tax field, Congress could have done so much more directly. It seems more reasonable to assume that Congress was zeroing in on a much more limited class of arrangements considered to be abusive at that time, and had no intention of addressing or radically overhauling the fee structure of the legal and accounting professions.

Furthermore, the fact that Congress added a new category of tax shelter subject to registration (a section 6111(d) shelter) in 1997 without repealing section 6111(c) does not indicate that Congress intended to breathe new life into or "re-enact" section 6111(c). Congress' change to one statutory provision without altering a related provision could be viewed as a reaffirmation of the related provision. This view is accorded more weight, however, when a particular issue such as the definition of a key statutory phrase, has been clarified by a judicial decision or administrative pronouncement, and Congress thereafter acts with respect to the statute leaving the previous resolution of the issue untouched. See *Red Lion Broadcasting v. FCC*, 395 U.S. 367, 381-82 (1969), and *United States v. Board of Comm'rs*, 435 U.S. 110, 135 (1978). Conversely, where little or no judicial or administrative action with respect to a particular aspect of a statute has occurred, in general little guidance can be drawn from the fact that Congress subsequently re-enacts the statute without changing the earlier provision. See *United States v. Board of Comm'rs, supra*, at 148-49.

If anything, the addition of a new category of tax shelter (section 6111(d)) in 1997 suggests that Congress did not view the earlier category (section 6111(c)) as sufficiently broad. This view is supported by the fact that the section 6111(d) definition of "tax shelter" refers to "any entity, plan, arrangement or transaction" while the section 6111(c) definition looks only to an "investment." This contrast in wording supports the argument that the section 6111(c) version targeted syndicated investment offerings, rather than the separate offerings of tax planning ideas.

C. Technical Analysis -- "Letter of the Law"

1. *OPIS Does Not Satisfy the "Tax Shelter Ratio" Test*

There is a reasonable argument for concluding that the "tax shelter ratio" requirement is not met in the case of OPIS, because capital losses should not be treated as "deductions" for purposes of that ratio. According to the Code, an arrangement will be treated as a "tax shelter" only if it is reasonable to expect that the "tax shelter ratio" for any investor as of the close of any of the first five years of the shelter may exceed 2 to 1. See § 6111(c)(1). The "tax shelter ratio" is the ratio of the aggregate amount of the deductions plus 350% of the credits represented as being potentially allowable to investors under Subtitle A to the investor's "investment base." See § 6111(c)(2).

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Although the Code clearly refers to an ordinary loss as a "deduction" (see section 165), we are not aware of any similar Code provision characterizing the amount of a capital loss as a "deduction." Instead, the Code views capital losses as an offset of capital gain, with the excess in the case of individuals being deductible from ordinary income (subject to certain limits). See § 1211(a) and (b).

If Congress had wanted to include capital losses in the ratio, Congress easily could have done so. For example, section 6111(b)(2) requires any investor in a shelter claiming a "deduction, credit, or other tax benefit" (emphasis added) from the shelter to include the shelter's registration number on the investor's tax return. No such language was included in the definition of "tax shelter ratio."

This reading of "deduction" also is supported by the instructions to the registration form - Form 8264, Application for Registration of a Tax Shelter. These instructions (page 5, Items 8a and 8b) specifically list 25 types of deductions to be taken into account in computing the ratio and no mention is made of "capital loss."⁷ This is so even though the instructions list "ordinary loss from sale of an asset" as a deduction for purposes of the ratio. There is a place on the form for "other," but it is reasonable to assume given the specific listing of "ordinary loss" that "capital loss" also would have been specifically listed and not left to "other" had there been an intent to include capital losses.

Although tax forms and instructions are not "authority" for purposes of certain penalty provisions of the Code, such as the accuracy-related penalty, the forms and instructions should be accorded weight in interpreting an ambiguous provision. This is especially the case where, as here, there is very limited additional guidance on whether the registration provisions would apply to an arrangement like OPIS. See generally, Treas. Reg. § 1.6694-2(b)(3), Example 4, which provides that a preparer's reliance on instructions to a tax form that are incorrect and contrary to regulations may qualify for the reasonable cause and good faith exception to the preparer penalty.

Furthermore, if capital losses like those in OPIS were treated as "deductions" in computing the "tax shelter ratio," it would appear that publicly traded stock offerings could be subject to registration. There is no hint that such offerings were intended to be covered by section 6111(c) and this also supports interpreting "deductions" as excluding capital losses.

Treating capital losses as deductions might require the registration of public offerings, because it might be reasonable to expect that the ratio of deductions to "investment base"

⁷ The listed deductions are: 1) amortization, 2) charitable contributions, 3) demolition expenses, 4) depletion - oil and gas, 5) depletion - other, 6) depreciation, 7) feed expenses, 8) consulting fees, 9) loan placement fees, 10) management fees, 11) marketing fees, 12) fees - other, 13) financing charges, 14) guaranteed payments, 15) intangible drilling costs, 16) interest expense, 17) legal expenses, 18) mining development costs, 19) ordinary loss from sale of an asset, 20) rehabilitation expenses, 21) rental expenses, 22) research and experimental expenditures, 23) royalties - oil, gas, and mineral, 24) royalties - other, 25) soil and water conservation expenditures, 26) other.

would exceed 2:1 in any of the first five years of the investment where the investment was especially risky and the stock was bought on margin. The "investment base" is the sum of the money plus the adjusted basis of property (net of liabilities to which the property is subject) contributed by the investor to the shelter. For this purpose, borrowed amounts are not counted if such sums were borrowed from any person who participated in the organization, sale, or management of the investment or who is related to such a person -- unless the borrowed amount is unconditionally required to be repaid by the investor before the close of the year. See § 6111(c)(3). Amounts borrowed on margin might not count in determining "investment base," because such amounts are borrowed from the promoter and might not have to be repaid within a year.

2. *OPIS is Not a "Substantial Investment"*

There also is a reasonable basis for concluding that OPIS does not satisfy the "substantial investment" prong of the tax shelter definition and, therefore, does not have to be registered on this ground. To be treated as a "tax shelter," in addition to having a 2:1 tax shelter ratio, the investment must be required to be registered under a federal or state law regulating securities, sold pursuant to an exemption from registration requiring the filing of a notice, or a substantial investment. OPIS is not required to be registered under a federal or state law regulating securities or sold pursuant to an exemption from registration. Thus, OPIS would meet this portion of the "tax shelter" definition only if OPIS is a "substantial investment." An investment is a "substantial investment" if the aggregate amount which may be offered for sale exceeds \$250,000 and there are expected to be 5 or more investors. See § 6111(c)(4).

Similar investments are aggregated in determining whether the \$250,000 and 5 or more investor prongs are met. Investments are considered "similar" if "they involve similar principal business assets and similar plans or arrangements. Investments that include no business assets will be considered similar if they involve similar plans or arrangements." Temp. Treas. Reg. § 301.6111-1T Q&A 21 and 22. The regulations also state that a tax shelter organizer will be presumed to have known of any similar investments offered within 12 months of the first offering of an investment. See Temp. Treas. Reg. § 301.6111-1T Q&A 23.

There is no definition of "similar" in the regulations. Absent such clarification, and given the inherent ambiguity of the term "similar," a reasonable argument could be made that each OPIS is a more customized tax planning arrangement than the types of syndicated investment arrangements intended to be subject to aggregation. For example, in contrast to the examples in the Conference Report and Treasury regulations noted above, OPIS is not an arrangement designed for multiple investors with a similar price per "investment unit."

Moreover, the purpose of the aggregation rule was to prevent avoidance of the registration of arrangements by dividing the arrangements into separate parts. See, e.g., Private Letter Ruling 8842042 ("The principal underlying purpose for aggregating

investments is to prevent the avoidance of tax shelter registration through the division of what is essentially one investment scheme into multiple parts, none of which separately would be required to register”) This purpose would not be served by requiring aggregation of separate OPIS arrangements, as these arrangements by their nature always were intended to be marketed on a separate basis.

D. Fair and Equitable Administration of the Tax Laws

The Service has a duty to treat taxpayers fairly. If the IRS were to start enforcing 6111(c) after so many years of not administering the provision, the IRS would be selectively enforcing the provision. This is impermissible discrimination. *See, e.g., Automobile Club of Michigan v. Commissioner*, 353 U.S. 180, 186 (1957).

2247

new

From: Jordan, Robert M
Sent: Wednesday, September 16, 1998 1:34 PM
To: Etscheid, Jeffrey A; Bickham, Randall S
Subject: OPIS Workpaper Files

After all the back and forth of presenting the idea to the client and implementing, I find I have quite a few documents/papers/notes related to the OPIS transaction. Rather than just file them away, it occurs to me that we should adopt some standard guidelines regarding the minimum and MAXIMUM amount of information to retain. Purging unnecessary information now pursuant to an established standard is probably OK. If the Service asks for information down the road (and we have it) we'll have to give it to them I suspect. Input from (guy) DPP may be appropriate here.

Regards,
Bob

Proprietary Material
Confidentiality Requested

KPMG 0035903

Permanent Subcommittee on Investigations
EXHIBIT #98e

November 2, 1998

From: Larry DeLap
Partner in Charge - DPP-Tax

To: Mark A. Springer
Partner in Charge - Tax Innovation Center

Re: Opining on Federal Tax Penalties

This memorandum confirms and provides additional guidance on firm policy for opining on whether it is more likely than not that an accuracy-related penalty will apply in transactions that may be considered "tax shelters" *assuming that the desired federal income tax results are disallowed by the IRS*. For this purpose, a "tax shelter" is any entity, investment, plan or arrangement with "a significant purpose" of avoiding or evading federal income tax. See IRC § 6662(d)(2)(C)(iii) (which defines "tax shelter" for purposes of the substantial understatement component of the accuracy-related penalty).

Background

Opinions on whether a penalty applies, as opposed to opinions on the underlying merits of a transaction, may increase the firm's risk without providing a corresponding benefit to the client in its dealings with the Internal Revenue Service. In the context of corporate tax shelters, our ability to opine on the substantial understatement penalty, in particular, may be limited by factors in the regulations for determining whether the reasonable cause exception to the penalty applies. Nevertheless, an opinion on the substantial understatement penalty may be warranted based on arguments as to the validity of the regulations and the facts and circumstances of a particular case.

Policy

All proposed engagements to issue an opinion letter concluding that it is more likely than not that an accuracy-related penalty will not apply (as opposed to an opinion on the underlying merits of the tax position) are to be approved by the Partner in Charge of DPP-Tax prior to issuance of the engagement letter. See Tax Product Alert No. 97-02 (December 18, 1997), which sets forth this policy for purposes of the substantial understatement penalty.

Because there may be material differences among cases within a particular strategy, the determination as to whether to opine on a penalty generally will be made on a client-by-client (as opposed to a strategy-by-strategy) basis and will be based on the facts and circumstances of that particular case. In view of the inherent uncertainties in determining whether a taxpayer qualifies for the reasonable cause exception to the accuracy-related

penalty, there, nevertheless, may be strategies for which an opinion on the penalty would not be appropriate.

In most cases, assuming there is at least a “more likely than not” opinion on the merits, the key factors affecting whether an opinion on the penalty is appropriate will be the degree of business purpose and economic substance to the transaction. In the context of corporate tax shelters, an opinion on the substantial understatement penalty is less likely if the taxpayer’s claimed tax benefits are unreasonable in relation to its investment in the shelter. *See* Treas. Reg. § 1.6664-4(e)(3). This factor, however, may be less applicable where, for example, the strategy involves a redeployment of existing assets within the corporate group. The existence of a confidentiality agreement with the promoter or organizer of the transaction may affect our ability to opine on the substantial understatement penalty.

2250

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Quadra swap and call
Sent: 1998-12-22 16:32:07.578
Date: 1998-12-22 16:32:07.734
X-Folder: Swap

Jeff,

FYI....

More people are inquiring if they can take their swap loss in 1998. I have a call in to Randy to see if he has decided.

Angie

-----Original Message-----

From: Napier, Angie
Sent: Monday, December 21, 1998 4:04 PM
To: Brennan, James
Cc: Bickham, Randall S
Subject: Quadra swap and call

REDACTED

Jim,

I spoke to regarding the following issues:

1. When do the swaps terminate and can they be settled early to recognize a loss in 1998? All of the swaps terminate in 1999. Quadra has had 2 KPMG people inquire about terminating the swap in 1998 to recognize the loss in 1998. Quadra has decided that this is a KPMG issue because the opinions are to state that this swap is a 90 day swap. She has left this issue up to Randy to decide. She said that the swaps can be terminated early if both parties agree, which they would. So, it is up to Randy. So far, none have been terminated early.
2. The status of the upfront calls- which deals have been cash settled to take the gain in 1998. Kim is going to fax me a list of the deals that have elected to cash settle. She has not received cash settlement forms from . She will keep me updated as new elections are received.

Angie

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Permanent Subcommittee on Investigations
EXHIBIT #98g

KPMG 0026866

2251

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20483
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20483
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: BLIPs
Sent: 1999-03-01 22:48:00.855
Date: 1999-03-01 22:48:01.401
X-Folder: BLIPs

Jeff:

Per our discussion, you will memorialize the responses from the team re technical analysis (w/ the exception of business purpose, economic substance, ACM, etc.), and next steps for the development team. Thanks,

Mark
202-467-3807

-----Original Message-----

From: Sams, James K
Sent: Monday, March 01, 1999 2:51 PM
To: Smith, Richard H; Rosenthal, Steven M
Cc: Wiesner, Philip J; Zysik, Jeffrey C; Springer, Mark A
Subject: RE: BLIPs

This is to confirm that I am at a more likely than not level of comfort for the position that the transactions proposed to be entered into by the partnership -- properly structured and with appropriate procedural requirements satisfied -- will be treated as section 988 transactions within the meaning of section 988(c).

I am NOT at that level of comfort, however, for the proposition that the entire loss realized or recognized at the partner level would be treated as foreign exchange loss and therefore would be treated as ordinary loss under the provisions of section 988. While the language of the regulations does not clearly support a "non-ordinary" treatment (section 1.988-2(d)(4)), the legislative history, general rules of section 988 governing computation of exchange gain or loss and the anti-abuse rule of section 1.988-2(d) militate against a conclusion that a loss arising from a substituted basis would necessarily be treated as section 988 loss.

In our discussions with Jeff I did not perceive this issue to be a deal-breaker by any stretch as it merely goes to characterization. Clearly, of course, it limits the potential marketability of the transaction. We have explored this issue in some detail (there really is not much out there) but would be happy to discuss and consider arguments that could be raised by way of analogue, etc.

I do not perceive there to be any other issues within the INTL arena that otherwise affect the substance of the transaction.

Please let me know if you have any questions or comments.

Regards,

Jim

James K Sams

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Permanent Subcommittee on Investigations
EXHIBIT #98h

KPMG 0028170

2252

KPMG Washington National Tax
tel: 202-467-3896
fax: 202-822-8887

-----Original Message-----
From: Smith, Richard H
Sent: Saturday, February 27, 1999 1:17 PM
To: Sams, James K; Rosenthal, Steven M
Cc: Wiesner, Philip J
Subject: FW: BLIPs

Gentlemen,

I want to circle back with the two of you to confirm that you do not have issues within your jurisdiction that would act as deal breakers for the transaction. The restructuring referred to below would have the investor exit the transaction prior to repayment of the loan and the prepayment penalty. This should avoid the 705 issue altogether as well as the OID gross v. net determination. Sections 752 and 465 are very much stand alone, although we will want to include discussions about the treatment of bond premium, for example, bond premium is not taxable upon receipt by the investor. On business purpose / economic substance / anti-abuse, we believe that analysis roughly stated is dependent upon whether (1) the transaction occurs in the fashion described (we assume that this can be accomplished) and (2) the investor making representations about its effort to make a profit (other than from tax benefits). The only issue that I feel remains outstanding is the section 163 anti-abuse rule. Are there any others? Steve and Jim, please let me know whether there are additional issues that need to be analyzed.

Steve -- on section 163 anti-abuse you have previously indicated that you did not think this is a problem. My sense is that you would be able to conclude using much the same approach that Phil and I discussed re: business purpose, etc. Please confirm / expand / deny.

As my message indicates, there will be much effort to get an opinion letter in shape. While this will be primarily PFP's responsibility, we will each need to help directly and with additional resources.

After the opinion letter is whipped into shape, Larry DeLap's review will be undertaken.

Thanks,

Richard

-----Original Message-----
From: Smith, Richard H
Sent: Saturday, February 27, 1999 12:56 PM
To: Eischeid, Jeffrey A
Cc: Wiesner, Philip J; DeLap, Larry; Watson, Mark T; Springer, Mark A; Sams, James K; Rosenthal, Steven M; Elgin, Evelyn; Gardner, John H; Larkins, Richard G; Zysik, Jeffrey C
Subject: BLIPs

Jeff,

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KPMG 0028171

2253

This is to confirm our discussion yesterday afternoon.

With regard to the following issues, we believe that we can conclude in a manner that makes the BLIPs product technically viable on a "more-likely-than-not" basis:

- * section 752
- * section 705(a)(2)(B)
- * section 465
- * business purpose / economic substance / various anti-abuse rules

I have discussed these positions with Phil Wiesner. I have not had the opportunity to circle back with Jim Sams or Steve Rosenthal, but these conclusions take into account analyses they had set forth earlier. I will close this loop over the weekend.

To best position our clients, we believe that the transaction should be restructured slightly. We believe that the opinion letter should be redrafted to add, expand, and/or delete certain analyses. We also believe that we must craft the representations in a more focused manner.

We look forward to meeting with Randy Bickham next week to get the process underway of getting a completed opinion letter drafted.

Thanks,

Richard H. Smith
Washington National Tax
rsmith@kpmg.com
Phone: (202) 467-3855
Fax: (202) 822-8887

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KPMG 0028172

2254

From rrruble@brownwoodlaw.com
Received: from kpmg.com (pa0016c4.kpmg.com [130.100.150.27]) by
meomexc09.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id F34T3JJ7; Fri, 5 Mar 1999 10:20:39 -0500
Received: from pa0016c1.kpmg.com by kpmg.com(8.8.8/8.8.8) with ESMTMP id
KAA00889; Fri, 5 Mar 1999 10:25:11 -0500 (EST)
Received: by pa0016c1.kpmg.com; id KAA23577; Fri, 5 Mar 1999 10:25:10 -0500
(EST)
Received: from unknown(208.140.184.10) by pa0016c1.kpmg.com via smap (3.2)
id xma019550; Fri, 5 Mar 99 10:17:13 -0500
Received: by nynotes2.brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 8525672B.0054226D ; Fri, 5 Mar 1999 10:18:58 -0500
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: "Eischeid, Jeffrey A" <eischeid@kpmg.com>
cc: rbickham@kpmg.com
Message-ID: <8525672B.0052DC69.00@nynotes2.brownwoodlaw.com>
Date: Fri, 5 Mar 1999 10:20:05 -0500
Subject: Re: 988
X-Folder: BLIPS

Jeef:

Other than what I sent to you, I have no answer. My clients have done about \$1 billion of 357c deals using currency. Sec. 362 is essentially a carry over basis transaction with transferor gain added on. The deals have been reviewed and signed off on by AA and the C of PWC withiut issue on this point. In addition a number of well known law firms have reached the same result reviewing it for ther clients.

988(a)(1)(A) provides that gain or loss attributable to a 988 transaction is ordinary. 988(c)(1)(C)(i) treats the disposition of a non-functional currency as a 988 transaction and treats the gain or loss as foreign currency gain or loss. The 1.998-2 regulations are consistent with this. It therefor appears to me that if the taxpayer were disposing of foreign currency itself, it is more likely than not that the entire loss would be ordinary under these rules. I also believe that the same should apply to options, forwards or futures in the currency, although it amay be less clear.

As a way to deal with this in the context of BLIPS, maybe everyone wuold feel better if the partner ship reduced the amount to be distributed to the investor to the foreign currency itself and this was distributed to the investor. In that case the rules I set out above would clearly apply.

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Permanent Subcommittee on Investigations
EXHIBIT #98i

KPMG 0033904

2255

To: Innovative Strategies Team
From: Mark Watson
Re: Reporting a loss from a Section 988 transaction

Issue

If an individual taxpayer or a single member LLC owned by an individual realizes a loss from a Section 988 transaction, on what form or forms should that loss be reported for federal income tax purposes?

Conclusion

If a loss from a Section 988 transaction is characterized as an ordinary loss, the loss should be reported on line 10 of Form 4797 and line 14 of the taxpayer's Form 1040. If a loss from a Section 988 transaction is characterized as a capital loss, the loss should be reported on Schedule D (Form 1040).

Analysis

Section 988 Transactions

According to Section 988(a)(1)(A), "any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be)." Treasury Regulation Section 1.988-1(a)(1) defines the term "Section 988 transaction" as including the following transactions:

- A disposition of nonfunctional currency.¹
- Any of the following transactions if any amount which the taxpayer is entitled to receive or is required to pay by reason of such transaction is denominated in terms of a nonfunctional currency or is determined by reference to the value of one or more nonfunctional currencies:
 - Acquiring a debt instrument or becoming an obligor under a debt instrument.

¹ The term "nonfunctional currency" means with respect to a taxpayer a currency other than the taxpayer's "functional currency." Treas. Reg. Sec. 1.988-1(c). In the case of a U.S. taxpayer, the term "functional currency" generally means the U.S. dollar. IRC Section 985(b)(1).

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EXHIBIT #98j

KPMG 0046037

- Entering into or acquiring any forward contract, futures contract, option, warrant, or similar financial instrument if the underlying property to which the instrument ultimately relates is a nonfunctional currency.²

Thus, pursuant to the general rule of Section 988(a)(1), even if a Section 988 gain or loss is generated by the disposition of a capital asset (as opposed to a non-capital asset), such gain or loss is nevertheless characterized as an ordinary gain or loss. However, in the case of a foreign currency gain or loss that is attributable to a forward contract, a futures contract, or option which is a capital asset in the hands of the taxpayer and is not a part of a straddle (within the meaning of Section 1092(c), without regard to paragraph (4) thereof), a taxpayer may elect to treat such gain or loss as capital gain or loss (as the case may be).³ Treasury Regulation Section 1.988-3(b)(3) sets forth the requirements for making such an election.

Form 4797

The instructions to Form 4797 provide that the form is to be used to report the following transactions:

- The sale or exchange of property used in a trade or business; depreciable and amortizable property; oil gas, geothermal, or other mineral properties; and Section 126 property.
- The involuntary conversion of property used in a trade or business and capital assets held in connection with a trade or business or a transaction entered into for profit.
- The disposition of non-capital assets (other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business).
- The recapture of Section 179 expense deductions for partners and S corporation shareholders from property dispositions by partnerships and S corporations.

² For example, entering into or acquiring a forward contract to purchase a nonfunctional currency, an option to enter into a forward contract to purchase a nonfunctional currency, an option to purchase a bond denominated in or the payments of which are determined by reference to the value of a nonfunctional currency, or a warrant to purchase nonfunctional currency would constitute a Section 988 transaction. However, entering into or acquiring a forward contract to purchase wheat denominated in a nonfunctional currency, an option to enter into a forward contract to purchase wheat denominated in a nonfunctional currency, or a warrant to purchase stock denominated in a nonfunctional currency would not constitute a Section 988 transaction. See Treas. Reg. Sec. 1.988-1(a)(2)(ii)(A).

³ IRC Section 988(a)(1)(B). However, a foreign currency gain or loss that is attributable to a regulated futures contract or a nonqualify option with respect to which an election under Section 988(c)(1)(D)(ii) is in effect may not be treated as capital gain or loss. See Treas. Reg. Sec. 1.988-3(b)(1)(ii).

- The computation of recapture amounts under Sections 179 and 280F(b)(2), when the business use of Section 179 or listed property drops to 50 percent or less.

Arguably, in the context of the BLIPS transaction, any gain or loss realized by the investor when he or she (or the single member LLC) disposes of the nonfunctional currency (or other Section 988 asset) would not be reported on Form 4797 because it does not fall within one of the above listed transactions. However, the instructions to line 10 of Form 4797 indicate that a loss from the disposition of Section 1244 stock is to be reported on line 10 of Form 4797 to the extent such loss does not exceed the amount that may be treated as an ordinary loss under Section 1244(b). Any loss in excess of the amount allowed to be treated as an ordinary loss under Section 1244(b) is to be reported on Schedule D.

Section 1244(a) provides that, in the case of an individual, "a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in [section 1244(b)], be treated as an ordinary loss." Similar to Section 1244 stock, loss generated upon the disposition of a nonfunctional currency (or other Section 988 asset) by an investor in BLIPS would, absent Section 988(a)(1)(A), typically be treated as a loss from the sale or exchange of a capital asset. By analogy, therefore, it appears appropriate to report a loss from a Section 988 transaction on line 10 of Form 4797 to the extent such loss is characterized as an ordinary loss.⁴ If a loss from a Section 988 transaction is characterized as a capital loss pursuant to Section 988(a)(1)(B), then such loss should be reported on Schedule D.

⁴The amount reported on line 10 of Form 4797 would also be reported on line 14 of the taxpayer's Form 1040.

From: Brennan, James
Sent: Thursday, March 16, 2000 5:09 PM
To: Napier, Angie
Subject: FW: BLIPS 988 losses

FYI

-----Original Message-----

From: Watson, Mark T
Sent: Thursday, March 16, 2000 4:55 PM
To: Paula, Robin M; Brennan, James
Subject: RE: BLIPS 988 losses

Hey, I don't make firm policy. All I can do is tell you how I see it. It is up to each professional to decide whether or not to heed my advice.

-----Original Message-----

From: Paula, Robin M
Sent: Thursday, March 16, 2000 4:48 PM
To: Watson, Mark T; Brennan, James
Subject: RE: BLIPS 988 losses

does this mean that there is sufficient flexibility that each partner can decide how they want to report it, or are you steadfast in your opinion that it goes on a Form 4797?

-----Original Message-----

From: Watson, Mark T
Sent: Thursday, March 16, 2000 1:16 PM
To: Brennan, James
Cc: Paula, Robin M
Subject: RE: BLIPS 988 losses

I think the losses should be reported by the individual on Form 4797. However, others disagree.

-----Original Message-----

From: Brennan, James
Sent: Wednesday, March 15, 2000 2:35 PM
To: Watson, Mark T
Cc: Paula, Robin M
Subject: BLIPS 988 losses

Mark,

Have you concluded that the 988 losses from the fund cannot be reported on Schedule E of form 1040? I know that 4797 was your conclusion; however, at the partnership level, even though 4797 was used to report these losses, the fund was not in a trade or business and, therefore, these losses flowed to line 7 of schedule K, other income. Can they subsequently be reported on Schedule E, or do they go on 4797 at the individual level also?

Thanks.

Jim Brennan
Manager
Kpmg LLP
Personal Financial Planning Group
(404) 222-3426
jamesbrennan@kpmg.com

2259

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

.....

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Memo to File
Re. BLIPS Code Section 988 Issue
Jeff Eischeid/Randy Bickham
March 31, 1999

BLIPS is a proprietary investment program developed by Presidio Advisors, LLC. Upon termination of the defined investment strategy, an Investor will receive nonfunctional foreign currency (or contracts in such currencies) equivalent in value to his partnership capital account. This currency will have a "substituted basis" pursuant to Code Section 732. Under Code Section 732(b), the basis of property, other than money, distributed by a partnership to a partner in liquidation of the partner's interest is equal to the adjusted basis of such partner's interest in the partnership.

It is reasonably anticipated that this currency will be disposed of at a taxable loss because its substituted basis will be significantly higher than its fair market value. The question arises as to the appropriate character of this tax loss - ordinary loss or capital loss.

Code Section 988 unequivocally states that the character of gain or loss from the disposition of foreign currency is ordinary. Under Code Section 988(a) exchange gains and losses from Code Section 988 transactions are characterized as ordinary, subject to the taxpayer electing capital treatment for forward contracts, futures contracts and options pursuant to Code Section 988(a)(1)(B). Code Section 988 overrides other sections of the Code for purposes of determining character, including Code Section 1234A (gains and losses from terminations of rights and obligations with respect to personal property and certain Code Section 1256 contracts).

Code Section 988(a) reads as follows:

General rule. Notwithstanding any other provision of this chapter--

(1) Treatment as ordinary income or loss.

(A) In general. Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

(B) Special rule for forward contracts, etc. Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

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KPMG 0026354

“Section 988 transactions” are defined in Code Section 988(c)(1). Code Section 988 transactions include certain forward contracts, futures contracts, options and similar financial instruments. *See* Code Section 988(c)(1)(B)(iii). Dispositions of nonfunctional currencies are also Code Section 988 transactions. *See* Code Section 988(c)(1)(C)(i). Based upon these definitions, the disposition of Investor’s nonfunctional foreign currency (or contracts in such currencies) is a “section 988 transaction”.

“Foreign currency gain or loss” is defined in Code Section 988(b). In general, this section limits foreign currency gain or loss to that realized by reason of changes in exchange rates. A special rule applies to treat all gain or loss from forward contracts, futures contracts, options or similar financial instruments defined in Code Section 988(c)(1)(B)(iii) as foreign currency gain or loss.

Treas. Reg. Section 1.988-2 provides guidance with respect to the recognition and computation of exchange gain or loss. In general, the provisions of the Code applicable to the sale or disposition of property apply, e.g., Code Section 1001. Accordingly, Treas. Reg. Section 1.988-2(a)(2) defines a realized exchange loss as the excess of the adjusted basis of nonfunctional currency over the amount realized.

“Adjusted basis” is defined in Treas. Reg. Section 1.988-2(a)(2)(iii) as the basis determined under the applicable provisions of the Code, e.g., Code Sections 1011 through 1023. Thus, the Regulations clearly contemplate carryover and substituted basis transactions. Code Section 1011 makes specific reference to basis determined under subchapter K, (e.g., Code Section 732.)

Note that neither these regulations, nor the preamble to these regulations, limit the amount of exchange gain or loss on the disposition of nonfunctional foreign currency to that portion of the gain or loss attributable to a change in exchange rates. Instead, the regulations simply apply the mechanical provisions of other code sections in order to determine the amount of gain or loss and then characterize all of such gain or loss as exchange gain or loss. The statutory limitations of Code Sections 988(b)(1) and (2) are ignored and the special rule of Code Section 988(b)(1) is effectively applied. In other words, all gain or loss on the disposition of nonfunctional foreign currency is treated as exchange gain or loss.

It appears that this regulatory approach was adopted based upon the legislative history of the amendments made to Code Sections 988(b) and (c) in the Technical and Miscellaneous Revenue Act of 1988. The House, Senate and Joint Committees each included identical language in their reports describing the measurement and recognition of foreign currency gain or loss. The Committees said: “Further, any gain or loss on a nonfunctional currency disposition is foreign currency gain or loss regardless of whether the difference between acquisition and disposition prices is due to spot rate movements between acquisition and disposition dates, forward discount or premium, bid-asked spreads, or other factors” (emphasis added). Treasury’s all gain/loss approach is based upon this directive.

Investor, simply following the literal language of the Treas. Reg. Section 1.988-2 regulations, would recognize an ordinary loss on the disposition of his nonfunctional foreign currency. However, it is possible that such loss may be recharacterized under the “substance over form” anti-abuse provision contained in the regulations. Reg. Section 1.988-2(f) provides:

“If the substance of a transaction described in 1.988-1(a)(1) differs from its form, the timing, source and character of gains or losses with respect to such transaction may be recharacterized by the Commissioner in accordance with its substance. For example, if a taxpayer enters into a transaction that it designates a “currency swap contract” that requires the prepayment of all payments to be made or to be received (but not both), the Commissioner may recharacterize the contract as a loan. In applying the substance over form principle, separate transactions may be integrated where appropriate.”

Accordingly, the Commissioner has the authority to recharacterize the timing, source and character of transactions described in Treas. Reg. Section 1.988-1(a)(1) to the extent the substance of such transactions differ from their form. On its face, however, Reg. Section 1.988-2(f) does not provide authority for the Commissioner to recharacterize a transaction if its substance and form coincide.

The starting point of an analysis of Reg. Section 1.988-2(f) is a “transaction described in §1.988-1(a)(1)”. These transactions include:

- a disposition of nonfunctional currency;
- the acquisition of a debt instrument or becoming the obligor under a debt instrument denominated in terms of a nonfunctional currency;
- accruing an item of income or expense (e.g., payables and receivables) denominated in terms of a nonfunctional currency; and,
- the acquisition of a forward contract, futures contract, option, or similar financial instrument denominated in terms of a nonfunctional currency.

Treas. Reg. Section 1.988-2(f) permits the Commissioner to recharacterize one of these transactions if its substance differs from its form. The Reg. provides the example of a taxpayer entering into a transaction that it designates as a “currency swap contract” that requires the prepayment of all payments to be made or to be received (but not both). The transaction is recharacterized by the Commissioner as a loan as a result of the substance of the transaction. Accordingly, the special timing and characterization rules under Code Section 988 would not apply. Another example in the regulation describes a transaction also designated by the taxpayer as a currency swap. The transaction was recharacterized

by the Commissioner as a spot purchase of foreign currency combined with a forward sale. The only impact of recharacterization was on the timing of income recognition.

We believe that these examples are indicative of the types of abuses contemplated by Treasury. They relate to an overall attempt to provide similar treatment for complex financial instruments having differing forms. In general, complex financial instruments can be categorized as forward contracts, contingent debt instruments or notional principal contracts. Each of these three financial instruments is taxed differently for U.S. federal income tax purposes. The primary differences in taxation between these three financial instruments generally relate to the character and timing of income, and the necessity of accruing an interest component.

With respect to the overall BLIPS investment program, most transactions undertaken in the program will involve the buying and selling of foreign currency forward contracts and currency swaps. Depending upon the structure of the forward contracts, there could be some exposure to recharacterization of the transaction as a notional principal contract. With respect to the currency swaps, there may be some exposure to the type of recharacterization contained in the regulation's example. However, with respect to the transaction under scrutiny, i.e., the disposition of foreign currency distributed to the Investor on liquidation of his partnership interest, the substance and form coincide – it is a disposition of nonfunctional foreign currency.

Conclusions

Our view is that the Investor, at least on a more-likely-than-not basis, is entitled to literally apply the language of the regulations under Treas. Reg. Section 1.988-2. The Investor dealt solely in nonfunctional currencies, and associated contracts in those currencies, which were clearly Code Section 988 transactions. This entitlement is particularly appropriate given the legislative history supporting the approach to determining gain or loss adopted by the regulations. A literal application of this regulation would result in an ordinary loss deduction for the taxpayer. The fact that the substituted basis rules of Code Section 732 result in tax basis greater than fair market value after liquidation of Investor's partnership interest should not cause or permit the Commissioner's recharacterization of the transaction as one that is not a Code Section 988 transaction. Substance comports with form.

It is arguable that Treasury's anti-abuse provision, written broadly, is sufficient to permit the Commissioner to recharacterize Investor's tax loss from ordinary loss to capital loss. However, when this regulation was drafted, the statute and its legislative history were known to Treasury. Nevertheless, Treasury failed to draft a regulatory scheme that limits ordinary income/loss treatment to only a portion of carryover or substituted basis transactions. This failure acknowledged that various factors, not just changes in exchange rates, could give rise to exchange gain or loss. In such circumstance, it is at

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least more-likely-than-not that the anti-abuse provision should not be applied to override the explicit regulatory provisions.

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2265

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18727
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18727
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: BLIPS
Sent: 1999-04-02 17:57:12.543
Date: 1999-04-02 17:57:32.536
X-Folder: BLIPS
X-Attachments: Attachments\988rsb[1].doc; "Attachments\blips dpp rsb.doc";
"Attachments\BLIPS 6111 Issue[1].doc"

John,

I wanted to provide you with a quick update on the status of the BLIPS approval process and what we can expect over the next few days. This summary is based upon multiple conference calls throughout the last two weeks with Jeff Eischeid, Randy Bickham, Mark Watson and others. Additionally, I have spoken directly with John Raedel and have exchanged messages with John Guinan and Phil Wiesner.

Registration Issue. Larry DeLap, based upon a technical analysis by Eve Elgin, concluded that the product fell within the purview of Internal Revenue Code Section 6111(c) and must be registered as a tax shelter. Eve's conclusion was that there was no reasonable basis for not registering the product. In response to DPP's position, Randy Bickham prepared the attached memorandum to Mark Ely dated March 24, 1999, that concluded that there was a reasonable basis for not registering based upon satisfying the "tax shelter ratio" test contained in Code Section 6111. Based upon the logic contained in the memorandum and his own independent assessment, Mark agreed that there was a reasonable basis for not registering the product as a tax shelter. He is drafting a memorandum to DPP setting forth his logic for concluding that there is a reasonable basis for not registering the BLIPS product.

Technical Issues. The only remaining technical issues are the applicability of Internal Revenue Code Section 988 to the "ordinary" version of the product and Phil Wiener's final sign-off on whether the BLIPS product meets the requisite business purpose threshold.

Jim Sams could not initially get to a MLTN position with respect to the application of Code Section 988 because of the anti-abuse provision contained in the regulations under Code Section 988. The anti-abuse provision incorporates a "substance over form" analysis that allows the Commissioner to recharacterize the timing, source and character of transactions. Jeff Eischeid and Randy Bickham prepared that attached memorandum dated March 31, 1999, which concludes that on a "more-likely than-not basis" that an application Code Section 988(a) allows for ordinary income or loss treatment and the anti-abuse provision contained in Treasury Regulation Section 1.988-2(f) does not apply. John Raedel has asked Jim to reconsider his initial conclusion based upon Jeff's and Randy's analysis.

With respect to business purpose, Phil Wiesner enlisted Steve Rosenthal's assistance in assessing the economics of the BLIPS investment program. There have been extensive discussions between Presidio and Steve orchestrated by Jeff Eischeid to address Steve's outstanding issues. Steve's positive assessment has been conveyed to Phil. In addition, Phil has been provided with approximately 20 examples of actual transactions which effectively replicate the economics of the BLIPS financing structure by using above-market interest rate debt offerings.

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Permanent Subcommittee on Investigations
EXHIBIT #981

KPMG 0028189

2266

Next Step. On Monday, John Raedel, Richard Smith and Phil Wiesner will meet to review Jim Sams' concerns and to form a conclusion as to the applicability of Code Section 988. Phil will then conclude as to business purpose and WNT's overall conclusion that the BLIPS product meets the "more-likely-than-not" standard. The product will then go to Larry Delap and DPP Assurance to obtain requisite approvals. I am fully confident that Larry will give us his immediate response.

I may need to solicit your assistance to insure that we receive an expeditious review from DPP Assurance.

I realize that you are quite swamped with the Canadian situation but, if you have any other questions, please give me a call.

Thanks,

Doug Ammerman
KPMG LLP
Orange County Office
(714) 850-4455

2267

Unknown

From: John Larson [jl Larson@presidioadv.com]
Sent: Monday, May 03, 1998 8:57 AM
To: rbickham@kpmg.com
Cc: r rubble@brownwoodlaw.com; eischeid@kpmg.com
Subject: BLIPS - liquidation issue

Randy-

Based on Friday's discussion, it is my understanding that you now want us to have at least 3 partners/members (two in addition to the US investor) in each investment LLC. This is to insure that the partnership will continue in existence in situations where the US investor's exit strategy is a redemption of his interest rather than a sale of the membership interest. It is also my understanding that you would use the redemption alternative where the partner/member is looking for an ordinary loss from allocating outside basis to distributed section 988 assets.

My question is whether you will get the intended result under the redemption alternative if the partnership is not liquidated. I would have thought you were relying on a basis allocation under section 732 which appears to be not applicable in this fact pattern. Am I missing something?

JL

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Permanent Subcommittee on Investigations
EXHIBIT #98m

KPMG 0033309

2268

Watson, Mark T

From: Pace, Katherine A
nt: Tuesday, July 20, 1999 5:31 PM
o: Watson, Mark T

mark, as you may know i had a best transaction producing an ordinary loss. when you sent your memo out re. how to report the ordinary loss on a 988 sale i was concerned because we came to a diff. conclusion. we reported it on line 7 of our partnership as other income / loss. after reading your memo i saw exactly what you were saying and became worried that i may have reported it wrong. so i then started analyzing what the consequences of that might be . we contacted robert lora in the prac. and proc. group in atlanta. after walking him through the facts he immediately said report it on line 7 other income. i then shared with him your logic and he decided to call a friend of his in irs international to see where he thought 988 losses should be reported. his friend said he had never seen one on form 4797 and thought in our partnership situation line 7 , other income , was correct. so we have decided to leave our return as is. however i thought you might find their comments interesting. obviously we like line 7 better as it gives no detail as to the sales price vs. cost basis and dates involved.

Permanent Subcommittee on Investigations
EXHIBIT #98n

MTW 0077

2269

new

From: Slattery, Dave: M
Sent: Tuesday, March 16, 1999, 1:19 PM
To: Esched, Jeffrey A
Subject: Opis compliance

Jeff

I'm looking for some guidance, if available, on a Firm position regarding the loss on the disposition of the Swap contract. I've been under the impression that the loss is ordinary, however, I understand that may not be a universal conclusion. I inquire because our ordinary loss number is large enough to wipe out a very large part of the ordinary taxable income of our client. With what I understand about how returns are scored in the service center, this large ordinary loss appearing on page 1 of the 1040 would almost certainly buy an examination. Just wanted to make sure I wasn't operating as a lone ranger on this issue.

Thanks,

Dan Slattery

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KPMG 0036206

Permanent Subcommittee on Investigations

EXHIBIT #98o

2270

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=5136
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=5136
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: BLIPS Update 2
Sent: 1999-03-16 15:17:50.338
Date: 1999-03-16 15:17:51.395
X-Folder: BLIPS

Upon further discussions with DPP, it appears there is at least some possibility that BLIPS could be released without registration as a sec. 6111(c) tax shelter. An initial memo prepared under attorney-client privilege has been prepared by DPP discussing their position. A hard copy of this memo will be distribute to Jeff Eischeid and Randy Bickham for their use only so that they may assess DPP's position and respond with counter-arguments. The memo is not for further distribution.

If you have any questions, please call me directly at (202)739-8659.

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Permanent Subcommittee on Investigations
EXHIBIT #98p

KPMG 0030359

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kpmgLLP

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To Evelyn Elgin
WNT

Date March 17, 1999

From Randy Bickham
San Francisco

Steno
Ref c:\my documents\blips\8111
issue.doc

cc John Larson
Presidio Advisors, LLC

Presidio BLIPS Product - Description of Trading Activities

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Permanent Subcommittee on Investigations
EXHIBIT #98q

KPMG 0026705

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Issue: Code Section 6111(c)(3)(A) provides that, except as provided in this paragraph, the term "investment base" means, with respect to any year, the amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) contributed by the investor as of the close of such year. Code Section 6111(c)(3)(C)(i) provides "no amount shall be taken into account under subparagraph (A) which is to be held in cash equivalent or marketable securities."

Temp. Treas. Reg. Section 301.6111-1T A-14(4) further provides that:

"Any amounts to be held *for the benefit of investors* in cash, cash equivalents, or marketable securities. An amount is to be held in cash equivalents if the amount is to be held in a checking account, savings account, mutual fund, certificate of deposit, book entry government obligation, or any other similar account or arrangement. Marketable securities are any securities that are part of an issue any portion of which is traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market."

Analysis: The Conference Committee Report to the 1984 Tax Act and the Blue Book explanation prepared by the staff of the Joint Committee on Taxation do not explain the above "current asset exclusion" (cash, cash equivalents and marketable securities). The logical premise underlying the exclusion is a concern by Congress and the authors of the temporary regulations that absent such exclusion, tax shelter participants might artificially reduce tax shelter ratios by contributing assets to a program that are not integral to the investments made by the program. Accordingly, differentiation is made with respect to "any amounts to be held *for the benefit of investors*". The description of the amounts held in cash equivalents in the Regulation focuses upon investments of non-working capital invested *for the benefit of investors* versus current assets that are an integral component of the investment program.

None of the amounts contributed by an Investor to Presidio's BLIPS Investment Program constitute "amounts to be held *for the benefit of investors*" based upon the following description of the foreign currency trades entered into by the investment partnership ("Partnership"). The total amount of cash contributed by the general partner (Presidio) and the limited partner (Investor) to the investment program is required by the Investment Advisor to serve as working capital to either directly fund/purchase foreign

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currency positions or instruments, or to collateralize borrowing used to enter into those positions or instruments.

To illustrate how the Investment Advisor would utilize the funds contributed to the Partnership, the following three trades that are representative of the trades to be used in the BLIPS program are described:

Example 1

The following simple example, using OTC forward contracts to sell foreign currency (go short) and purchase U.S. dollars (go long), is representative of the investments entered into pursuant to the strategy. The premise underlying the trade is that the foreign currency will devalue against the dollar over the term of the trade. The forward contracts would typically have the following attributes:

- Notional Amount \$50,000,000
- Initial Cash Outlay \$0
- Required Collateral Up to \$50,000,000
- Terms of Contract Counterparty has option of requiring either physical delivery or cash settlement

Trade Mechanics: At time 0, Partnership enters a trade whereby at time T Partnership is required to deliver a fixed amount of Foreign Currency (X) in exchange for a fixed amount of Dollars (Y). At time 0, T, X and Y are all known and fixed. Should counterparty require physical delivery, at time T, Partnership will be required to buy in the market X units of foreign currency and deliver those X units to counterparty. To comply with such requirement, Partnership must have the means at time T (and the ability to demonstrate at time 0, that it would have the means at time T) to purchase X units of foreign currency. Assuming initial dollar notional amount of \$50,000,000 and no change in foreign exchange rates, Partnership will be required to purchase foreign currency in the amount of \$50,000,000.

Example 2

A second trade involves forward purchases of 30 year Treasury Bonds (go long) and forward sales of 29 ¼ year Treasuries (go short). (This trade is sometimes called "On the run v. off the run.") The objective of the trade is to profit from yield differentials on the two types of bonds caused by greater liquidity in the 30 year bonds versus the 29 ¼

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bonds. Physical delivery is required for this trade, hence, the working capital required at settlement may equal the notional amount of the forward.

- Notional Amount \$50,000,000
- Initial Cash Outlay Up to \$50,000,000 for the long position
- Required Collateral For short sale – negotiable with counterparty
- Terms of contract Physical settlement may be required

Example 3

A third trade is based on the yield differential between 9 year German Bunds (the 10 year German bond) and a 9 year "cash flow matched" swap. Without getting into the details of the trade, it can be described as the purchase of 9 year Bunds (go long) and paying a fixed rate return on a 9 year interest rate swap. In this trade, physical settlement is required to complete the purchase of the 9 year Bunds. Hence capital may be committed equal to the notional amount of the trade. With a \$50,000,000 trade, \$50,000,000 cash could be required for settlement.

The key point demonstrated by the above examples is that whereas on Day 1 no working capital may be required to enter into the contract, a \$50,000,000 working capital commitment may be required by the counterparty to the contract on Day 1 as a condition of entering the contract because the contracts allows (or sometimes require) physical delivery at the option of the counterparty. Based on the capital requirements described above, it is expected that there will be minimal or no residual "non-working" capital that could constituted "amounts to be held for the benefit of the investors".

An additional consideration is that the investments will be made in privately-negotiated OTC foreign currency contracts. Such contracts will not constitute marketable securities which are "traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market" because of the non-standard expiration date of the contracts. Quotes for foreign currency contracts are based on contracts of standard durations (3 months, 6 months, etc.) that expire on specific dates, typically March, June, September, and December (standard IMM dates). In order to optimize inherent profit positions, the privately-negotiated contracts are customized as to time duration and maximize risk reward of the investment strategy.

Additional Observations: In the definition of "tax shelter ratio" as set forth in Code Section 6111(c)(2)(A), the numerator of the fraction consists of the aggregate amount of

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DEDUCTIONS and credits. The potential tax benefit that is derived from participating in a BLPS transaction arises from a capital loss, not from a Code Section 162 or Code Section 212 "deduction".

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kpmgLLP

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To Mark Ely
WNT

From Randy Bickham
San Francisco

cc Jeff Eischeid
Atlanta

Date March 24, 1999

Steno
Re c:\my documents\blips\6111
issue.doc

BLIPS Product - Discussion of Code Section 6111(c) Issues

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The following sets forth our views as to the applicability of the Code Section 6111 tax shelter registration provisions to the BLIPS product. The key issue in determining the applicability of these provisions is how to apply the tax shelter ratio formula as defined in Code Section 6111(c). Integral to the calculation of the tax ratio formula is the amount of cash an investor invests in an investment and the associated financing. In the BLIPS product, the investor ("Investor") partially finances his participation in the BLIPS investment program with a nonrecourse loan from a bank. The Investor takes out the loan and subsequently contributes the loan proceeds to the BLIPS investment partnership ("Partnership").

For purposes of this memo, the following assumptions have been made:

- ❖ On January 1, 1999, Investor obtained a \$100 million fixed rate nonrecourse loan to partially fund its participation in the investment partnership.
 - The \$100 million principal amount of the loan is payable on December 31, 2005.
 - Interest on the loan is payable quarterly at a rate of 15.85 percent per annum.
- ❖ Investor opted to repay the loan at a 15.85 percent interest rate in return for a premium payment of \$50 million in order to lessen the financial risks associated with participation in the investment program.
- ❖ On January 10, 1999, the \$150 million was contributed to Partnership subject to the \$100 million loan. The loan was assumed by Partnership.

Code Section 6111(c) provides that a tax shelter is any investment where the "tax shelter ratio" for any investor, as of the close of any of the first 5 years ending after the date on which such investment is offered for sale, is greater than 2 to 1. Code Section 6111(c)(2) defines the term "tax shelter ratio" as the ratio which the aggregate amount of "deductions" and 350 percent of the credits which are represented to be potentially allowable to any investor under subtitle A for all periods up to and including the close of such year, bears to the "investment base" as of the close of such year.

Based upon our conclusions to the issues discussed below, the tax shelter ratio calculation yields a result that is significantly lesser than the 2 to 1 benchmark. Accordingly, the Code Section 6111 tax shelter registration rules would not apply to the

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BLIPS product.

Issue 1: What amounts are included in the numerator of the tax shelter ratio calculation?Conclusion: Temp. Treas. Reg. Section 301.6111-1T A-6 provides that:

"the term "amount of deductions" means the amount of *gross deductions* and other similar tax benefits potentially allowable with respect to the investment. The *gross deductions* are not to be offset by any *gross income* to be derived or potentially derived from the investment. Thus, the term "amount of deductions" is not equivalent to the net loss, if any, attributable to the investment."

Based upon the language in the Regulation, we believe that the term "amount of deductions" only encompasses Code Section 162 and 212 types of deductions, not capital losses. Accordingly, in the context of an investment through a partnership, the numerator would be based upon the partnership's operating expenses. The potential tax benefit that is derived from participating in a BLIPS transaction arises from a capital loss, not from a Code Section 162 or Code Section 212 "deduction". The operating expenses of Partnership will be significantly less than the amount of the capital loss.

Issue 2: To what extent does the \$100 million loan reduce the "investment base"?

Conclusion: Code Section 6111(c)(3)(A) provides that, except as provided in this paragraph, the term "investment base" means, with respect to any year, the amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) contributed by the investor as of the close of such year. Code Section 6111(c)(3)(B) further provides that for purposes of subparagraph (A), there shall not be taken into account any amount borrowed from any person who participated in the organization, sale, or management of the investment or who is a related person as defined in Code Section 465(b)(3)(C), unless such amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made.

Temp. Treas. Reg. Section 301.6111-1T A-14(2) further provides that the investment base must be reduced by:

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"Any amount borrowed by the investor, even if borrowed on a recourse basis, from any person, if the loan is *arranged* by a participating (or related) person, unless the amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made."

The assumed fact pattern is that Investor contributed \$150 million of cash subject to a \$100 million nonrecourse loan to Partnership. The \$100 million loan was assumed by Partnership. Under Code Section 6111(c)(3)(A), the investment base amount would be \$150 million, the amount of money contributed. The \$100 million loan would not reduce the \$150 million amount because the reduction contemplated under the statute only relates to "any liability to which *such other property* is subject", not to the cash contributed.

Code Section 6111(c)(3)(B) could apply to a contribution of cash to a partnership based upon the "for purposes of subparagraph (A)" language which effectively reduces the amount of cash contributions for specifically defined liabilities (relative to the treatment of the amounts of other property contributed which is reduced by any liability). Code Section 6111(c)(3)(B) would not, however, apply to the assumed fact pattern because the loan was obtained from a third party bank.

Based upon the language in Temp. Treas. Reg. Section 301.6111-1T A-14(2), the Service could take the position that the cash contribution of \$150 million is reduced by the \$100 million loan because the financing was "arranged" as defined by the Regulation. There is, however, a question of the current applicability of the "arranged" financing logic because the exclusion from the investment base of loans that were "arranged" by a participating or related person in the temporary regulations is not supported in the statute or legislative history and the temporary regulation is over ten years old.

Issue 3: To what extent is the "investment base" reduced by "cash equivalents" or "marketable securities" held by Partnership?

Conclusion: Code Section 6111(c)(3)(A) provides that, except as provided in this paragraph, the term "investment base" means, with respect to any year, the amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) contributed by the investor as of the close of such year. Code

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Section 6111(c)(3)(C)(i) provides "no amount shall be taken into account under subparagraph (A) which is to be held in cash equivalent or marketable securities.

Temp. Treas. Reg. Section 301.6111-1T A-14(4) further provides that the investment base is reduced by:

"Any amounts to be held *for the benefit of investors* in cash, cash equivalents, or marketable securities. An amount is to be held in cash equivalents if the amount is to be held in a checking account, savings account, mutual fund, certificate of deposit, book entry government obligation, or any other similar account or arrangement. Marketable securities are any securities that are part of an issue any portion of which is traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market."

The Conference Committee Report to the 1984 Tax Act and the Blue Book explanation prepared by the staff of the Joint Committee on Taxation do not explain the above "current asset exclusion" (cash, cash equivalents and marketable securities). The logical premise underlying the exclusion is a concern by Congress and the authors of the temporary regulations that absent such exclusion, tax shelter participants might artificially reduce tax shelter ratios by contributing assets to a program that are not integral to the investments made by the program. Accordingly, differentiation is made with respect to "any amounts to be held *for the benefit of investors*". The description of the amounts held in cash equivalents in the Regulation focuses upon investments of non-working capital invested *for the benefit of investors* versus current assets that are an integral component of the investment program.

None of the amounts contributed by an Investor to the BLPS program constitute "amounts to be held *for the benefit of investors*" based upon the following description of the foreign currency trades to be entered into by the investment partnership. The total amount of cash contributed by the Investor to the investment program is required as working capital to either directly fund/purchase foreign currency positions or instruments, or to collateralize borrowing used to enter into those positions or instruments.

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To illustrate how the investment partnership would utilize the funds contributed by Investor, the following three trades that are representative of the trades to be used in the BLIPS program are described:

Example 1

The following example, using OTC forward contracts to sell foreign currency (go short) and purchase U.S. dollars (go long), is representative of the investments entered into pursuant to the strategy. The premise underlying the trade is that the foreign currency will devalue against the dollar over the term of the trade. The forward contracts would typically have the following attributes:

- Notional Amount \$100 million
- Initial Cash Outlay \$0
- Required Collateral Up to \$100 million
- Terms of Contract Counterparty has option of requiring either physical delivery or cash settlement

Trade Mechanics: At time 0, Partnership enters a trade whereby at time T Partnership is required to deliver a fixed amount of Foreign Currency (X) in exchange for a fixed amount of Dollars (Y). At time 0, T, X and Y are all known and fixed. Should counterparty require physical delivery, at time T, Partnership will be required to buy in the market X units of foreign currency and deliver those X units to counterparty. To comply with such requirement, Partnership must have the means at time T (and the ability to demonstrate at time 0, that it would have the means at time T) to purchase X units of foreign currency. Assuming initial dollar notional amount of \$100 million and no change in foreign exchange rates, Partnership will be required to purchase foreign currency in the amount of \$100 million.

Example 2

A second trade involves forward purchases of 30 year Treasury Bonds (go long) and forward sales of 29 ¼ year Treasuries (go short). (This trade is sometimes called "On the run v. off the run.") The objective of the trade is to profit from yield differentials on the two types of bonds caused by greater liquidity in the 30 year bonds versus the 29 ¼ bonds. Physical delivery is required for this trade, hence, the working capital required at settlement may equal the notional amount of the forward.

- Notional Amount \$100 million

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- Initial Cash Outlay Up to \$100 million for the long position
- Required Collateral For short sale – negotiable with counterparty
- Terms of contract Physical settlement may be required

Example 3

A third trade is based on the yield differential between 9 year German Bunds (the 10 year German bond) and a 9 year "cash flow matched" swap. Without getting into the details of the trade, it can be described as the purchase of 9 year Bunds (go long) and paying a fixed rate return on a 9 year interest rate swap. In this trade, physical settlement is required to complete the purchase of the 9 year Bunds. Hence capital may be committed equal to the notional amount of the trade. With a \$100 million trade, \$100 million of cash could be required for settlement.

The key point demonstrated by the above examples is that whereas on Day 1 no working capital may be required to enter into the contract, a \$100 million working capital commitment may be required by the counterparty to the contract on Day 1 as a condition of entering the contract because the contracts allows (or sometimes require) physical delivery at the option of the counterparty. Based on the capital requirements described above, it is expected that there will be minimal or no residual "non-working" capital that could constituted "amounts to be held *for the benefit of the investor*".

An additional consideration is that the investments will be made in privately-negotiated OTC foreign currency contracts. Such contracts will not constitute marketable securities which are "traded on an established securities market and any securities that are regularly quoted by brokers or dealers making a market" because of the non-standard expiration date of the contracts. Quotes for foreign currency contracts are based on contracts of standard durations (3 months, 6 months, etc.) that expire on specific dates, typically March, June, September, and December (standard IMM dates). In order to optimize inherent profit positions, the privately-negotiated contracts are customized as to time duration and maximize risk reward of the investment strategy.

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From /O=KPMG/OU=US/CN=RECIPIENTS/CN=10532
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=10532
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Quadra received a Tax Shelter ID #
Sent: 1999-04-02 22:35:09.683
Date: 1999-04-02 22:35:10.942
X-Folder: FLIP

Jeff, Quadra has received a tax shelter ID # on its FLIP. The IRS notice is dated 3-5-99, but they just received it. I can send you a fax of the notice (IRS) if you don't have yet. Quadra is sending required letters out to clients. Not sure how this impacts second year aspects of 1997 deals. Quadra is not sending notification to OPIS deals done through Quadra (as seems appropriate).

WLS

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Permanent Subcommittee on Investigations
EXHIBIT #98r

KPMG 0026863

May 2, 1999

Accuracy-Related Penalty Rules for Individual Taxpayers

This memorandum describes the accuracy-related penalty rules that apply to individual taxpayers. More specifically, this memorandum provides an overview of the substantial understatement of income tax penalty and the penalties for negligence or disregard of rules or regulations in section 6662 of the Internal Revenue Code of 1986, as amended (the "Code"). Unless otherwise indicated, all section references are to the Code or the Treasury regulations promulgated thereunder.

A. Introduction

Section 6662 imposes an accuracy-related penalty on the portion of any underpayment of tax that is attributable to one of the types of conduct listed in that section. These include a substantial understatement of income tax, negligence, and the careless, reckless or intentional disregard of a rule or regulation.¹

The amount of the penalty for these types of conduct is 20 percent of the portion of the underpayment attributable to the conduct.² There is no stacking of accuracy-related penalties.³ For example, the maximum penalty for conduct that may be attributable both to negligence and a substantial understatement of income tax is 20 percent of the underpayment.

The accuracy-related penalty does not apply if certain standards are satisfied or if the taxpayer, on the basis of all facts and circumstances, qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c). These matters are discussed below.

B. Substantial understatement penalty

The substantial understatement penalty potentially applies if the return reflects an understatement of income tax that is considered to be substantial. For this purpose, an understatement is substantial for a taxable year if the understatement exceeds the greater of 10 percent of the tax required to be shown on the return for that year, or \$5,000 (\$10,000 for a C corporation).⁴

¹ See sections 6662(b)(2) and (b)(1).

² A 40 percent penalty rate applies to "gross valuation misstatements" as defined in section 6662(h)(2) for purposes of the accuracy-related penalties for valuation misstatements under chapter 1 in section 6662(e), overstatement of pension liabilities in section 6662(f), and estate or gift tax valuation understatements in section 6662(g).

³ See Treas. Reg. section 1.6662-2(c).

⁴ See section 6662(d)(1).

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EXHIBIT #98s

KPMG 0009234

Different substantial understatement penalty rules apply depending upon whether an understatement of income tax is attributable to a "tax shelter item." A "tax shelter item" generally is an item of income, gain, loss, deduction, or credit that is attributable to a "tax shelter."⁵ For items with respect to transactions entered into after August 5, 1997, a "tax shelter" is any entity, investment, plan or arrangement with a *significant purpose* of avoiding or evading federal income tax.⁶

Because Treasury has not yet issued any guidance on the meaning of the new definition of "tax shelter," there is a very limited legal basis for reaching a conclusion as to whether the transaction is or is not a "tax shelter" for purposes of the substantial understatement penalty.⁷ Accordingly, this memorandum will address the substantial understatement penalty rules that apply if the transaction is not a "tax shelter," as well as those that apply if the transaction is a "tax shelter."

1. *Outside the tax shelter context*

Outside the context of tax shelters, there are two ways the amount of a potential understatement may be reduced in determining whether the understatement is substantial. First, tax due to a position is not counted in computing the amount of an understatement if there was substantial authority for the position. Second, tax due to a position is not counted in computing the amount of an understatement if there was a reasonable basis for the position and the position was adequately disclosed to the Internal Revenue Service.⁸

- substantial authority

Substantial authority exists for a position if the weight of authorities supporting the position is substantial in relation to the weight of authorities supporting a contrary position.⁹ The substantial authority standard is less stringent than the "more likely than not" standard, *i.e.*, the standard that is satisfied when there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the IRS.¹⁰ On the other hand, the substantial authority standard is more stringent than the "reasonable basis" standard, *i.e.*, the standard that, if satisfied, generally will preclude imposition of the negligence penalty (discussed below).¹¹

⁵ See section 6662(d)(2)(C) and Treas. Reg. section 1.6662-4(g)(3).

⁶ See section 1028 of the Taxpayer Relief Act of 1997 and section 6662(d)(2)(C)(iii).

⁷ Treasury regulations provide some guidance on the definition of a tax shelter prior to the Taxpayer Relief Act of 1997. For example, tax benefits "consistent with the statute and Congressional purpose" (such as accelerated depreciation allowances) are not considered "tax shelters" under the regulations. See Treas. Reg. section 1.6662-4(g)(2)(ii). These regulations, however, do not address the extent to which a combination of Congressionally approved benefits might be treated as "tax shelters." It also is not clear whether the regulations provide meaningful guidance for transactions subject to the new definition of tax shelter in the 1997 Act.

⁸ See section 6662(d)(2)(B).

⁹ See Treas. Reg. section 1.6662-4(d)(3).

¹⁰ See Treas. Reg. section 1.6662-4(d)(2).

¹¹ *Id.*

"Authority" for purposes of the substantial authority determination includes applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final Treasury regulations interpreting such statutes; Congressional intent as reflected in committee reports; the General Explanation of tax legislation prepared by the staff of the Joint Committee on Taxation; court cases; and certain IRS pronouncements. These pronouncements include revenue rulings and revenue procedures, as well as private letter rulings and technical advice memoranda issued after October 31, 1976, and general counsel memoranda and actions on decision issued after March 12, 1981.¹²

The weight accorded an authority depends on its relevance and persuasiveness, and the type of document (*e.g.*, revenue ruling, or private letter ruling) constituting the authority. In the absence of certain types of authority, a taxpayer also may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.¹³

- disclosure

Outside the tax shelter context, the substantial understatement penalty also may be avoided by adequate disclosure of a return position, provided the position had at least a reasonable basis. In general, reasonable basis is a standard that is less stringent than the substantial authority standard (discussed above) and significantly more stringent than the not frivolous standard (*i.e.*, the standard that is satisfied if the position is not patently improper).¹⁴

2. In the tax shelter context

In the case of a non-corporate taxpayer participating in a tax shelter, the potential understatement may be reduced by tax attributable to a return position that satisfies two requirements. First, the taxpayer must reasonably believe, at the time the return is filed, that the position is more likely than not the proper position. Second, there must be substantial authority for the position.¹⁵ (There is no disclosure exception to the substantial understatement penalty in the case of a position attributable to a tax shelter item.)

The reasonable belief test can be satisfied either by a taxpayer's own analysis or by the taxpayer's good faith reliance on an opinion of a professional tax advisor. If the taxpayer seeks to establish its reasonable belief by reliance on a tax opinion, the opinion must

¹² See Treas. Reg. section 1.6662-4(d)(3)(iii).

¹³ See Treas. Reg. section 1.6662-4(d)(3)(ii).

¹⁴ See H. Rep. No. 213, 103d Cong., 1st Sess., 668-69 (1993) and Treas. Reg. section 1.6662-3(b)(3). Disclosure of a position of a corporation that is attributable to a "multiple-party financing transaction" will avoid the substantial understatement penalty only if the position clearly reflects the income of the corporation. See section 1028(c) of the Taxpayer Relief Act of 1997 and Treas. Reg. § 1.6662-4(e)(3).

¹⁵ See section 6662(d)(2)(C)(i) and Treas. Reg. section 1.6662-4(g).

unambiguously state that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the tax shelter item will be upheld if challenged by the IRS.¹⁶ The opinion also must be based on all relevant facts, relate the law to those facts, and not be based on unreasonable factual or legal assumptions or representations.¹⁷

C. *Negligence penalty*

The negligence penalty applies if there is an underpayment of tax that is attributable to a taxpayer's negligence, unless the reasonable cause and good faith exception to the penalty applies (discussed below). There is no disclosure exception to the negligence penalty for returns due after 1993.¹⁸

"Negligence" includes a failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return.¹⁹ A position generally is not considered to be attributable to negligence if there is a reasonable basis for the position.²⁰

A position has a reasonable basis if the level of accuracy represented by the position is significantly higher than "not frivolous" (*i.e.*, not patently improper).²¹ This level of accuracy is less stringent than that required to establish that substantial authority is present.²² Treasury regulations indicate that a position has a reasonable basis if it is reasonably based on one or more of the authorities that are taken into account in determining whether there is substantial authority for a position.²³

D. *Disregard penalty*

The disregard of rules or regulations penalty generally applies if there is an underpayment that is due to a position that constitutes a careless, reckless, or intentional disregard of a rule or regulation.²⁴ The penalty generally does not apply, however, if the position has at least a reasonable basis and is adequately disclosed to the Service,²⁵ or if the taxpayer qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c) (discussed below).²⁶

¹⁶ See Treas. Reg. sections 1.6662-4(g)(1)(i)(B) and 1.6662-4(g)(4)(i)(B).

¹⁷ See Treas. Reg. sections 1.6662-4(g)(4)(ii) and 1.6664-4(c)(1).

¹⁸ See section 13251 of the Omnibus Budget Reconciliation Act of 1993.

¹⁹ See section 6662(c) and Treas. Reg. section 1.6662-3(b)(1).

²⁰ See Treas. Reg. section 1.6662-3(b)(1).

²¹ See Treas. Reg. section 1.6662-3(b)(3).

²² See Treas. Reg. section 1.6662-4(d)(2).

²³ See Treas. Reg. section 1.6662-3(b)(3).

²⁴ See section 6662(b)(1) and (c).

²⁵ If the position is contrary to a regulation, the position also must represent a good faith challenge to the validity of the regulation. See Treas. Reg. section 1.6662-3(c)(1).

²⁶ See Treas. Reg. section 1.6662-3(c).

A position is considered to "disregard" a rule or a regulation if the position is contrary to the rule or regulation.²⁷ The term "rules or regulations" includes the Code, temporary or final Treasury regulations, IRS revenue rulings and notices.²⁸

E. Reasonable cause exception

No accuracy-related penalty applies if the taxpayer qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c). The reasonable cause and good faith determination is made on the basis of all pertinent facts and circumstances.

Generally, the most important factor is the extent of the taxpayer's effort to assess its proper tax liability.²⁹ Treasury regulations indicate that reliance on a professional tax advisor constitutes reasonable cause and good faith if under all the facts and circumstances the reliance was reasonable and the taxpayer acted in good faith.³⁰ Reasonable and good faith reliance on a competent tax advisor regarding an issue of substantive tax law generally provides reasonable cause protection from penalties.³¹ Taxpayers, however, may have a greater duty to inquire as to the validity of the investment and its tax consequences if the advisers are also promoters of the investment.³² The advisor's opinion must be based on all pertinent facts and the law as it relates to those facts; must not be based upon inaccurate legal or factual assumptions; and must not unreasonably rely upon the representations, statements, findings, or agreements of the taxpayer or any other person.³³

²⁷ See Treas. Reg. section 1.6662-3(b)(2).

²⁸ See Treas. Reg. section 1.6662-3(b)(2).

²⁹ See Treas. Reg. section 1.6664-4(b).

³⁰ *Id.*

³¹ See, e.g., *United States v. Boyle*, 469 U.S. 241, 251 (1985) (addressing reasonable cause in a failure to file penalty case and stating that "[w]hen an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice"); *Chamberlain v. Commissioner*, 66 F.3d 729, 732 (5th Cir. 1995) (invoking *Boyle* to overturn a negligence penalty where the taxpayer had reasonably relied on a professional's advice); *Industrial Valley Bank and Trust Co. v. Commissioner*, 66 T.C. 272 (1976) (overturning a negligence penalty where there was reasonable reliance on a professional). For cases refusing to uphold a substantial understatement penalty where the taxpayer reasonably relied on a professional tax advisor, see, e.g., *Vorsheck v. Commissioner*, 933 F.2d 757 (9th Cir. 1991) and *Hasley v. Commissioner*, 902 F.2d 380 (5th Cir. 1990).

³² See, e.g., *Lincir v. Commissioner*, T.C. Memo. 1998-98 (1999) (taxpayer's reliance on advice of tax accountant with an economic interest in the investment to avoid negligence penalty was unreasonable, where advisor lacked knowledge of pertinent facts and was not an expert in the type of investment, and where taxpayer failed to show it made reasonable inquiries into the validity of the investment); and *Schillinger v. Commissioner*, 60 T.C.M. 1470 (1990), *aff'd* 1 F.3d 954 (9th Cir. 1993) (taxpayer's reliance on advice of promoters of venture did not avoid negligence penalty, where taxpayer's accountant disagreed with advice and where taxpayer's lawyer merely rubber-stamped promoters' opinion).

³³ See Treas. Reg. section 1.6664-4(c).

Memorandum of Accuracy-Related Penalty Rules for Individual Taxpayers

Revised as of June 2, 1999

[This is a background memorandum of penalty rules -- not an opinion letter. The user of this memorandum is responsible for determining that it reflects current law and is appropriate for the taxpayer's particular factual situation. If you have questions, please contact the WNT Tax Controversy Services group.]

Accuracy-Related Penalty Rules for Individual Taxpayers

This memorandum describes accuracy-related penalty rules that apply to individual taxpayers. More specifically, this memorandum provides an overview of the penalties for a substantial understatement of income tax, negligence or disregard of rules or regulations, and substantial (or gross) valuation misstatements in section 6662 of the Internal Revenue Code of 1986, as amended (the "Code"). Unless otherwise indicated, all section references are to the Code or the Treasury regulations promulgated thereunder.

A. Introduction

Section 6662 imposes an accuracy-related penalty on the portion of any underpayment of tax that is attributable to one of the types of conduct listed in that section. These include a substantial understatement of income tax; negligence; the careless, reckless or intentional disregard of a rule or regulation; and a substantial (or gross) valuation misstatement under chapter 1.¹

The amount of the penalty for a substantial understatement of income tax, negligence or disregard of rules or regulations, or a substantial valuation misstatement under chapter 1 is 20 percent of the portion of the underpayment attributable to the conduct.² A 40 percent penalty rate applies to "gross" valuation misstatements under chapter 1.³ There is no stacking of accuracy-related penalties.⁴ For example, the maximum penalty for conduct that may be attributable both to negligence and a substantial understatement of income tax is 20 percent of the underpayment.

The accuracy-related penalty does not apply if certain standards are satisfied or if the taxpayer, on the basis of all facts and circumstances, qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c). These matters are discussed below.

B. Substantial understatement penalty

¹ See sections 6662(b)(2), (b)(1), and (b)(3).

² See section 6662(a).

³ See section 6662(b)(2).

⁴ See Treas. Reg. section 1.6662-2(c).

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KPMG 0000507

The substantial understatement penalty potentially applies if the return reflects an understatement of income tax that is considered to be substantial. For this purpose, an understatement is substantial for a taxable year if the understatement exceeds the greater of 10 percent of the tax required to be shown on the return for that year, or \$5,000 (\$10,000 for a C corporation).⁵

Different substantial understatement penalty rules apply depending upon whether an understatement of income tax is attributable to a "tax shelter item." A "tax shelter item" generally is an item of income, gain, loss, deduction, or credit that is attributable to a "tax shelter."⁶ For items with respect to transactions entered into after August 5, 1997, a "tax shelter" is any entity, investment, plan or arrangement with *a significant purpose* of avoiding or evading federal income tax.⁷

Because Treasury has not yet issued any guidance on the meaning of the new definition of "tax shelter," there is a very limited legal basis for reaching a conclusion as to whether the transaction is or is not a "tax shelter" for purposes of the substantial understatement penalty.⁸ Accordingly, this memorandum will address the substantial understatement penalty rules that apply if the transaction is not a "tax shelter," as well as those that apply if the transaction is a "tax shelter."

1. Outside the tax shelter context

Outside the context of tax shelters, there are two ways the amount of a potential understatement may be reduced in determining whether the understatement is substantial. First, tax due to a position is not counted in computing the amount of an understatement if there was substantial authority for the position. Second, tax due to a position is not counted in computing the amount of an understatement if there was a reasonable basis for the position and the position was adequately disclosed to the Internal Revenue Service (the "IRS" or "Service").⁹

- substantial authority

Substantial authority exists for a position if the weight of authorities supporting the position is substantial in relation to the weight of authorities supporting a contrary

⁵ See section 6662(d)(1).

⁶ See section 6662(d)(2)(C) and Treas. Reg. section 1.6662-4(g)(3).

⁷ See section 1028 of the Taxpayer Relief Act of 1997 and section 6662(d)(2)(C)(iii).

⁸ Treasury regulations provide some guidance on the definition of a tax shelter prior to the Taxpayer Relief Act of 1997. For example, tax benefits "consistent with the statute and Congressional purpose" (such as accelerated depreciation allowances) are not considered "tax shelters" under the regulations. See Treas. Reg. section 1.6662-4(g)(2)(ii). These regulations, however, do not address the extent to which a combination of Congressionally approved benefits might be treated as "tax shelters." It also is not clear whether the regulations provide meaningful guidance for transactions subject to the new definition of tax shelter" in the 1997 Act.

⁹ See section 6662(d)(2)(B).

position.¹⁰ The substantial authority standard is less stringent than the “more likely than not” standard, *i.e.*, the standard that is satisfied when there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the IRS.¹¹ On the other hand, the substantial authority standard is more stringent than the “reasonable basis” standard, *i.e.*, the standard that, if satisfied, generally will preclude imposition of the negligence penalty (discussed below).¹²

“Authority” for purposes of the substantial authority determination includes applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final Treasury regulations interpreting such statutes; Congressional intent as reflected in committee reports; the General Explanation of tax legislation prepared by the staff of the Joint Committee on Taxation; court cases; and certain IRS pronouncements. These pronouncements include revenue rulings and revenue procedures, as well as private letter rulings and technical advice memoranda issued after October 31, 1976, and general counsel memoranda and actions on decision issued after March 12, 1981.¹³

The weight accorded an authority depends on its relevance and persuasiveness, and the type of document (*e.g.*, revenue ruling, or private letter ruling) constituting the authority. In the absence of certain types of authority, a taxpayer also may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.¹⁴

- disclosure

Outside the tax shelter context, the substantial understatement penalty also may be avoided by adequate disclosure of a return position, provided the position had at least a reasonable basis. In general, reasonable basis is a standard that is less stringent than the substantial authority standard (discussed above) and significantly more stringent than the not frivolous standard (*i.e.*, the standard that is satisfied if the position is not patently improper).¹⁵ The “reasonable basis” standard is discussed further below under the heading “Negligence penalty.”

2. *In the tax shelter context*

In the case of a non-corporate taxpayer participating in a tax shelter, the potential understatement may be reduced by tax attributable to a return position that satisfies two requirements. First, the taxpayer must reasonably believe, at the time the return is filed, that the position is more likely than not the proper position. Second, there must be

¹⁰ See Treas. Reg. section 1.6662-4(d)(3).

¹¹ See Treas. Reg. section 1.6662-4(d)(2).

¹² *Id.*

¹³ See Treas. Reg. section 1.6662-4(d)(3)(iii).

¹⁴ See Treas. Reg. section 1.6662-4(d)(3)(ii).

¹⁵ See Treas. Reg. sections 1.6662-3(b)(3) and 1.6662-4(d)(2).

substantial authority for the position.¹⁶ (There is no disclosure exception to the substantial understatement penalty in the case of a position attributable to a tax shelter item.)

The reasonable belief test can be satisfied either by a taxpayer's own analysis or by the taxpayer's good faith reliance on an opinion of a professional tax advisor. If the taxpayer seeks to establish its reasonable belief by reliance on a tax opinion, the opinion must unambiguously state that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the tax shelter item will be upheld if challenged by the IRS.¹⁷ The opinion also must be based on all pertinent facts and the law as it relates to those facts; must not be based upon inaccurate legal or factual assumptions; and must not unreasonably rely upon the representations, statements, findings, or agreements of the taxpayer or any other person.¹⁸

C. *Negligence penalty*

The negligence penalty applies if there is an underpayment of tax that is attributable to a taxpayer's negligence, unless the reasonable cause and good faith exception to the penalty applies (discussed below). There is no disclosure exception to the negligence penalty for returns due after 1993.¹⁹

"Negligence" includes a failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return.²⁰ A position generally is not considered to be attributable to negligence if there is a reasonable basis for the position.²¹

A position has a reasonable basis if the level of accuracy represented by the position is significantly higher than "not frivolous" (i.e., not patently improper).²² This level of accuracy is less stringent than that required to establish that substantial authority is present.²³ Treasury regulations indicate that a position generally has a reasonable basis if it is reasonably based on one or more of the authorities that are taken into account in determining whether there is substantial authority for a position.²⁴

D. *Disregard penalty*

The disregard of rules or regulations penalty generally applies if there is an underpayment that is due to a position that constitutes a careless, reckless, or intentional disregard of a

¹⁶ See section 6662(d)(2)(C)(i) and Treas. Reg. section 1.6662-4(g).

¹⁷ See Treas. Reg. sections 1.6662-4(g)(1)(i)(B) and 1.6662-4(g)(4)(i)(B).

¹⁸ See Treas. Reg. sections 1.6662-4(g)(4)(ii) and 1.6664-4(c)(1).

¹⁹ See section 13251 of the Omnibus Budget Reconciliation Act of 1993.

²⁰ See section 6662(c) and Treas. Reg. section 1.6662-3(b)(1).

²¹ See Treas. Reg. section 1.6662-3(b)(1).

²² See Treas. Reg. section 1.6662-3(b)(3).

²³ See Treas. Reg. section 1.6662-4(d)(2).

²⁴ See Treas. Reg. section 1.6662-3(b)(3).

rule or regulation.²⁵ The penalty generally does not apply, however, if the position has at least a reasonable basis and is adequately disclosed to the Service,²⁶ or if the taxpayer qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c) (discussed below).²⁷

A position is considered to “disregard” a rule or a regulation if the position is contrary to the rule or regulation.²⁸ A special rule provides, however, that a position contrary to an IRS revenue ruling or notice is not considered to disregard the ruling or notice if the position has at least a one-in-three possibility of being sustained on its merits if challenged by the IRS.²⁹ The term “rules or regulations” includes the Code, temporary or final Treasury regulations, IRS revenue rulings and notices.³⁰

E. Valuation misstatement penalty

The penalty for substantial (or gross) valuation misstatements under chapter 1 applies if there is at least a \$5,000 (\$10,000 in the case of a C corporation) income tax underpayment on a return that is attributable to one or more substantial (or gross) valuation misstatements. The penalty is 20 percent of the underpayment attributable to a substantial valuation misstatement (and 40 percent of the underpayment attributable to a gross valuation misstatement).³¹ A valuation misstatement is “substantial” if the value or adjusted basis of property claimed on a return is 200 percent or more of the correct amount (and is “gross” if the value or adjusted basis is overstated by at least 400 percent).³²

The valuation misstatement penalty does not distinguish between transactions that are “tax shelters” and those that are not. There also is no disclosure exception to this penalty.³³ The penalty can be avoided either by showing that there is not an underpayment of tax “attributable to” a substantial (or gross) valuation misstatement, or by qualifying for the reasonable cause and good faith exception in section 6664(c) (discussed below).

It is not entirely clear whether tax underpayments that result from disallowed legal positions that contributed to an overstatement of the value or basis of property are “attributable to” a valuation misstatement for purposes of the valuation misstatement penalty. The legislative history to the predecessor (former section 6659) of the current valuation misstatement penalty suggests that Congress only intended to penalize

²⁵ See section 6662(b)(1) and (c).

²⁶ If the position is contrary to a regulation, the position also must represent a good faith challenge to the validity of the regulation. See Treas. Reg. section 1.6662-3(c)(1).

²⁷ See Treas. Reg. section 1.6662-3(c).

²⁸ See Treas. Reg. section 1.6662-3(b)(2).

²⁹ See Treas. Reg. sections 1.6662-3(b)(2) and 1.6694-2(b)(1) (defining “realistic possibility”).

³⁰ See Treas. Reg. section 1.6662-3(b)(2).

³¹ See sections 6662(a), (b)(3) and (h).

³² See sections 6662(e) and (h).

³³ See Treas. Reg. section 1.6662-5(a).

misstatements of value or basis due to factual issues when it first introduced the penalty into the Code in 1981.³⁴ Although this penalty has been amended numerous times (e.g., in 1982, 1984, 1989, 1990 and 1993), there is no indication (with the possible exception of the section 482 transfer pricing context) that Congress intended to extend this penalty to underpayments attributable solely to legal issues.

To the contrary, it often would make little sense to have both the substantial understatement and valuation misstatement penalties potentially apply to the same return positions. Because there is no stacking of accuracy-related penalties (see Treas. Reg. §1.6662-2(c)), if the valuation misstatement penalty applied to misstatements due to purely legal issues, the IRS could merely assert that penalty instead of the substantial understatement penalty to circumvent taxpayer protections (such as the disclosure exception) in the substantial understatement penalty. Such an overlapping approach also runs counter to Congress' intent in 1989 to consolidate the current accuracy-related penalties into a single Code section in order to "significantly improve the fairness, comprehensibility, and administrability" of those penalties.³⁵ Notwithstanding these arguments for limiting the scope of the valuation misstatement penalty, courts are split on the potential reach of the penalty.³⁶

F. *Reasonable cause exception*

No accuracy-related penalty applies if the taxpayer qualifies for the reasonable cause and good faith exception to the penalty in section 6664(c). The reasonable cause and good faith determination is made on the basis of all pertinent facts and circumstances. Generally, the most important factor is the extent of the taxpayer's effort to assess its proper tax liability.³⁷

Treasury regulations indicate that reliance on a professional tax advisor constitutes reasonable cause and good faith if under all the facts and circumstances the reliance was reasonable and the taxpayer acted in good faith.³⁸ Reasonable and good faith reliance on

³⁴ See H. Rep. No. 201, 97th Cong., 1st Sess. 243 (1981) ("The Committee believes that a specific penalty is needed to deal with various problems related to valuation of property . . . The Committee recognizes that valuation issues frequently involve difficult questions of fact. Often, these issues seem to be resolved simply by 'dividing the difference' in the values asserted by the Internal Revenue Service and those claimed by the taxpayer.")

³⁵ See H. Rep. No. 247, 101st Cong., 1st Sess. 1388 (1989).

³⁶ Compare, e.g., *Todd v. Commissioner*, 862 F.2d 540 (5th Cir. 1988) (valuation penalty did not apply where underpayment was due to taxpayer erroneously treating property as in service, even though basis of property was overstated), *Heasley v. Commissioner*, 902 F.2d 380 (5th Cir. 1990) (valuation penalty did not apply where underpayment was due to tax benefits – depreciation and investment credit – that were completely disallowed), and *Gainer v. Commissioner*, 893 F.2d 225 (9th Cir. 1990) (valuation penalty was rejected where taxpayer overstated its basis in containers and failed to place them in service) with *Massengill v. Commissioner*, 876 F.2d 616 (8th Cir. 1989) (valuation penalty applied to underpayment from cattle breeding tax shelter that lacked economic substance) and *Gilman v. Commissioner*, 933 F.2d 143 (2d Cir. 1991) (valuation penalty applied to underpayment resulting from sale/leaseback transaction that was held to be a sham).

³⁷ See Treas. Reg. section 1.6664-4(b).

³⁸ *Id.*

a competent tax advisor regarding an issue of substantive tax law generally provides reasonable cause protection from penalties,³⁹ provided the professional tax advisor's opinion satisfies the relevant penalty standard.⁴⁰ Taxpayers, however, may have a greater duty to inquire as to the validity of the investment and its tax consequences if the advisor is also a promoter of the investment.⁴¹ The advisor's opinion must be based on all pertinent facts and the law as it relates to those facts; must not be based upon inaccurate legal or factual assumptions; and must not unreasonably rely upon the representations, statements, findings, or agreements of the taxpayer or any other person.⁴²

³⁹ See, e.g., *United States v. Boyle*, 469 U.S. 241, 251 (1985) (addressing reasonable cause in a failure to file penalty case and stating that "[w]hen an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice"); *Chamberlain v. Commissioner*, 66 F.3d 729, 732 (5th Cir. 1995) (invoking *Boyle* to overturn a negligence penalty where the taxpayer had reasonably relied on a professional's advice); *Industrial Valley Bank and Trust Co. v. Commissioner*, 66 T.C. 272 (1976) (overturning a negligence penalty where there was reasonable reliance on a professional). For cases refusing to uphold a substantial understatement penalty where the taxpayer reasonably relied on a professional tax advisor, see, e.g., *Vorscheck v. Commissioner*, 933 F.2d 757 (9th Cir. 1991) and *Hesley v. Commissioner*, 902 F.2d 380 (5th Cir. 1990).

⁴⁰ For example, in the case of the substantial understatement penalty in the tax shelter context, the opinion must reach at least a "more likely than not" level of certainty.

⁴¹ See, e.g., *Lincir v. Commissioner*, T.C. Memo. 1998-98 (1999) (taxpayer's reliance on advice of tax accountant with an economic interest in the investment to avoid negligence penalty was unreasonable, where advisor lacked knowledge of pertinent facts and was not an expert in the type of investment, and where taxpayer failed to show it made reasonable inquiries into the validity of the investment); and *Schillinger v. Commissioner*, 60 T.C.M. 1470 (1990), aff'd 1 F.3d 954 (9th Cir. 1993) (taxpayer's reliance on advice of promoters of venture did not avoid negligence penalty, where taxpayer's accountant disagreed with advice and where taxpayer's lawyer merely rubber-stamped promoters' opinion).

⁴² See Treas. Reg. section 1.6664-4(c).

2296

Unknown

From: Elgin, Evelyn [elgin@KPMG.com]
Sent: Friday, August 13, 1999 12:43 PM
To: Vail, Daniel T
Subject: BLIPS - Valuation Misstatement Penalty

Dan,

Please see attached template. To summarize briefly, it's possible that the IRS would impose a valuation misstatement penalty (section 6662(b)(3)) on an underpayment of tax due to an overstatement of basis attributable to a legal issue, but by far the better argument is that the valuation misstatement penalty only applies to misstatements due to factual issues. Thus, this penalty should not apply in BLIPs. If, however, the penalty were to be applied, the rate in the BLIPs context would most likely be 40%.

The attached opinion template contains an analysis explaining why we feel the penalty should not apply to a misstatement due to a legal issue. We don't usually opine on the issue, however, as among other things, the likelihood of the penalty applying in this type of context is farfetched and there's not a lot of law on point. However, the discussion in the template may help KPMG people understand the issue better.

I really don't think it's advisable to change our slides to address this penalty. First, presentation materials may find their way into the hands of the IRS and this penalty very well may not even have been on the IRS's radar screen in this type of context (misstatement due to legal issue). Second, it doesn't seem reasonable to stress this issue in a presentation (which I'd equate with highlighting the issue on a slide) when there are so many other more important issues warranting consideration.

Eve

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KPMG 0018048

Unknown

From: Carbo, Deke G
 Sent: Wednesday, July 21, 1999 6:37 AM
 To: Eischeid, Jeffrey A
 Subject: RE: BLIPS Exit Strategy

Shannon is writing it up for Randy and me to review. Shannon and I were in San Fran yesterday for a Midco meeting. Randy, Shannon and I discussed this at lunch.

Deke

-----Original Message-----

From: Eischeid, Jeffrey A
 Sent: Tuesday, July 20, 1999 8:04 AM
 To: Carbo, Deke G; Bickham, Randall S
 Subject: RE: BLIPS Exit Strategy

I like it. Who is going to pursue/write up the issues?

-----Original Message-----

From: Carbo, Deke G
 Sent: Friday, June 18, 1999 6:27 PM
 To: Eischeid, Jeffrey A; Bickham, Randall S
 Subject: BLIPS Exit Strategy
 Importance: High

Jeff and Randy:

I talked to John Larson today regarding various issues related to BLIPS and John suggested an idea for liquidating partner interests at the conclusion of the BLIPS transaction that, under appropriate circumstances, appears to be a fantastic idea. We would obviously need to evaluate the associated technical issues before we could present it to clients but in our very brief discussion, neither one of us identified a concern.

The particular fact situation I discussed with John involved two clients with publicly-traded stock they planned to sell. Both were interested in evaluating the economics associated with staying in the BLIPS partnership for a year to get long-term capital loss treatment on the sale (for reporting purposes) and to stay invested for a longer time to better sustain business purpose arguments. The clients would sell their stock in early 2000 rather than the latter part of 1999.

John suggested the additional capital required to participate in Stage II and Stage III may cause many clients to not follow this course of action unless they could fund these phases with profits from Stage I. However, he proposed an alternative.

Assume the investor owned BankAmerica (BA) stock. If at the end of Stage I, the BLIPS limited partnership interest was worth \$100,000, the partnership could purchase \$100,000 of BA stock and distribute it in liquidation of the investors interest therein. All of the investor's partnership basis would attach to BA stock, even if the proposed Section 732 changes are enacted. Thus, the timing of the loss could be controlled by the investor based on when the new BA stock is sold. The investor could, therefore, hold the new BA stock for over one year and sell the existing BA stock and new BA stock in the same tax year reporting everything in a single schedule D transaction. This transaction could further take place in an intervening flow-through entity such as another partnership or grantor trust to further remove the reporting from the 1040.

We have several clients who have taken companies public or own substantial chunks of stock in public companies held in family partnerships. Given the enhancement in how BLIPS could be presented on a tax return, I feel comfortable their interest in implementing a BLIPS transaction would increase. The clients with publicly-traded stock that we are talking to are all clients who have first indicated to us that they plan to sell. We have not met with them discussing BLIPS as an asset diversification strategy but as a strategy to consider since they have separately decided to diversify.

I think this is a great idea! Your thoughts please.

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EXHIBIT #98v

KPMG 0007661

2298

Deke

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**Proprietary Material
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KPMG 0007662

Unknown

From: Eischeid, Jeffrey A
Sent: Tuesday, December 07, 1999 2:16 PM
To: Baumann, Dale; Belcher, Gregory; Bickham, Randall; Bloom, Richard; Carbo, Deke; Desany, Edmond; Eischeid, Jeffrey; Fergus, Terrence; Gray-RALEIGH, Mike; Hasting, Carl; Henderson, Tracie; Jandl, George; Jordan, Robert; Lipschultz, Brent; Liston, Shannon; Mccrimick, George; McGrath, Kevin; Napier, Angie; Nuckolls, John; Pace, Katherine; Paule, Robin; Pedersen, Robert; Perez, Robert; Pike, Ralph; Poreba, Edward; Remo, DeeAnn; Rivkin, David; Schrier, John; Shatzman, Janice; Slattery, Daniel; Smolin, Jay; Speiss, Timothy; Spitz, William; Staebler, Victoria; Tendler, Neil; Warley, Carol; Watkins, B; Watson, Mark; Weems, Pamela; Zaudtke, David; Zysik, Jeffrey
Subject: FW: BLIPS trade redemptions
Importance: High

The WNT passthrough group has confirmed that the following reasonably summarizes our discussions regarding this redemption issue. Please read it carefully.

Jeff

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, December 03, 1999 3:42 PM
To: Smith, Richard H (WNT)
Cc: Fields, Deborah A; Watson, Mark T
Subject: BLIPS trade redemptions
Importance: High

The following summarizes my understanding of the current Presidio redemption procedures for the BLIPS strategy and a potential income tax issue.

Presidio is in the process of notifying their investors that the close of Stage I (60 days) is drawing near. Investors must give 10 days notice of their intent to withdraw. Otherwise, they will continue with the investment program and will contribute additional capital to the investment partnership (actually an LLC). Presidio's traders are having discussions with each investor regarding the actual performance of their investment, Presidio's outlook regarding the market environment, etc. In connection with those discussions, Presidio is disclosing the fair market value (redemption value) of the investor's partnership interest.

Presidio is given latitude in the partnership agreement regarding whether cash or property will be distributed to an exiting partner in redemption of their partnership interest. A partner may not require Presidio to make an in kind distribution. Presidio's intent is to make redemption distributions with assets they have on hand at the time of payment. These assets are typically US dollars and/or Euros. Note that Euros are held on deposit throughout the life of the partnership to secure the partnership's obligations under various forward delivery contracts denominated in emerging market currencies.

For various reasons, some investors are requesting that Presidio distribute property other than US dollars or Euros in redemption of their partnership interest. For example, an investor whose partnership interest is worth \$1 million might state: "Rather than distribute to me \$1 million worth of Euros, please distribute \$200,000 worth of Euros and \$800,000 of Cisco stock". In such case, Presidio would likely cause the partnership to purchase Cisco stock for later distribution to the exiting partner.

I understand that there is an income tax issue associated with an investor making a property distribution request. That is, the IRS might argue that the partnership is substantively acting as the agent of the investor when it purchases assets for distribution to the investor (Cisco stock in my example). If this view were correct, the investor would be deemed to have received a distribution of Euros and US dollars, not Euros and Cisco stock. The consequence would be that the investor's tax basis in his partnership interest would be reduced by the US dollars she is deemed to have received (\$800,000). Any remaining income tax basis would attach to the Euros that had been distributed.

While I think I understand the income tax issue, I do not believe the partnership's property distributions should be recharacterized as cash distributions. First, with respect to distributing Euros, this fungible asset is held from the outset of the investment program. I understand it to be an integral component of Presidio's currency trading program.

1

Proprietary Material
Confidentiality Requested

KPMG 0007242

Permanent Subcommittee on Investigations
EXHIBIT #98w

2300

Unfortunately, its value has declined fairly significantly in the recent past. Thus, making an in kind distribution of all or a part of this asset class should not be an income tax issue.

Second, with respect to the other property that might be acquired for distribution, it appears that the partnership will have acquired the benefits and burdens of ownership. The partnership becomes committed to distributing a portion of its net asset value on a given date. On the date of redemption, all assets and liabilities are marked to market and the investor's ownership percentage is distributed. If the value of the acquired asset(s) changes during the partnership's holding period (typically one week), the entire partnership and all of its partners, not just Investor, obtain the benefit of a positive change in value or bear the burden of a negative change in value. A material change in asset value is likely to occur given the volatile nature of the marketable securities that would be selected to accommodate these type of requests. If the value of the Cisco stock in the above example declined from \$800,000 to \$700,000, the partnership's redemption obligation to Investor would decrease by \$90,000 assuming Investor is a 90% partner.

Please let me know if you disagree with my analysis or if you believe there is another issue(s) that we should be concerned with. As always, thank you for your assistance.

Jeff

B-113
PENDING FROM 8/6/99 M76

- MH (1) PULL FROM WESWEN'S 8/4 MEMO
- MH (2) FROM PREDICTION'S PLAN OF STEPS 2+2
(S/O AVAILABLE = 8/11/99)
- MH (3) PRINT OPINION LETTER
RELATIVE TO EXISTING MC WE HAVE
- DR (4) DISCUSS CONTRA OF HIGH BASIS
ASSETS INTO PSHP IN GAIN INSIDE
PSHP DIRECTLY IN WATFSA. ISSUE 75572
WE MIGHT BE ABLE TO OPINE ON THIS.
- MH (5) NEW OPINION WITH COMML AM = 8/15/99
(REMOVED AGAIN SINCE LAST ONE)
- JF/JB (6) SEND ON HSNM VS COMML TO DS TEAM

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Permanent Subcommittee on Investigations
EXHIBIT #98x

KPMG 0007186

2302

BL(P)
8/6/99.MTC

1/ :

DEALS W/O 60 DAYS.

LIB EXTENDED TO 90 DAYS UPON

CUSTOM REQUEST (REQUEST DOES

NOT HAVE TO BE A BEGIN OF YEAR)

PREM \approx .67% OF LOAN

LOAN ORIG FEE ~~1.00%~~ = BACK END NOT FRONT END

LOAN IS FIXED RATE LOAN

LIBOR + 5.5% = FWD RATE

LENGTH OF LOAN AND AFFECTS
PREMIUM.

STEP TRANSACTION DOC.

INVESTOR NOT COMMITTED TO

PUT LOAN & INTO PREMIUM FUND

2303

B-VIS
8/6/99 M7L

21:

SUBSTANCE OVER FORM:

IF NEG REAS, EXPECT. IN

TAX ACT THEN PAS THIS

TEST

INVESTOR = TRUE BORROWER

IN MORE LIKELY THAN NOT BASIS

HAVE GATE MEASUR CAN

RANDY B.

197 M7L

PENALTY MEMO, ENG LTR, INFO REQUEST

SLIDES

~~WE CAN LEAVE OUT TAX SLIDES~~

SLIDES IF WE WANT TO

2304

B LIPS
8/6/99 MTC

3/ :

- NO GUNL PMS TO PM FGS IN FINAL DEAL
THERE W/B ENOUGH CAPTION LEFT TO
BE #1788

ACM CASE + ASA CASE (ARCHIVE TO VAND PSHH)
↓
ARCHIVE SIGN

- FEE IS IN ADDITION TO T/M, BUT
PRESIDING W/B EXPLAIN HOW CAPTION
W/B LEFT.
BROWNE + PRESIDING + BANK
ONLY GO PAID IF 8 LEFT
CONTRACTUALLY

- HAVE 'BARRY' IS BOTH LAW FIRM
TO ASK G'S OF. ~~BED~~ WEM LAWYER LAW
FIRM THAT ADVISES HEDGE FUND, FUND
G'S THAN MARY, JEFF, RANNY.

- EISCHIED MTH GIVE EMAIL TO PRESIDING TO PMSL'D DEAL
→ DEAL SIGN G'S + MARY + JEFF, SIGNED ENG LTR, ^{CHIEF} _{EVN}
ETC. SEE WICKMAN'S MEMO.

2305

AL-113

4/:

8/6/99 MTC

IF WE STB ING CTR, WATSON DOES NOT NEED
TO SEC 17, BUT ^{ENHANCED} DOES.

STD DEAL FR COUN APPROV: 1 PERSON DOING
AND LCC, SUNDAY
EMAN TO
JEFF + MARK.

• ATLANTA STAFF W/ COORDINATE PRODUCTION
OF OPINION LETTER (GATHERING MGS, BROWN
+ WOODS OPINION, etc).

→ TAKES TIME TO GATHER MGS.

→ WE W/ NO OPINION AGAIN
1ST OF YR.

• FOCUS GATHERER ON "WATSON OR NOT"
OPINION LETTER IS "WELL REASONED"
THAN SOB IS TO MAKE SENSE PENALTIES
ARE REMOTE

• 732(d) PROVISION IS CONTROVERSIAL IN D.C.,
AND IS UNLIKELY TO SURFACE. NOT IN
HALL A SENSE BILL, NOT IN CONFERENCE.
AGREEMENT RELEASED 8/5/97 PER WATSON

2306

B-1PS
8/6/99 MTC

5/

AS OF 8/6/99 NO OTHER SOLUTION OR
AGGREGATION EXCEPT EACH POSSIBLE
AS SEPARATE BORROWER

EACH BORROWER MUST HAVE
5 MILLION NET INVESTMENT ASSETS
FOR REGULATORY PURPOSES TO
QUALIFY FROM ENTERING INTO
B-1PS

→ KIDS IN FAMILY CAN
DIP BELOW 5 MILLION
FOR REGULATORY PURPOSES

WE ARE LOOKING AT ELECTING
DUM # 5771.

2307

BUPS
8/6/99 MTC

6/

• SEW MATHS INT, THEN REDEEM BALANCE
TO ACHIEVE BOTH CAPTION + ORDINARY
LOSS (WAS TO CONFIRM SPAN).

• IF ORD LOSS DEM WHAT TYPE
OF CURRENCY USED. MUST BE FORWARD
CONTRACTS.

BUPS
CONF CAL 6/9/99

• SINGLE MEMBER LLC

WE SEPARATE PROP AGREEMENTS

• REFINES > 1,000,000 NOT LEGALLY REQ'D TO BE REVIEWED BY GMIT.

• 3402(m) + (n) ISSUES ~~WILL~~ ^{WILL} BE RESOLVED BY SUBORDA + CUAH BY 6/18/99

• LOAN MUST BE TAKEN ON BY INDIVIDUAL PARTICIPANTS IN SINGLE MEMBER LLC (OR EITHER OF THOSE VIA GRANTOR TRUST ~~OR~~ SA WR ~~OR~~ K-1). THERE WILL PROBABLY NOT BE ABILITY TO USE ASHIPS OR OTHER TRUSTS TO ENHANCE COSMETICS.

• NOT ALL TRANSACTIONS W/ 988 TRANSACTIONS IN ASHIP.

AA
SOME LATER

LOW	100 M	} 16% ⁴ MINUS	
PREM	60		3-5 YEAR DISTRIBS OF 988 COMETS TO CURE
CAP	7.6		

Proprietary Material
Confidentiality Requested

BMAPS

CONF CALL 6/2/99

• THERE MUST BE COMPLETE WRITEN OR ASHD UP
(NOT PARTIAL) TO GO ON THE ANSWER

• USE CITIZEN TRUSTS SO THAT KEAMC'S
TAX PREP RESPONSIBILITY ENDS W/ BENE
INFO W/

I

2310

new

From: DeLap, Larry
Sent: Saturday, August 14, 1999 12:43 PM
To: Elgin, Evelyn
Cc: Watson, Mark T; Vail, Daniel T
Subject: RE: BLIPs Slides - Valuation Misstatement Penalty



Eve -

I suppose the slide could be changed to simply refer to "Accuracy-Related Penalty". However, it sounds like we need to change the penalty memorandum that is to be provided to the prospective investor to include a discussion of substantial and gross valuation misstatements.

Larry

-----Original Message-----
From: Elgin, Evelyn
Sent: Friday, August 13, 1999 3:20 PM
To: DeLap, Larry
Cc: Watson, Mark T; Vail, Daniel T
Subject: BLIPs Slides - Valuation Misstatement Penalty

Larry,

Mark Watson asked me to run the issue in red below by you for your views.

Background:

An attorney for a BLIPs client (or prospective client) recently asked about the client's potential exposure to a 40% valuation misstatement penalty. That penalty applies if, e.g., the basis of property claimed on a return is 400% or more of the correct amount, unless the taxpayer qualifies for the reasonable cause exception. Although some cases have held that the penalty applies for tax underpayments due to legal issues, the better view is that the penalty only applies to misstatements due to factual issues (e.g., bad appraisals). In any event, even if the penalty were found to apply, there's a very strong argument that reasonable reliance on a reasonable basis (or higher) opinion should constitute reasonable cause. Still, is there some risk of a 40% penalty? Yes, as, if BLIPs blows up, the IRS will probably throw the book at it and that conceivably could include a 40% penalty.

Question:

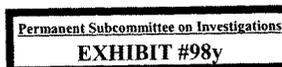
There currently is a BLIPs slide on "Economic Exposures." One bullet on the slide reads: "IRS 20% substantial understatement penalty." The question is should we add a reference on the slide to a possible 40% valuation misstatement penalty?

I lean against this, as the IRS may get the slide and start thinking of applying the penalty in an unintended context (legal issue). I guess I would think we could briefly state this risk orally. But, given what's at stake with BLIPs, we obviously wanted your input.

Eve

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KPMG 0009233

Unknown

From: Baumann, Dale R
 Sent: Thursday, December 09, 1999 7:29 PM
 To: Nuckolls, John M; Liston, Shannon L; Bickham, Randall S; Rivkin, David; Paule, Robin M; Hasting, Carl D; Mccrimisk, George H
 Cc: Ito, Dennis A
 Subject: FW: BLIPS

Stay tuned...

-----Original Message-----

From: Watson, Mark T
 Sent: Thursday, December 09, 1999 4:04 PM
 To: Eischeid, Jeffrey A; Warley, Carol G; Baumann, Dale R
 Subject: RE: BLIPS

Dale, I think our fees *should* be paid by year end to support adding such fees to the basis of the client's partnership interest.

-----Original Message-----

From: Eischeid, Jeffrey A
 Sent: Thursday, December 09, 1999 4:55 PM
 To: Warley, Carol G; Watson, Mark T
 Subject: RE: BLIPS

I think John is on the same page.

-----Original Message-----

From: Warley, Carol G
 Sent: Thursday, December 09, 1999 4:50 PM
 To: Watson, Mark T; Eischeid, Jeffrey A
 Subject: FW: BLIPS

See the final paragraph of Dale's message re Angie. Is Angie on the same page with John Larson on basis and flow through items? I spoke to John Larson today and he isn't sure how this will all be reported. (Mark I left you a long voice mail on my conversation with him as it relates to this and when things will be paid.) This may need to be coordinated with him.

-----Original Message-----

From: Eischeid, Jeffrey A
 Sent: Thursday, December 09, 1999 1:33 PM
 To: Warley, Carol G
 Subject: FW: BLIPS

fyi

-----Original Message-----

From: Baumann, Dale R
 Sent: Thursday, December 09, 1999 1:55 PM
 To: Nuckolls, John M; Liston, Shannon L; Bickham, Randall S; Mccrimisk, George H; Hasting, Carl D; Paule, Robin M; Rivkin, David
 Cc: Ito, Dennis A; Eischeid, Jeffrey A; Baumann, Dale R
 Subject: BLIPS

This is a follow up to the message Carol Warley sent out re:billing for BLIPS engagements.

1. According to Jeff Eischeid, he believes it is not critical that the fee actually be collected by the 31st in order for us to take a position with regard to capitalizing the KPMG fee into the basis of the assets. WNT is in the process of putting together a paper/opinion discussing the firm position for capitalizing the fee instead of treating it as a miscellaneous itemized deduction - they will distribute it when it is completed. With that said, we should still send the wire information to the clients and try to get the fees collected shortly after the partnership distributes the assets.
2. For a description on the bill, I am just using the following "For professional services rendered and out of pocket

1

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KPMG 0007240

Permanent Subcommittee on Investigations
 EXHIBIT #98z

2312

expenses incurred." Its up to you how you want to send out the bills, but I didn't want any reference to the investment strategy in the language of the bill.

3. One other thing on bills, Jeff indicated he was going to send the bills out in the name of the LLCs - which is probably the appropriate party since the LLC is the one that decided to make the investment.

Finally,

Angie Napier is in the process of sending out the basis calculation schedules - so you should receive them shortly, if you have not already. I just raised an issue with regards to the amount of the operating loss which Angie indicates will pass through the partnership. Jeff is going to check with Angie and will get back to us shortly if any of the basis statements already sent out need to be adjusted.

Please give me a call if you have any questions.

Dale

2313

Unknown

From: Watson, Mark T
Sent: Friday, December 17, 1999 7:01 AM
To: Eischeid, Jeffrey A
Subject: RE: Capitalize v. expense

Jeff, I believe the deciding factor is whether the management fee relates to the investor's acquisition of his or her interest in the partnership – not the acquisition of assets by the partnership. Thus, to the extent that the management fee relates to the purchase and management of assets by the partnership, it probably should be expensed under section 212. It may be necessary for the partnership to capitalize some of the management fees if they relate to the acquisition of an asset with a useful life greater than one year; however, I don't know if that helps our clients.

On another matter, are you able to participate in the product call on Monday?

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, December 17, 1999 8:57 AM
To: Watson, Mark T
Subject: FW: Capitalize v. expense
Importance: High

REDACTED

What do you think??

-----Original Message-----

From: John Larson [mailto:jlanson@presidioadv.com]
Sent: Thursday, December 16, 1999 6:58 PM
To: eischeid@kpmg.com
Cc: Bob Pfaff
Subject: Capitalize v. expense

Jeff-

Seems like one possible argument is to treat the entire one-time fund management fee (applicable to an intangible asset with a seven year life) as a capital expenditure. In general I think that management fees paid in connection with long-term contracts must be capitalized. As I see it, the Strategic Investment Fund agreements are akin to a seven-year contract. Since the management fee is only payable once, but management services may go on for seven years, capitalization would seemingly be indicated.

JL

1

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KPMG 0006502

Permanent Subcommittee on Investigations

EXHIBIT #98aa

Unknown

From: Watson, Mark T
Sent: Wednesday, February 02, 2000 5:07 AM
To: Eischeid, Jeffrey A
Subject: RE: BLIPS Funds - Form 1065

Jeff, whatever we do I think we should be consistent -- i.e., if we treat one of the Funds as a trade or business, then we should probably treat all of the Funds as being in a trade or business and vice versa. Further, I think taking the position that the Funds constitute a trade or business simply adds an element of risk to the transaction without providing a benefit to many of our clients who don't need the ordinary loss. Thus, I vote for treating the Funds as investors rather than traders.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, January 31, 2000 2:28 PM
To: Watson, Mark T
Subject: FW: BLIPS Funds - Form 1065

Let's discuss ASAP

-----Original Message-----

From: John Larson [<mailto:jl Larson@presidloachv.com>]
Sent: Monday, January 31, 2000 1:48 PM
To: eischeid@kpmg.com
Subject: BLIPS Funds - Form 1065

Jeff-

Grant Thornton has indicated that they are comfortable preparing the 1065's taking the position that the Funds are in the trade or business of trading currencies etc. If they do this the net loss from each partnership will flow through as ordinary loss. Since I know that we went through major gyrations to minimize ordinary loss, I assume you want them to treat the Funds as investment, not trading, partnerships and show the Forex losses as capital. Let me know and we will start cranking out the 1065's.

JL

Proprietary Material
Confidentiality Requested

KPMG 0006520

Permanent Subcommittee on Investigations
EXHIBIT #98bb

Unknown

From: DeLap, Larry [ldelap@KPMG.COM]
Sent: Friday, February 18, 2000 11:33 AM
To: Sams, James K
Cc: Kelloway, Lisa A; Venigalla, Arvind ; Schlaman, Kristine K; Tseng, Ruth
Subject: RE: CAMPUS Draft Whitepaper

<<ICV2.DOC>>

Jim -

Please see suggested revisions and comments on the ICV letter attached.

Could you please ask someone from Tax Controversy Services to look at both the ICV letter and the engagement letter for the purpose of determining whether language should be added or modified in order to bolster the "business purpose" argument in the event the letters are later scrutinized in connection with an IRS challenge to the strategy. Then, send both the ICV letter and the engagement letter back to me.

Larry

> -----Original Message-----
> **From:** Sams, James K
> **Sent:** Saturday, February 12, 2000 6:13 PM
> **To:** DeLap, Larry
> **Cc:** Kelloway, Lisa A; Venigalla, Arvind ; Schlaman, Kristine K; Tseng, Ruth
> **Subject:** CAMPUS Draft Whitepaper
>
> **Larry:**
>
> Attached is a draft whitepaper for a product dubbed (not by me)
> CAMPUS. It involves the dual incorporation of a company in both Canada
> and the US by way of a continuance of a US company into Canada. The
> continuance gives the USCo a step up in basis in assets for Canadian
> tax purposes. The strategy relies on a provisions in the US-Canada tax
> treaty holding that such a company will be treated as a resident (and
> taxable as a
> resident) solely of Canada for purposes of the treaty.
>
> We had discussed this idea with Gratian Joseph, its originator, some
> time ago. He has since sold two engagements, where the key issue has
> been resolution and comfort with the business purpose of the
> continuance. The fact patterns of the engagements match those of the
> whitepaper (notably, no assets were transferred into the continued
> entity by another person). In addition, we had obtained a concurring
> opinion from Kevin Dolan and Steve Lainoff (before their departures
> from Well were in process) in respect of at least one of the clients.
> Gratian has a couple other prospects as well and KevinD. as well as
> Fenwick and West (and possibly also Baker McKenzie) had been consulted
> by certain of the target clients for their views as well.
>
> Because of the nature of the strategy, the thought is to market it
> only to a limited group of targets and to cease pursuing additional
> engagements after a given number (not defined, but I'm guessing at
> 8-10 tops) have been implemented. Also because of its nature, we do
> not anticipate doing a TPA nor discussing this strategy during the Monday night calls.
>
> So, I attach the whitepaper, draft engagement letter and ICV letter,
> which we propose would represent the complete "package" in respect of
> this idea. Please let me know if you have questions or comments or
> would like any additional information.

>
> **Proprietary Material**
> **Confidentiality Requested**

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KPMG 0018304

Permanent Subcommittee on Investigations
EXHIBIT #98cc

2316

> Regards,
>
> Jim << File: CAMPUS4_SAMSREV5.doc >> << File: ICV2.DOC >>
>
> James K Sams
> KPMG Washington National Tax
> tel: 202-533-3102
> fax: 202-533-8546
>

Proprietary Material
Confidentiality Requested

kpmg

To: SC² tax file

From: Andrew S. Atkin

Date: February 29, 2000

Re: SC² strategy: Effect of recent temporary regulations concerning corporate tax shelters

ISSUES

1. Is the SC² transaction a "confidential corporate tax shelter" subject to registration requirements under Temporary Regulation Section 301.6111-2T?
2. In the SC² transaction, are either the shareholders or the S corporation required to file a statement disclosing participation in a "reportable transaction" under Temporary Regulation Section 1.6011-4T?

LAW

On February 28, 2000, the I.R.S. issued temporary regulations requiring the registration of "confidential corporate tax shelters" pursuant to Section 6111(d).¹ In addition, the I.R.S. also issued regulations requiring organizers and promoters to maintain customer lists for "potentially abusive tax shelters," pursuant to Section 6112. Lastly, the Service issued temporary regulations "requiring corporations to attach statements to their income tax returns describing their tax shelters."² All the regulations are generally effective as of February 28, 2000.³

1) "Confidential corporate tax shelter" registration requirements

Under Temporary Regulation Section 301.6111-2T(a), "confidential corporate tax shelter[s]" are subject to the registration requirements of Sections 6111(a) and (b).

A) Definition of "confidential corporate tax shelter"

The temporary regulations define a "confidential corporate tax shelter" as any transaction:

¹ T.D. 8876 (Feb. 28, 2000).

² T.D. 8877 (Feb. 28, 2000).

³ See Reg. Secs. 301.6111-2T(h), 301.6112-1T (A-22) and 1.60114T(g).

Proprietary Material
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Permanent Subcommittee on Investigations
EXHIBIT #98dd

KPMG 0048037

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate, as described in paragraph (d) of this section.⁴

The regulations define a number of the above terms.

1. "Significant Purpose"

The regulations specify that a transaction will be considered to have as a significant purpose to avoid or evade Federal income tax if:

- 1) the transaction is the same as or similar to a transaction identified by the I.R.S. to be a tax avoidance transaction; or
- 2) the transaction lacks economic substance (i.e. the present value of the participant's reasonably expected pre-tax profit is insignificant relative to the present value of the participant's expected Federal income tax savings); or
- 3) the transaction is structured to provide Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter reasonably expects the transaction to be presented to more than one participant.⁵

2. "For a direct or an indirect corporate participant"

The regulations specify that a transaction is "for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction."⁶

3. "Conditions of Confidentiality"

The regulations provide that "all the facts and circumstances relating to the transaction" will be considered in determining whether there are conditions of confidentiality.⁷ In addition, if:

⁴ Reg. Sec. 301.6111-2T(a)(2).

⁵ Reg. Sec. 301.6111-2T(b). This provision does not apply if the promoter can show that the participant is participating in the transaction in the ordinary course of its business and there is a long-standing and generally accepted understanding that the tax benefits from the transaction are allowable. *Id.*

⁶ Reg. Sec. 301.6111-2T(a)(4).

⁷ Reg. Sec. 301.6111-2T(c).

an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding.⁸

Even if there is no express or implied understanding of confidentiality, there is a condition of confidentiality if the transaction is claimed to be proprietary.⁹ Unless the facts and circumstances clearly indicate otherwise, there is no condition of confidentiality if:

the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.¹⁰

4. Fees in excess of \$100,000

All the facts and circumstances are taken into account in determining the amount of fees.¹¹ In addition, all types of consideration are taken into account, including contingent fees, equity interests and fees the promoters may receive for other transactions as consideration for promoting the tax shelter.¹² Moreover, it is presumed that the fees will be in excess of \$100,000 unless the person responsible for registering can show otherwise.¹³

B) Exception to "confidential corporate tax shelter" definition

If the transaction is not one of the listed transaction which the I.R.S. has determined to be a confidential corporate tax shelter, the transaction will not be subject to the registration requirements if:

the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Reg. Sec. 301.6111-2T(d).

¹² *Id.*

¹³ Reg. Sec. 301.6111-2T(g)(2)(vi).

judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)).¹⁴

2) Customer list requirement

Under Regulation Section 301.6112-1T, organizers and promoters of “potentially abusive tax shelters” are required to maintain customer lists. The regulations “follow a modified form of the definition of confidential corporate tax shelter under section 6111(d)(1) for purposes of defining the potentially abusive tax shelters that are subject to the list requirement under section 6112.”¹⁵ Under this modified definition, a transaction can be a “potentially abusive tax shelter” even if there are no conditions of confidentiality or the promoter may receive fees in the aggregate that are less than \$100,000.¹⁶ In determining whether a significant purpose of the transaction is avoidance or evasion of federal income tax, the regulations relating to the definition of “confidential corporate tax shelter” are applicable.¹⁷

3) Taxpayer disclosure requirement

Under Temporary Regulation Section 1.6011-4T, taxpayers participating in “reportable transactions” must attach to their tax returns a disclosure statement in the a form prescribed by the I.R.S.¹⁸

A) Applicable taxpayers

The disclosure requirements apply to “[e]very taxpayer that is required to file a return for a taxable year with respect to the tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction. . . .”¹⁹ A taxpayer is considered to have indirectly participated “if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (e.g. it participates through a partnership or through a controlled entity).”²⁰

B) “Reportable transactions”

The regulations define a “reportable transaction” as a transaction that is listed by the I.R.S. as being a tax avoidance transaction or a transaction that has at least two of the following characteristics:

¹⁴ Reg. Sec. 301.6111-2T(b)(5).

¹⁵ T.D. 885.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Reg. Sec. 1.6011-4T.

¹⁹ Reg. Sec. 1.6011-4T(a).

²⁰ *Id.*

- 1) The taxpayer participates in the transaction under confidentiality;²¹
- 2) The taxpayer has contractual protection against the possibility that all or a part of the intended tax benefits will not be sustained (e.g. contingent fee, insurance or indemnity);
- 3) The taxpayer's participation in the transaction was promoted by persons expected to receive fees in excess of \$100,000;
- 4) The expected treatment of the transaction for Federal income tax purposes differs by more than \$5 million from book treatment of the transaction;
- 5) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer, e.g. a tax-exempt entity or a foreign person;
- 6) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect for taxation of any party to the transaction in another country.

1. Exceptions

Even if a transaction meets at least two of the above criteria, there are exceptions to the transaction being a reportable transaction. If any of the following are true, the transaction is not a reportable transaction:

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code (Code) for substantially similar transactions.

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety

²¹ The term confidentiality is defined the same as for the registration requirements in Reg. Sec. 301.6111-2T(c).

of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)).

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.²²

The regulations clarify that certain corporate events are considered to be in the ordinary course of business:

For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.²³

2. Projected tax effect

Even if a transaction is a reportable transaction and does not fall within any of the above exceptions, there is no disclosure requirement unless the projected tax effect of the strategy meets certain threshold amounts. For transactions that are reportable transactions because they are a listed transactions, the transaction must reduce the taxpayer's federal tax liability by at least \$1 million in any one year or \$2 million for any combination of taxable years. For all other reportable transactions, the threshold amounts are \$5 million for any one tax year or \$10 million for any combination of tax years.

ANALYSIS

1. Is the SC² transaction a "confidential corporate tax shelter" subject to registration requirements under Temporary Regulation Section 301.6111-2T?

It does not appear that the SC² transaction is a "confidential corporate tax shelter" under Temporary Regulation Section 301.6111-2T. Under this set of regulations, the transaction must be "for a direct or indirect corporate participant."²⁴ The regulations specify that a transaction is "for a direct or an indirect corporate participant if it is

²² Reg. Sec. 1.6011-4T(b)(3)(ii).

²³ Reg. Sec. 1.6011-4T(b)(3)(iii).

²⁴ Reg. Sec. 301.6111-2T(a)(2)(i).

expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.”²⁵

Subchapter S corporations are generally not subject to corporate level taxes.²⁶ Subchapter S corporations are only subject to corporate level tax for certain items related to prior C corporation status.²⁷ The SC² strategy provides no Federal tax benefits to the subchapter S corporation. Rather, the only corporate level change is a reallocation of the income that passes through to the shareholders. The shareholders are the taxpayers that receive Federal income tax benefits. Therefore, the SC² strategy should not be considered a “confidential corporate tax shelter.”

2. Are organizers or promoters of the SC2 transaction required to maintain a customer list?

It does not appear that organizers or promoters of the SC² transaction will be required to maintain a customer list. The customer list regulations incorporate the “confidential corporate tax shelter” regulations with respect to the issue of whether the transaction has a significant purpose, the evasion or avoidance of the federal income tax. As state above, under the “confidential corporate tax shelter” regulations, the definition of the term “for a direct or indirect corporate participant” is that the transaction is expected to provide Federal income tax benefits to any corporation. Since the S corporation will not be receiving any Federal income tax benefits in the SC² transaction, a customer list should not need to be maintained.

2. In the SC2 transaction, are either the shareholders or the S corporation required to file a statement disclosing participation in a “reportable transaction” under Temporary Regulation Section 1.6011-4T?

It does not appear that either the shareholders or the S corporation will be required to file any disclosure statements under Temporary Regulation Section 1.6011-4T. The disclosure requirements apply to “[e]very taxpayer that is required to file a return for a taxable year with respect to the tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction. . . .”²⁸ Neither individuals or S corporations are subject to tax under Section 11. Therefore, the disclosure requirements are not applicable to them.

Section 11 imposes a tax on all corporations. Individuals are subject to tax under Section 1, not Section 11. Therefore, the disclosure requirements do not apply to individuals. Moreover, Subchapter S Corporations are not subject to the tax imposed under Section 11 and as discussed above, are generally not subject to any corporate level tax at all.²⁹ Even in the limited situations where a tax is imposed on a subchapter S corporation, the tax is

²⁵ Reg. Sec. 301.6111-2T(a)(4).

²⁶ I.R.C. Sec. 1363(a).

²⁷ See I.R.C. Secs. 1374 and 1375.

²⁸ Reg. Sec. 1.6011-4T(a).

²⁹ See I.R.C. Sec. 1363(a).

not imposed under Section 11.³⁰ Therefore, it does not appear that subchapter S corporations are subject to the disclosure requirements either.

³⁰ See I.R.C. Secs. 1374 and 1375.

Unknown

From: Warley, Carol G
 Sent: Tuesday, March 07, 2000 8:48 AM
 To: Eischeid, Jeffrey A; Brennan, James
 Cc: Watson, Mark T
 Subject: RE:

My understanding is that 707 disclosure is required and that the decision was made to disclose at the partnership level on a white paper caption statement (as opposed to a Form 8275). See 1.707-8.

-----Original Message-----

From: Eischeid, Jeffrey A
 Sent: Tuesday, March 07, 2000 8:58 AM
 To: Brennan, James
 Cc: Warley, Carol G
 Subject: FW:

REDACTED

Please check with Carol on the 707 disclosure. I believe that WNT concluded that disclosure is required but that there is no penalty if disclosure is omitted by the partnership.

Jeff

-----Original Message-----

From: Steven Buss (mailto:sbuss@presidioadv.com)
 Sent: Monday, March 06, 2000 8:05 PM
 To: eischeid@KPMG.com; JBrennan@KPMG.com; PAWilliams@KPMG.com
 Cc: John Larson; Kerry Bratton
 Subject:

As we discussed on the telephone I am confirming that the following is the complete list of changes to the "draft" of the tax return sent to you for review and comments on Thursday, March 2, 2000:

1. The return is to report on the accrual basis.
2. The entity is not in a trade or business so nothing is reported on the first page of the return:
 - A. The income/loss from foreign exchange is reported on Schedule K, line 7, "Other Income"
 - B. The guaranteed payment is reported on Schedule K, line 11, "Other Deductions"
3. The footnote in the tax return referring to the activity of the LLC as a trade or business is to be deleted.
4. Page 2 of the return, question 2 is to be answered yes since Presidio Growth LLC and Presidio Resources LLC are treated as partnerships.
5. Page 2 of the return, question 11 is to be

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answered yes because the distribution of Euros and/or Securities is a distribution of property. Those partnerships that sold an interest must also answer this question yes. All of the LLC's meet one or more of these criteria.

In addition to the above it has been brought to our attention that we should consider disclosure pursuant to Section 707; See 1.707-6(c) and 1.707-8. Please advise if we need to include this additional disclosure.

Regards.

Steven Buss

From: </O=KPMG/OU=US/CN=RECIPIENTS/CN=21552>
To: </O=KPMG/OU=US/CN=RECIPIENTS/CN=20499>
Sent: Sunday, January 10, 1999 12:00 AM
Subject: 707 disclosure

Not yet. I will try again.

-----Original Message-----
From: Eischeid, Jeffrey A
Sent: Monday, October 25, 1999 12:50 PM
To: Watson, Mark T
Subject: RE: 707 disclosure

Did you hear back from Mark Ely?

Thanks
-----Original Message-----
From: Watson, Mark T
Sent: Sunday, October 17, 1999 12:59 PM
To: Eischeid, Jeffrey A
Subject: FW: 707 disclosure

FYI. I will discuss this with Mark Ely.

-----Original Message-----
From: Smith, Richard H (WNT)
Sent: Friday, October 15, 1999 7:31 PM
To: Watson, Mark T
Cc: Fields, Deborah A
Subject: RE: 707 disclosure

Any sale would be of property (i.e., the distributed foreign currency) by the partnership to the partner. 1.707-6(a). If contribution and distribution occur within two years (regardless of order), section 1.707-6(c) addresses disclosure. Mark Ely is the guy for all the technical hoops, but in past discussions on 707 disclosures he has indicated that no penalty seems to apply. It would be prudent to circle back with him for his technical analysis on this point.

-----Original Message-----
From: Watson, Mark T
Sent: Thursday, October 14, 1999 3:08 PM
To: Fields, Deborah A; Smith, Richard H (WNT)
Subject: FW: 707 disclosure

Richard and Debbie, what do you think? I know we have discussed the technical requirement to disclose, but we also discussed the fact that there is no penalty for not disclosing. Also, since the partner that will receive a distribution from the partnership within two years only contributed cash to the partnership, does section 707 even apply?

-----Original Message-----

KPMG 0026339

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EXHIBIT #98ff

5/6/2003

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Page 2 of 2

From: Eischeid, Jeffrey A
Sent: Thursday, October 14, 1999 10:25 AM
To: Watson, Mark T
Cc: Bickham, Randall S; Henderson, Tracie K
Subject: FW: 707 disclosure

Mark - Will you confirm the accuracy of this conclusion with the WNT partnership folks?

Thanks, Jeff

-----Original Message-----
From: Henderson, Tracie K
Sent: Tuesday, July 13, 1999 7:16 PM
To: 'John Larson'
Cc: Eischeid, Jeffrey A; Watson, Mark T; Bickham, Randall S
Subject: 707 disclosure

John -

As discussed, I think disclosure under sec. 707 will be required for BLIPS. See 1.707-6(c) and 1.707-8.

Tracie

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5/6/2003

Resnick, Joel
 From: Engel, Greg A
 Sent: Wednesday, March 08, 2000 1:19 AM
 To: Bailine, Richard W; Duer, Walter M
 Cc: Resnick, Joel ; Reiter, Mathias T
 Subject: RE: INSURECO and the Tax Shelter Regs
 Rick,

I want to study further, but I tend to agree with your views. We generally would have a significant M-1; however there may be cases when there is no M-1 since the reserves are deducted for book. We also will have fees in excess of \$100k; however I am sure that we will attempt to develop some novel approach on fees to fall outside this bad factor. The other bad factors should be easy to avoid.

In any event, I think we could argue that two of the good factor exceptions apply. The one you listed below seems to apply (or at least it should apply). We will only opine if we have a strong business purpose (this has been the case to date) and the business purpose standard is arguably similar to the good factor below. The one question could be if they looked at each step separately and thus the sale of the stock to the strategic buyer could be questioned; the rest of the transaction is clearly ordinary course and customary. That said, it is not unusual that a strategic buyer would be utilized, it is just not as common as a simple captive. I also think that the second good factor could come into play. The "long standing accepted treatment of the transaction" factor should arguably apply since we are relying on a published ruling with ample case law. Of course, the twist we put on it may call it into question, but it seems that we could certainly argue the second good factor as well.

I appreciate your help on this, perhaps we need a quick telecon to pull all of our thoughts together. I am in the office the balance of the week.

Thanks
 Greg

-----Original Message-----

From: Bailine, Richard W
 Sent: Tuesday, March 07, 2000 6:32 PM
 To: Duer, Walter M; Engel, Greg A
 Cc: Resnick, Joel ; Reiter, Mathias T
 Subject: INSURECO and the Tax Shelter Regs

Guys--we need your thoughts as described below.

We are trying to conclude that clients that implement INSURECO do not need to disclose this event under these regs. For deals that were at least partially done by COB 2/28/00 I feel pretty comfortably that this is true as in such case there does not appear to be any "reportable transaction" as defined in these regs.

But for deals done in their entirety after COB 2/28/00, we need another argument. I assume that this deal will fail at least of the so called "Bad Factors" in Regs 1.6011-4T(b)(3)(i), most likely paragraphs b, C and/or D (failing any two is BAD). But I am thinking the INSURECO also very well may have a so called "Good Factor" which, if present, exempts the client from disclosing under these regs.

The most likely Good Factor can be found in Regs 1.6011-4T(b)(3)(ii). To meet this we would need to know if the following were true.

(i) A client that implements INSURECO is entering into a transaction that is in the ordinary course of its business, and,

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(ii) the client is using a form consistent with customary commercial practice.

Now it seems to me that both of these elements should be true. The Business Purpose the client has to support entering into the deal should tell us that the transaction is one that is in the ordinary course as the transaction is part of the clients overall risk assessment program and is, consistent thereunder.

As for a customary form, I will rely on your expertise in this industry but it seems to me that using captives is a very common means of shifting/managing risk.

I would appreciate it you two gents would ponder and discuss these points and get back to me with your conclusions as were are attempting to assess these issues under the new regs and, answers to these "business" issues is paramount. Thanks.

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KPMG 0026883

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Resnick, Joel
From: Reiter, Mathias T
Sent: Tuesday, May 23, 2000 6:25 PM
To: Resnick, Joel
Subject: RE: Insureco-Final Opoinion



Joel

Attached is one Word file.

Matt

-----Original Message-----
From: Resnick, Joel
Sent: Tuesday, May 23, 2000 7:19 PM
To: Reiter, Mathias T
Subject: Insureco-Final Opoinion

Please send to me a copy of the final Insureco generic opinion.

Thanks.

Joel

Joel Resnick
Partner
312-665-2007 (phone-Chicago)
jresnick@KPMG.com

2332

Resnick, Joel
From: Reiter, Mathias T
Sent: Thursday, September 23, 1999 6:45 PM
To: Engel, Greg A
Cc: Resnick, Joel
Subject: RE: Insureco-Submission to DeLap



9-23-99.doc

Greg

Attached is one file with the latest draft of the Insureco opinion letter. All changes are blacklined from the various reviewers as indicated by Joel below.

Pending is any changes you see fit from your reaction to Art's comments and one comment from Greg as indicated at the top on the first page of the attached opinion.

Please let me know if there is anything else I can do.

Matt

-----Original Message-----

From: Resnick, Joel
Sent: Thursday, September 23, 1999 6:07 PM
To: Engel, Greg A
Cc: Reiter, Mathias T
Subject: Insureco-Submission to DeLap

Attached is a suggested memo to Larry from me relating to certain of his comments. If you desire, make such changes as you deem appropriate and send it to Larry under your name.

The draft which Matt is sending to you attempts to reflect the changes desired by Eve Elgin, Rick Bailine (except for those relating to insurance which are noted and which we assume that you will make), Richard Yates and Mark Ely. We assume that you will make any changes relating to Art's comments.

After you are satisfied with the draft perhaps you can send it and the attached memo to Larry to keep the approval process moving while I am on vacation. Matt is available to help as needed. << File: jor8635-response to Larry.doc >>

Joel Resnick

Partner

*KPMG-Washington National Tax
312-665-2007 (phone-Chicago)
202-467-3859(phone-WNT)*

KPMG 0026885

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Unknown

From: DeLap, Larry [ldelap@KPMG.COM]
 Sent: Saturday, March 11, 2000 12:35 PM
 To: Atkin, Andrew S; Manth, Larry E
 Cc: Smith, Richard H (Vice Chair-Tax); Springer, Mark A; Rosenthal, Richard P
 Subject: FW: S Corporation strategy



S_Corp_Strategy.doc
 cc (134 KB)

Please note that your discussion of "tax shelter" is too narrow. The strategy is clearly a tax shelter as defined by section 6662(d)(2)(C)(iii). Such classification by itself is not necessarily bad, but simply means that the disclosure exception to the substantial understatement penalty does not apply and that the taxpayer must reasonably believe the strategy is more likely than not to prevail on its merits.

An open question may be whether we would need to maintain a list of clients participating in the strategy, pursuant to the recently released corporate tax shelter temporary regulations.

We avoid giving opinions directly on accuracy related penalties. Whitepapers should not suggest that we are prepared to give such opinions. The section on "Section 6662 Accuracy Related Penalties" in the attached whitepaper should be deleted in its entirety.

Discussions on section 6662 should be limited to the facts, such as in the attachment. Please note that when we discuss penalties, and the exceptions thereto, with clients, we should point out that a court might view an opinion by the promoter of the opinion as suspect (see footnote 41 of the attachment).

<<T_IDVPEN.DOC>>

Larry

> -----Original Message-----
 > From: Atkin, Andrew S
 > Sent: Thursday, March 02, 2000 5:52 PM
 > To: Manfreda, Richard H; Kelliher, William B; Smith, Richard H (WNT);
 > Cvach, Gary Q; Bloom, Gilbert D; Springer, Mark A; Ransome, Justin P;
 > DeLap, Larry; Rosenthal, Richard P
 > Cc: Douglas Duncan; Larry Manth; Robert Huber
 > Subject: S Corporation strategy
 >
 > Attached please find a revised version of the whitepaper. Changes are
 > in revision mode (i.e. they appear underlined and in red).
 >
 > Thanks
 >
 > <<S_Corp_Strategy.doc>>
 >
 >

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From /O=KPMG/OU=US/CN=RECIPIENTS/CN=13922
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=13922
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Holding Period - BLIPS
Sent: 2000-03-20 03:31:39.196
Date: 2000-03-20 03:31:44.037
X-Folder: BLIPS

Jeff,

Does the IS group have a standard manner in which to report the BLIPS transaction on Schedule D and Form 4797.

Based on the discussion below, the purchase date of the distributed securities and/or euros would be the date the partnership purchased these assets. At this point, I don't believe we have this information from Presidio. In addition, from a presentation standpoint, the purchase date and the sales date on Schedule D and Form 4797 would be only a few days apart. Is everyone following the technical answer below? Thanks.

Richard Bloom
Senior Manager
Personal Financial Planning

150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
Phone: 973-912-6470
Fax: 973-912-6168
Email: rbloom@kpmg.com

-----Original Message-----

From: Watson, Mark T
Sent: Tuesday, December 21, 1999 7:16 PM
To: Bloom, Richard J
Subject: FW: Holding Period - BLIPS

Richard, after further discussions with Debbie, I understand that the holding period of the partnership will carry over to the recipient partner regardless of whether or not the distribution is an operating or liquidating distribution, and regardless of whether or not the partner has a long-term or short-term holding period in his or her partnership interest. Therefore, the acquisition date of the distributed security should reflect the date the partnership acquired the security.

-----Original Message-----

From: Fields, Deborah A
Sent: Monday, December 20, 1999 7:59 PM
To: Watson, Mark T
Subject: RE: Holding Period - BLIPS

That is right - the partner's holding period in the property reflects the partnership's holding period in the property - regardless of whether it is a current or liquidating distribution. There is an article (6JPTAX327) that discusses the issue. Hope that helps.

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2335

With regard to Richard Bloom's question - yes you can convert long-term to short-term and short-term to long-term. My response treats the distribution of stock as property and not as cash under section 731(c).

Deborah A. Fields
Washington National Tax
New Number (202) 533-4580
dfields@KPMG.com

-----Original Message-----

From: Watson, Mark T
Sent: Sunday, December 19, 1999 2:35 PM
To: Fields, Deborah A
Subject: FW: Holding Period - BLIPS

Debbie?

-----Original Message-----

From: Bloom, Richard J
Sent: Sunday, December 19, 1999 2:34 PM
To: Watson, Mark T
Subject: RE: Holding Period - BLIPS

Thanks for the response. Do I understand this correctly? Based on Debbie's response, this treatment can indirectly convert a long term holding period to a short term holding period. If the client acquired the partnership interest in January, 1990 and received IBM stock (which the partnership acquired on December 1, 1999) in liquidation of his entire interest on December 17, 1999, the client's "acquisition date" for the IBM stock is December 1, 1999. Therefore, if client sells the IBM stock on December 18, 1999, he has a short term capital gain or loss.

Richard Bloom
Senior Manager
Personal Financial Planning

150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
Phone: 973-912-6470
Fax: 973-912-6168
Email:rbloom@kpmg.com

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-----Original Message-----

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From: Watson, Mark T
Sent: Sunday, December 19, 1999 2:25 PM
To: Bloom, Richard J
Subject: FW: Holding Period - BLIPS

FYI

-----Original Message-----
From: Fields, Deborah A
Sent: Tuesday, December 14, 1999 9:33 PM
To: Watson, Mark T
Subject: RE: Holding Period - BLIPS

Mark -

Sorry this has taken so long -

Section 735(b) provides that in determining the period for which a partner has held property received in a distribution from a partnership (other than for inventory items) you include the holding period of the partnership as determined under section 1223. I would treat the partner as acquiring the asset on the date the partnership acquired the asset without regard to when they acquired their interest in the partnership.

Deborah A. Fields
Washington National Tax
New Number (202) 533-4580
dfields@KPMG.com

-----Original Message-----
From: Watson, Mark T
Sent: Monday, December 13, 1999 8:36 AM
To: Fields, Deborah A
Subject: FW: Holding Period - BLIPS
Importance: High

Debbie, if a partnership acquires an asset (e.g., stock) and subsequently distributes that asset to a partner in liquidation of his or her partnership interest, does the recipient partner's holding period in his or her partnership interest tack onto the distributed property? In other words, if the recipient partner were to sell the distributed property, what would he or she use as the acquisition date of the property -- the date the partner acquired his or her partnership interest (assuming cash was used to acquire the interest) or the date that the partnership acquired the property?

-----Original Message-----
From: Bloom, Richard J
Sent: Sunday, December 12, 1999 11:23 AM
To: Watson, Mark T
Subject: Holding Period - BLIPS

Mark,

What is the holding period (or, more specifically, the date acquired) of the distributed assets, i.e., the Euro's or common stock, in the BLIPS transaction? I believe the holding period should begin on the date the investor acquired his interest in the Presidio Investment Partnership. My authority for this in

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Section 1223(1). Section 735(b) states that the holding period shall include the time the partnership held the distributed property, but it seems that this provision should apply in nonliquidating distribution situations.

The reason I ask is a planning and presentation reason. The presentation issue is what date do we use to as "Date Acquired" on Form 4797 or Schedule D as the case may be when we report the sale or foreign currency transaction on the tax return. The planning issue is if the investor receives common stock as the distribution and sells the common stock to trigger the capital loss. I have a report that shows common stocks which have decreased tremendously in the last quarter. If the investor receives one of these stocks as part of their liquidating distribution and can report the acquisition date as the date he acquired the Presidio Investment Partnership (which is probably around the beginning of this quarter) for most people, it may seem reasonable from a presentation standpoint. I realize there are other issues to consider such as why would Presidio purchase this stock (there should be some type of investment reason for this). However, I thought it may be worth discussing.

What do you think?

Richard Bloom
Senior Manager
Personal Financial Planning

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Phone: 973-912-6470
Fax: 973-912-6168
Email:rbloom@kpmg.com

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KPMG 0023363



To John Lanning
Jeff Stein

Date March 21, 2000

From Michael Lippman

Ref c:\data\policy1.doc

Corporate Tax Shelter Regulations

This memorandum sets forth the policy that will guide decisions made with respect to the corporate tax shelter regulations and the process that we will use to make decisions regarding specific solutions and transactions.

Policy

The following policies will guide decisions regarding the corporate tax shelter regulations:

Client Disclosure:

We will advise clients about the regulations using a "balanced approach," recognizing that it is not in the best interest of our clients to apply the regulations in either an overly aggressive or conservative manner. We will advise clients about the rules (including issues the resolution of which is uncertain) and the risks clients should evaluate in making their decision about disclosure. This advice, depending on the case, may be in writing or oral).

KPMG List Maintenance:

We will examine specific transactions to determine whether we will, in fact, maintain a list taking into account all facts and circumstances and a balanced analysis of the relevant regulatory exception. In addition, we will ensure that the required information is available for all significant transactions so that a list with respect to such transactions can be produced and maintained if, at a later date, it is appropriate to do so. In appropriate circumstances, we will advise clients about the rules (including issues the resolution of which is uncertain) and inform them of our contemplated actions (with appropriate caveats). This advice and information, depending on the case, may be in writing or oral.

Registration: **Proprietary Material
Confidentiality Requested**

We will use our best efforts to avoid registration by not making offers to participate under "conditions of confidentiality." As appropriate, we will advise



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KPMG 0019312

**Permanent Subcommittee on Investigations
EXHIBIT #98jj**



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clients, based on our knowledge, whether a transaction has been or has not been offered under conditions of confidentiality (including issues the resolution of which is uncertain). Based on our knowledge, we will inform clients of our contemplated actions (with appropriate caveats). This advice and information, depending on the case, may be in writing or oral.

Process

We will use the following process to make decisions regarding specific solutions and transactions.

WNT will interpret substantive and procedural regulations involving corporate tax shelters. WNT will determine whether we register a transaction, whether we maintain a list with respect to a transaction, and what advice we render to our clients with respect to disclosure. To assure consistency, decisions in these matters must be reviewed by at least one of the following five WNT partners: Brockway, Smith, Wiesner, Bailine and Ely.

WNT will obtain input from DPP-Tax and business leaders with an interest in specific transactions. DPP-Tax input may include the extent to which tentative conclusions comport with policies set forth above. DPP-Tax may also ask WNT to reconsider its conclusions with respect to any transaction.

In appropriate circumstances, senior tax leadership will be consulted to participate in these business decisions of the tax practice.

Action Plan

By Friday, March 24th, we will apply these policies and processes to determine our conclusions with respect to disclosure, registration, and list maintenance regarding no less than two transactions, including TEMPEST and 401(k)ACCEL.

Proprietary Material
Confidentiality Requested

KPMG 0019313

2340



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May 4, 2003

**Proprietary Material
Confidentiality Requested**

KPMG 0019314

Stone, Tracy T

From: Smith, Richard H (WNT)
Sent: Monday, August 14, 2000 4:24 PM
To: Stone, Tracy T
Cc: Wiesner, Philip J
Subject: FW: Grantor trust reporting

FYI

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, January 22, 1999 7:40 AM
To: DeLap, Larry
Subject: RE: Grantor trust reporting



grantor.doc

-----Original Message-----

From: DeLap, Larry
Sent: Thursday, January 21, 1999 8:13 PM
To: Eischeid, Jeffrey A
Cc: Watson, Mark T
Subject: FW: Grantor trust reporting

Jeff -

Please send me the memorandum to which Mark refers.

Larry

-----Original Message-----

From: Watson, Mark T
Sent: Thursday, January 21, 1999 3:05 PM
To: Eischeid, Jeffrey A; Baumann, Dale R; Bickham, Randall S; Bloom, Richard J; Branan, Carolyn B; Carbo, Deke G; Fergus, Terrence P; Gardner, John H; Hasting, Carl D; Henderson, Tracie K; Jordan, Robert M; Liston, Shannon L; Nuckolls, John M; Pace, Katherine A; Paule, Robin M; Pedersen, Robert A; Poage, Ray M; Rivkin, David; Slattery, Daniel M; Speiss, Timothy P; Spitz, William L; Tendler, Neil J; Watkins, B M; Wissel, Kyle; Zaudtke, David P; Zysik, Jeffrey C
Subject: RE: Grantor trust reporting

You should all know that I do not agree with the conclusion reached in the attached memo that capital gains can be netted at the trust level. I believe we are filing misleading, and perhaps false, returns by taking this reporting position.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Thursday, January 21, 1999 2:12 PM
To: Baumann, Dale; Bickham, Randall; Bloom, Richard; Branan, Carolyn; Carbo, Deke; Eischeid, Jeffrey; Fergus, Terrence; Gardner, John; Hasting, Carl; Henderson, Tracie; Jordan, Robert; Liston, Shannon; Nuckolls, John; Pace, Katherine; Paule, Robin; Pedersen, Robert; Poage, Ray; Rivkin, David; Slattery, Daniel; Speiss, Timothy; Spitz, William; Tendler, Neil; Watkins, B; Watson, Mark; Wissel, Kyle; Zaudtke, David; Zysik, Jeffrey
Subject: Grantor trust reporting

I believe this is the latest version. Don't forget the statute of limitations issue Tracie raised.

Jeff

<< File: grantor.doc >>

Permanent Subcommittee on Investigations
EXHIBIT #98kk

MTW 0217

Stone, Tracy T

From: Smith, Richard H (WNT)
Sent: Monday, August 14, 2000 4:28 PM
To: Stone, Tracy T
Cc: Wiesner, Philip J
Subject: FW: Grantor trust memo

Importance: High

FYI

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, August 14, 2000 1:18 PM
To: Smith, Richard H (WNT)
Subject: FW: Grantor trust memo
Importance: High

-----Original Message-----

From: Henderson, Tracie K
Sent: Thursday, September 10, 1998 9:46 AM
To: Eischeid, Jeffrey A
Subject: RE: FW: Grantor trust memo

Jeff -

My preference would be to provide all necessary detail to the grantor: date purchased, date sold, cost and proceeds on an attachment that's included in the 1041. The summary page would show the net. That way, we have given the taxpayer what he requires to file an accurate return. Accordingly, any netting is "really" done at the 1040 level. But, we have a better argument for doing the netting that we would if we had no grantor trust.

Tracie

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Tuesday, September 08, 1998 9:14 AM
To: Henderson, Tracie K
Subject: FW: Grantor trust memo

-----Original Message-----

From: Watson, Mark T
Sent: Thursday, September 03, 1998 1:50 PM
To: Eischeid, Jeffrey A
Cc: Gardner, John H
Subject: RE: FW: Grantor trust memo

Jeff, yes, there are several reasons I disagree with the memo's logic. Specifically, section 671, Reg. section 671-1, -2, and -3, several court cases, Rev. Rul. 85-13, and numerous private letter rulings make it very clear that if a grantor or another person is treated as the owner of a trust, "he [or she] takes into account in computing his [or her] income tax liability all items of income, deduction, and credit . . . to which he [or she] would have been entitled had the trust not been in existence during the period he is treated as the owner." See Reg. section 1.671-3(a)(1). In other words, the grantor is treated as if he or she owned the trust's assets. Clearly, if the grantor directly sold one stock that generated a long-term capital gain, and, in the same year, directly sold another stock that generated a short-term capital loss, the grantor could not net the short-term loss against the long-term gain and report only the net gain or loss on his or her tax return. Rather, he or she would have to report each transaction separately on Schedule D.

Why then, when the above mentioned authority makes it clear that a grantor who is treated as the owner of a trust is treated as if he or she owned the trust's assets, would we reach a conclusion that we can net gains and losses at the grantor trust level? The "grantor trust memo" answers this question basically by stating "there is nothing that explicitly says we can't net." However, I argue that Treasury did not need to specifically address this matter because it is abundantly clear - a grantor who is treated as the owner of a trust is deemed to own the trust's assets, and if he or she is deemed to own the trust assets, then reportable transactions related to those assets must be reported in the same manner as they would if grantor actually did own the assets (i.e., no netting).

Further, to my knowledge, KPMG (and I suspect every other accounting firm) has never netted on grantor trust

returns. In fact, as the memo points out, you can get the wrong tax liability by netting on a grantor trust return. Thus, in response your second question, we cannot adopt netting on a broad-based basis because we would not be giving our clients sufficient information to prepare an accurate tax return if we did.

All the relevant evidence (e.g., the Code, regulations, case law, IRS rulings, partnership rules, S corporation rules, etc.) leads to the rational conclusion that you cannot net on a grantor trust return. Thus, I disagree with the conclusion reached in the memo.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Wednesday, September 02, 1998 7:34 PM
To: Watson, Mark T
Subject: RE: FW: Grantor trust memo

Is there a particular reason you disagree with the memo's logic? I don't want our people reporting in an inappropriate manner.

If we were to adopt the approach on a broad-based, go-forward basis are you more comfortable? In other words, what if we use the netting approach w/rt trusts that didn't have an OPIS transaction in them as well as those that did?

Jeff

-----Original Message-----

From: Watson, Mark T
Sent: Wednesday, September 02, 1998 7:24 PM
To: Gardner, John H; Eischeid, Jeffrey A
Cc: Henderson, Tracee K; Elgin, Evelyn ; Randall S Bickham at KPMG_Silicon_Valley2; Perez, Robert L
Subject: RE: FW: Grantor trust memo

Notwithstanding the conclusion reached in the "grantor trust memo," I don't think netting at the grantor trust level is a proper reporting position. Further, we have never prepared grantor trust returns in this manner. What will our explanation be when the Service and/or courts ask why we suddenly changed the way we prepared grantor trust returns/statements only for certain clients? When you put the OPIS transaction together with this "stealth" reporting approach, the whole thing stinks.

-----Original Message-----

From: Gardner, John H
Sent: Wednesday, September 02, 1998 4:19 PM
To: Eischeid, Jeffrey A
Cc: Henderson, Tracee K; Watson, Mark T; Elgin, Evelyn ; Randall S Bickham at KPMG_Silicon_Valley2
Subject: RE: FW: Grantor trust memo

Jeff:

Carl Hasting told me that an attorney he was dealing with just raised an issue with 6501(e) and the possibility that the netting could create a 6-year statute. I would argue that Reg. sec. 301.6501(e)-1(a)(1)(i) states the general rule that applies if the taxpayer omits from the gross income stated in the return of a tax imposed by subtitle A of the Code AN AMOUNT PROPERLY INCLUDIBLE THEREIN (emphasis added) which is in excess of 25 percent of the gross income so stated . . . The amount properly includible on Schedule D, lines 5 and 12, is the net short-term or long-term gain or loss from a trust's K-1. The grantor trust attachment that is filed pursuant to Reg. sec. 1.671-4(a) is essentially a substitute K-1, thus the net amount from the trust's K-1 would be the amount properly includible on the return.

What do you think? For less aggressive taxpayers, note that 6501(e)(1)(A)(ii) provides an exclusion for amounts omitted from gross income stated in the return if such amount is disclosed in the return, or a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item. Since a six year statute for this transaction is not a good answer, we may want to consider some way of providing the details in an understated way.

John

Reply Separator

Subject: FW: Grantor trust memo
Author: Jeffrey A Eischeid at KPMG_US

2344

Date: 9/1/1998 7:45 PM

-----Original Message-----

From: Henderson, Tracie K

Sent: Tuesday, September 01, 1998 1:38 PM

I think this is great and I agree with the analysis and conclusions. Are you comfortable mentioning this on tomorrow's conference call and posting it on the KMan workgroup in the OPIS toolkit? People are trying to get their tax returns out the door, as well as plan '98 transactions.

Jeff

To: Eischeid, Jeffrey A

Subject: FW: Grantor trust memo

fyi

-----Original Message-----

From: Gardner, John H

Sent: Monday, August 31, 1998 7:40 AM

To: Henderson, Tracie K

Subject: Grantor trust memo

Tracie:

I sent this to Gregg a while ago with the understanding that he would circulate it among the CaTS team for comments. I believe this is the latest version.

John

Stone, Tracy T

From: Smith, Richard H (WNT)
Sent: Monday, August 14, 2000 4:27 PM
To: Stone, Tracy T
Cc: Wiesner, Philip J
Subject: FW: Grantor Trust

Importance: High

FYI

-----Original Message-----

From: Eiseheid, Jeffrey A
Sent: Monday, August 14, 2000 1:21 PM
To: Smith, Richard H (WNT)
Subject: FW: Grantor Trust
Importance: High

-----Original Message-----

From: Henderson, Tracie K
Sent: Tuesday, September 29, 1998 10:52 AM
To: Eiseheid, Jeffrey A
Subject: FW: Grantor Trust

fyi

-----Original Message-----

From: Kay, Sheldon-ATLANTA M
Sent: Tuesday, September 29, 1998 9:46 AM
To: Henderson, Tracie K
Subject: Grantor Trust

Tracie-

I had an opportunity to look over the Grantor Trust Reporting Requirements paper with respect to whether long-term capital losses could be netted against short-term capital gains in a single number on the grantor's 1040.

Treas. Reg. sec. 671-3(a)(1) provides that the grantor "takes into account in computing his income tax liability all items of income, deductions and credits (including capital gains and losses) to which he would have been entitled had the trust not been in existence during the period ..." One case Bohstein v. United States, 735 F.2d 704 (2d Cir. 1984), provided in dicta that a grantor trust is a separate taxpayer. This portion of the opinion was questioned by the IRS in Rev. Rul. 85-13. The IRS said that it would not follow that portion of Bohstein. Rev. Rul. 85-13 further stated that it was the Service's position that the trust property in a grantor trust is treated as if it were the Grantor's own property. This would distinguish a grantor trust from a pass-through entity.

Therefore, since the grantor should treat the items of income as if the trust had not been in existence, it would be difficult to argue that the capital transactions should be netted, since they would not be netted on the grantor's 1040 if they were owned directly by the grantor.

Shelly

2346

KPMG Peat Marwick LLP

**GRANTOR TRUST REPORTING
REQUIREMENTS**

*for
Capital Transaction Strategies*

KPMG Peat Marwick LLP
Washington National Tax

February 1998

MTW 0222

GRANTOR TRUST REPORTING REQUIREMENTS

for Capital Transaction Strategies

I. General Rules of Grantor Trusts

A. Overview

IRC Subchapter J, Subpart E, (i.e., sections 671-679) addresses the taxation of grantor trusts and supersedes the general principles of gross income and deductions applicable to trusts.¹ In general, a grantor trust is a transparent entity for income tax purposes. The grantor is treated as owning all items of trust income, deductions, and credit directly, and not as a beneficiary of a trust taxed under the rules of Subchapter J, Subparts A-D. To the extent any portion of a trust is not treated as owned by a grantor or a third person, the trust is taxed under the rules of Subchapter J, Subparts A-D. See Treas. Reg. section 1.671-2(d).

Section 671 contains the general provisions governing the taxation of grantor trusts. Section 672 provides specific definitions and rules regarding grantor trusts. Sections 673-679 define the circumstances in which the income of the trust is taxed to the grantor. Treas. Reg. section 1.671-1(a) provides five general circumstances in which a trust is taxed as a grantor trust.

1. The grantor has retained a reversionary interest in the trust. (Section 673)
2. The grantor or nonadverse party has certain powers over the beneficial interests of the trust. (Section 674)
3. Certain administrative powers over the trust exist under which the grantor can or does benefit. (Section 675)
4. The grantor or nonadverse party has a power to revoke the trust or return the corpus to the grantor. (Section 676)
5. The grantor or nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse. (Section 677)

¹ *Helvering v. Clifford*, 309 US 331 (1940) and *Mallinckrodt v. Numan*, 146 F.2d 1(8th Cir. 1945) *aff'd* 2 T.C. 1128 (1944)

B. Income Tax Treatment

As stated in section 671, the grantor or other owner of a grantor trust must include in the determination of its tax liability all items of income, deduction and credits, to the extent the grantor is treated as the owner of the trust, as if the grantor had received the items directly. Treas. Reg. section 1.671-2(b) clarifies that the income reported by the grantor is determined by reference to the tax laws under the IRC and not in accordance with trust accounting income, which is normally determined with reference to state law.

The Service has taken the position that the grantor is treated as the owner of the assets and income (or appropriate portion) of a grantor trust. Therefore, transactions occurring between the grantor and the trust are to be ignored for tax purposes. The Service adopted this position when it issued Rev. Rul. 85-13² in opposition to a Second Circuit decision that recognized the trust as a separate tax entity, notwithstanding the grantor trust rules.³ Subsequently, the Service issued Rev. Rul. 87-61⁴ in which it allowed a taxpayer to avoid the section 1491 35 percent excise tax imposed on the appreciation in property transferred to a foreign trust based upon the rationale of Rev. Rul. 85-13. Since the grantor was treated as owning the trust, the excise tax was not imposed at the time the trust was created. However, the ruling did state that the excise tax would be assessed if the grantor renounced his trustee powers that caused the trust to be taxed as a grantor trust.

II. Reporting Requirements

A. General Rules

1. In general, a trust that has at least \$600 of gross income, any taxable income, or a nonresident alien beneficiary must file an annual income tax return (Form 1041) by the 15th day of the fourth month following the end of its taxable year.
2. The reporting requirements for grantor trusts are generally the same. However, as provided in section 671, the grantor must treat all items of income, deduction, and credits, received by a grantor trust as if received directly. Treas. Reg. section 1.671-4 provides guidance on the required income tax reporting of grantor trusts. Treas. Reg. section 1.671-4(a) states that the items reported to a grantor are not reported on Form 1041, but are reported on a separate statement attached to Form 1041.

² 1985-1 C.B. 184

³ *Rothstein v. U.S.*, 735 F.2d 704 (2d Cir. 1984)

⁴ 1987-2 C.B. 219

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3. The information at the top of page 1 of Form 1041 must be completed and the box for “Grantor type trust” checked. The items of income, deduction, and credit attributable to the portion owned by the grantor or other person are reported on a separate statement attached to Form 1041. The fiduciary is required to furnish the same information to the grantor. Schedule K-1 is not required.

B. Alternative Methods

Treas. Reg. section 1.671-4(b) provides two alternative methods for reporting all items of income, deduction and credit to the grantor of a grantor trust. However, it is assumed that the trustee will report the items of income, deduction and credit on a separate statement attached to Form 1041, as provided in Treas. Reg. section 1.671-4(a). For further discussion of the two alternative reporting requirements, see Appendix A attached to this outline.

C. Form 1041 Instructions

With respect to grantor trusts, the Form 1041 instructions explain: “[r]eport on Form 1041 only the part of the income that is taxable to the trust. Do not report on Form 1041 the income that is taxable to the grantor or another person. Instead, attach a separate sheet to report:

- The income of the trust that is taxable to the grantor or another person under sections 671 through 678;
- The name, identifying number, and address of the person(s) to whom the income is taxable; and
- Any deductions or credits applied to this income.

The income taxable to the grantor or another person under sections 671 through 678 and the deductions and credits applied to the income must be reported by that person on his or her own income tax return.”

D. Reporting Capital Gains and Losses

1. Other than examples provided in Treas. Reg. section 1.671-4(b)(2)(iv), the regulations provide no additional guidance on the reporting of capital transactions for grantor trusts. The examples are referenced in the attached Appendix A at I, C. Both examples disclose the gross proceeds and date of sale; therefore, it appears that this is the minimum required information that must be provided to the grantor if the trustee elects to report under Treas. Reg. section 1.671-4(b)(2). However, there is no specific requirements on reporting the net capital gain or loss from all

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transactions of the trust. The example in Treas. Reg. section 1.671-4(b)(2)(iv)(B) simply states "Gain from sale of B Stock." Therefore, this can be interpreted to provide for a netting of all gains and losses to be reported to the grantor, since the other information related to the stock sale in the example would allow the grantor to calculate the gain or loss without having a separate disclosure of the gain.

2. Since there is no other direct guidance on point, the Service's interpretation of the reporting of capital gains and losses to taxpayers in connection with other pass-through entities may serve as alternative guidance.
 - a. **Trusts.** For non-grantor trusts, the capital gains and losses are typically taxed to the trust and are not reported to the trust beneficiaries. However, situations do arise whereby capital gains or losses are passed out to the trust beneficiaries. Section 661 and the regulations thereunder state that the character of the amounts being passed to the beneficiaries is generally based upon the amount of each item in proportion to the total distributable net income of the trust. However, this general rule can be modified by the trust's governing instrument.

In interpreting section 661 and the corresponding regulations, the Service has provided a Schedule K-1 (Form 1041) to report each beneficiary's share of income, loss deduction or credit. The Schedule K-1 reports the net short-term capital gain separately from the net long-term capital gain.

- b. **Partnerships.** Since a partnership is not subject to tax, the taxable items of a partnership are reported to its partners. Section 702(a) states that a partner must take into account the following items in determining the partner's taxable income and tax liability.
 - (1) Gains and losses from the sales or exchanges of capital assets held for not more than 1 year.
 - (2) Gains and losses from the sales or exchanges of capital assets held for more than 1 year.
 - (3) Gains and losses from sales or exchanges of property described in section 1231.
 - (4) Charitable contributions.

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- (5) Dividends with respect to which there is a deduction under part VIII of Subchapter B.
- (6) Taxes, described in section 901, paid or accrued to foreign countries and to possessions of the US.
- (7) Other items of income, gain, loss, deduction, or credit, to the extent provided by regulations.
- (8) Taxable income or loss, exclusive of the items requiring separate computation (i.e., those stated above).

In connection with the application of section 702(a) and the regulations thereunder, the Service has provided a Schedule K-1 (Form 1065) to report each partner's share of income, loss deduction or credit. As required by sections 702(a)(1) and (2), the Schedule K-1 reports the net short-term capital gain separately from the net long-term capital gain.

- c. **S Corporations.** Section 1366(a)(1) requires the shareholder(s) of an S corporation to take a pro rata share of the corporation's items of income, including tax-exempt income, loss, deduction, or credit that would affect the tax liability of the shareholder. Additionally, section 1366(b) states that the character of any item included in the shareholder's pro rata share under section 1366(a)(1) shall be determined if such item was realized directly by the corporation, or incurred in the same manner as the corporation.

In connection with section 1366 and the regulations thereunder, the Service has provided a Schedule K-1 (Form 1120S) to report each shareholder's share of income, loss deduction or credit. The Schedule K-1 reports the net short-term capital gain separately from the net long-term capital gain.

III. Reporting Position for Capital Gain Transactions

A. Capital Gain Netting

A reporting position exists whereby the net short-term capital gain/loss and net long-term capital gain/loss can be netted at the grantor trust level. Therefore, only a net short-term gain/loss or net long-term gain/loss will be reported to the grantor. The trustee will also supply all details of the capital transactions to the grantor. However, rather than reporting the net gain or loss from short-term

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transactions separately from long-term, they will be reported to the grantor as a single gain or loss amount to be included by the grantor on his or her tax return.

Section 671 requires the trustee to report all items of income, loss and deduction to the grantor. The trustee will have met this requirement by providing all transaction details to the grantor. However, for simplicity purposes, the trustee may report a net gain or loss to the grantor for preparing its income tax return.

1. **Regulatory Authority.** The examples in Treas. Reg. section 1.671-4(b)(2)(iv) appear to allow the trustee to report the capital transactions to the donor in this manner. As stated in Example 2(ii)(B) of (b)(2)(iv), the trustee must report the "Gain from sale of B stock." Since the trustee is also providing complete cost and sales information, the determination of the capital gain would appear to be for the convenience of the grantor. Furthermore, if the trustee is required to provide the grantor with the proceeds, basis, acquisition date and date of sale for each transaction, it would appear unnecessary for the trustee to provide the grantor with a calculation of the net gain or loss from each transaction. Thus, it appears that the Service contemplated the netting of gains and losses.

In contrast, the Service has interpreted the requirement to provide the taxpayer of a pass-through entity with separate short-term and long-term gains and losses (i.e., trusts, partnership, and S corporations). However, there are distinctions that can be made with respect to grantor trusts. In connection with non-grantor trusts, section 661 and Treas. Reg. section 1.661(b)-1 state that the income distributed to the beneficiary must be of the same proportionate character as the total distributable income of the trust. For partnerships, section 702(a) specifically states that the partnership must report net short-term gains and losses separate from net long-term gains and losses. The S corporation reporting requirements are similar to those of non-grantor trusts. Section 1366(a)(1) requires the shareholder of an S corporation to take a pro rata share of the corporation's items of income, including tax-exempt income, loss, deduction, or credit. Additionally, section 1366(b) states that the character of any item included in the shareholder's pro rata share under section 1366(a)(1) shall be determined if such item were realized directly by the corporation.

With the other pass through entities, the Service has either been specifically directed or has interpreted the statute as requiring net short-term capital gains and losses be reported separate from net long-term capital gains and losses. However, since the code and regulations for these entities are not identical to Treas. Reg. section 1.671-4, and since they are not referenced therein, it is not conclusive that the trustee must report net

MTW 0228

short-term capital gains and losses separately from net long-term capital gains and losses.

2. Tax Forms and Instructions.

a. Form 1041 Instructions. As stated above, the Form 1041 instructions provide that in connection with a grantor trust, “attach a separate sheet to report:

- The income of the trust that is taxable to the grantor or another person under sections 671 through 678;
- The name, identifying number, and address of the person(s) to whom the income is taxable; and
- Any deductions or credits applied to this income.

The income taxable to the grantor or another person under sections 671 through 678 and the deductions and credits applied to the income must be reported by that person on his or her own income tax return.

The language above focuses on income “taxable” to the grantor. Taxable income under the principles of section 63(a), 165(f), and 1211(b) can be defined as including the net gain or loss from the disposition of capital assets.

b. Schedule D of Form 1040.

Line 5 of the 1997 Schedule D of Form 1040 requests net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1. Line 12 contains a similar description in connection with net long-term gain. The grantor trust attachment is essentially a substitute K-1. See the discussion under penalties that follows.

3. **Penalties.** Treas. Reg. section 1.671-4(f) provides for the assessment of penalties against the trustee for a failure to file a correct Form 1099 or a correct information statement. A trustee’s failure to provide the grantor with a correct Form 1099 or statement as provided for in Treas. Reg. section 1.671-4(b) is subject to the penalties imposed by IRC sections 6721 and 6722 and the regulations thereunder.

a. **Section 6722.** It could be argued that the penalties imposed by section 6722 should not apply to the method of reporting that is the

MTW 0229

subject of the memorandum because Treas. Reg. section 1.671-4(f) refers to the method referred to in Treas. Reg. section 1.671-4(b) and not in Treas. Reg. section 1.671-4(a). However, the separate statement to be attached to Form 1041 is likely to be considered a payee statement for purposes of section 6722. Section 6724(d)(2)(A) provides that the term payee statement means any statement required to be furnished under section 6034A. Section 6034A(a) provides that the fiduciary of any estate or trust required to file a return shall furnish to each beneficiary who receives a distribution or is allocated income a statement containing such information.

- b. Section 6722 imposes a penalty for failing to furnish correct payee statements. For each failure (i.e., failure to include all of the required information on the statement, or the inclusion of incorrect information), the payor is assessed a \$50 penalty. However, if the payor is found to have a failure that is due to an intentional disregard of the requirement to furnish a payee statement, additional penalties may be imposed.
- (1) The penalty is increased to \$100 per statement, or, if greater, 10 percent of the aggregate amount of the items required to be reported correctly, except statements required under sections 6045(b), 6041A(e), 6050H(d), 6050J(e), 6050K(b) or 6050L(c), none of which apply to grantor trusts.
 - (2) If the penalty for intentional disregard is assessed, the \$100,000 limitation under section 6722(a) will not apply, and the penalty shall not be taken into account in applying such limitation to other penalties for failing to furnish correct payee statements.
 - (3) Unless the Service was successful in arguing that the penalty for intentional disregard applied, the penalty exposure for the trustee is \$50 per grantor statement. It is unlikely that the penalty for intentional disregard would apply. Given the lack of clarity of the reporting requirements of Treas. Reg. section 1.671-4, there would not appear to be an intentional disregard of the reporting requirements. As discussed above, capital gain information will be reported on a net basis. Reporting on that basis is not inconsistent with providing information regarding income taxable to the grantor.

MTW 0230

- c. **Section 6662.** Section 6662 penalties could be assessed against the grantor if the netting of the short-term and long-term capital gains and losses by the grantor trust caused the grantor to underpay income tax. The only situation in which this would arise is when the grantor trust offsets a net long-term capital loss with a net short-term capital gain, and the grantor has other long-term capital gains outside of the grantor trust. In this situation, the grantor will have underreported the net short-term capital loss on his income tax return and overstated his net long-term capital gain. If the trustee had not netted the gains at the trust level, the long-term losses would have reduced the long-term capital gains outside the grantor trust, before reducing the short-term capital gain from within the trust. With the difference in tax rates for short-term capital gains versus long-term capital gains (see section 1), an understatement of net short-term capital gains would cause the grantor to underreport his or her tax liability.

In most situations the trust will be offsetting net short-term capital losses with net long-term capital gains. In these situations, it is possible that the grantor will overstate his tax liability, if he has other short-term capital gains outside the trust. If the short-term capital loss was not offset against the long-term capital gain by the trust, the short-term capital loss may completely eliminate any short-term capital gains outside the trust, and minimize the reduction in the long-term capital gain. Thus, the grantor may overstate the short-term capital gain, causing an overstatement of the tax liability.

- d. **Reporting to Grantor.** Given the possibility of the grantor reporting an incorrect tax liability as a result of the trustee's netting of short-term and long-term capital gains and losses, the information should be separately provided to the grantor. It is recommended that all of the transactions be reported to the grantor, as a supplement to the grantor trust letter, for the grantor to have the information to calculate the correct tax liability.

B. Individual Return Preparation.

Although not intended to be the focus of this paper, a logical question will arise after the completion of the grantor trust tax return regarding the filing of the grantor's individual income tax return. Of particular concern is the treatment of the net capital gain or loss when there are other net short-term capital gains outside of the grantor trust. There appears to be two alternatives to handle these situations.

MTW 0231

1. The taxpayer should be alerted to the possible incorrect reporting of the income tax liability. If the taxpayer so directs, we could prepare the return with the net long-term capital gain as reported from the grantor trust combined with the short-term capital gains from outside the trust. Although the tax liability would be incorrectly stated, the taxpayer would be overpaying the income tax liability and, therefore, not be subject to the section 6662 penalties which are assessed for an underpayment of tax liability. KPMG would still be able to sign the return, even though the tax liability is overstated. This is similar to the taxpayer instructing us to ignore certain legitimate deductions (i.e., the charitable deduction from an Investment Diversification Vehicle, unreimbursed business expenses, etc.) based on the taxpayer's desire not to call attention to certain transactions or those which are frequently questioned by the IRS.
2. In cases where the netting of grantor trust transactions with transactions outside the grantor trust, the grantor should be provided with all of the detail of the capital transactions with the grantor trust letter. With this information, the preparer could report capital gains and losses on the individual return to correctly calculate the tax liability.

IV. Conclusion

In connection with the information reporting of a grantor trust, net short-term capital losses may be netted with net long-term capital gains on the information statement provided by the trustee to the grantor. The avoidance of penalties is further enhanced if the grantor is also the trustee or co-trustee of the trust. The following is the suggested reporting for selected grantor trusts.

- A. The trustee will file under Treas. Reg. section 1.671-4(a).
- B. The net short-term capital gains and losses will be netted with the net long-term capital gains and losses to report one net gain or loss (short-term or long-term) to the grantor.
- C. The copy of the 1041 filed with the IRS will not contain a detailed statement of the capital transactions and will have the following notation on page one of Form 1041.

"Pursuant to Treas. Reg. Sec. 1.671-4(a), items of income, deduction, and credit attributable to a grantor trust under IRC Secs. 671-678 are reported on the attached separate statement."
- D. The information statement provided to the grantor will report one net gain or loss (short-term or long-term) to the grantor.

MTW 0232

- E. The transaction detail should be provided on the transmittal letter or on a separate attachment referenced on the transmittal letter to the grantor. A statement should be included in the transmittal letter similar to the following:

"If you have other capital transactions outside of this trust, the additional information provided in [this letter] [Attachment B] may be required to correctly calculate your income tax liability."

MTW 0233

APPENDIX A

- I. Treas. Reg. section 1.671-4(b)(2)(i) provides two alternative methods of reporting for a grantor trust which is treated as owned by a single grantor.
- A. The trustee can "furnish the name and taxpayer identification number (TIN) of the grantor or other person as the owner of the trust, and the address of the trust, to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii)." (Treas. Reg. section 1.671-4(b)(2)(i)(A))
1. Treas. Reg. section 1.671-4(b)(2)(ii)(A) imposes additional obligations on the trustee when the name and TIN of the grantor and address of the trust are furnished to payors. The statement provided to the grantor must include the following.
 - a. Shows all items of income, deduction, and credit of the trust for the taxable year.
 - b. Identifies the payor of each item of income.
 - c. Provides the grantor with the information necessary to take the items into account in computing the grantor's taxable income.
 - d. Informs the grantor that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor.
 2. If the trustee chooses the option under Treas. Reg. section 1.671-4(b)(2)(i)(A), the trustee is not required to file any type of return with the IRS. (Treas. Reg. section 1.671-4(b)(2)(ii)(B))
- B. The trustee can "furnish the name, TIN and address of the trust to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(iii)." (Treas. Reg. section 1.671-4(b)(2)(i)(B))
1. Treas. Reg. section 1.671-4(b)(2)(iii)(A) imposes an additional obligation on the trustee to file the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year and showing the trust as the payor and the grantor as the payee.
 - a. Under this alternative, the trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type

MTW 0234

- of income in the aggregate, and each item of gross proceeds separately.
- b. Treas. Reg. section 1.671-4(b)(5) states that the information reporting requirements only include those amounts that would otherwise be reported to the trustee on Form 1099. Thus, any items of income that would be reported from partnership, S corporation or trust Schedules K-1 are not included in the information reporting requirements of this regulation.
2. Treas. Reg. section 1.671-4(b)(2)(iii)(B) defines the reporting obligations of the trustee when the name and TIN of the grantor and address of the trust are furnished to payors. The statement provided to the grantor must include the following.
- a. Shows all items of income, deduction and credit of the trust for the taxable year.
 - b. Provides the grantor with the information necessary to take the items into account in computing the grantor's taxable income.
 - c. Informs the grantor that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor's income tax return.
- C. Treas. Reg. section 1.671-4(b) provides examples on the alternative reporting methods outlined in Treas. Reg. section 1.671-4(b)(2)(ii)(A) and Treas. Reg. section 1.671-4(b)(2)(ii)(B).
- 1. Treas. Reg. section 1.671-4(b)(2)(iv) provides two examples of the reporting requirements for a trust electing to report under section Treas. Reg. section 1.671-4(b)(2)(ii)(B). In Example 2, the trustee reports the items of interest, dividends and gain from the sale of stock. In reporting the gain from the sale of stock, the example lists the information provided with relation to the sale of stock to include the proceeds, basis, acquisition date, and the date the stock was sold. If the trustee did not acquire the stock sold nor has the basis and acquisition date, the regulations provide an alternative reporting method. Under the alternative method, the trustee does not report the gain from the sale of stock, the basis, nor the acquisition date. However, the trustee must still report the gross proceeds and the date of sale.

MTW 0235

2. Treas. Reg. section 1.671-4(b)(5)(ii) provides an example of the Form 1099 filing requirements of the trustee. This example is limited to the reporting requirements related to the Forms 1099 and does not provide any further examples of the reporting requirements regarding capital gains and losses.
- II. The instructions for Form 1041 mirror the requirements of Treas. Reg. section 1.671-4(b)(2). Although the instructions do not carry the weight of law under the IRC or Treasury Regulations, the instructions reflect the Service's interpretation of the IRC and the regulations. The 1041 instructions list two alternative methods for reporting information related to a grantor trust for trusts with only one grantor.
- A. **Method 1.** The trustee must give the payors of all income during the year the name and TIN of the grantor and the address of the trust. However, this method may only be used if the grantor provides the trustee with a completed and signed Form W-9, Request for Taxpayer Identification Number. Additionally, the trustee is required to provide the grantor a statement with the following information, unless the grantor is the trustee or co-trustee of the trust.
1. Shows all items of income, deduction and credit of the trust.
 2. Identifies the payor of each item of income.
 3. Explains how the grantor takes those items into account when figuring the grantor's taxable income or income tax liability.
 4. Informs the grantor or other person treated as the owner of the trust that those items must be included when figuring taxable income and credits on his or her income tax return.
- B. **Method 2.** The trustee must give the payors of all income during the year the name, TIN, and address of the trust. The trustee must also file the appropriate Forms 1099 to report the income and gross proceeds paid to the trust during the tax year, and the Forms 1099 will show the trust as the payor and the grantor as the payee. The trustee is also required to report each type of income in the aggregate and each item of gross proceeds separately. Additionally, unless the grantor is the trustee or co-trustee of the trust, the trustee must provide the grantor with a statement with the following information, which also can satisfy the requirement to provide the grantor with copies of the Forms 1099 filed by the trustee.
1. Shows all items of income, deduction and credit of the trust.
 2. Explains how the grantor takes those items into account when figuring the grantor's taxable income or income tax liability.

MTW 0236

3. Informs the grantor or other person treated as the owner of the trust that those items must be included when figuring taxable income and credits on his or her income tax return.
- III. Treas. Reg. section 1.671-4(b)(6) lists the six types of trusts that are not allowed to use the reporting methods of Treas. Reg. section 1.671-4(b).
- A. A common trust fund described in section 584(a).
 - B. A trust that has its situs or any of its assets located outside the U.S.
 - C. A trust that is a qualified subchapter S trust under section 1361(d)(3).
 - D. A trust with a grantor whose taxable year is a fiscal year.
 - E. A trust with a grantor who is not a U.S. person.
 - F. A trust which has two or more grantors, one of whom is not a U.S. person.

MTW 0237

2362

Unknown

From: Collins, Erin M
Sent: Thursday, December 27, 2001 8:50 PM
To: Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: FTB/IRS exams

The FTB has agreed to suspend any state audits if we notify them of which taxpayer is also under IRS examination. If you have a client under exam with both the fed & state let me know and we will pass that information along. I would assume you might want to discuss this with your client first. But the FTB is pushing us for a list to suspend cases ASAP.

We need to provide the FTB with the clients name, FTB auditor name and a copy of some IRS IDR or other document (restricted consent) that shows the IRS has spotted the issue (flips/opis/blips) and they will suspend the state case until the final conclusion of the IRS exam.

Dale - inquiring minds would like to know if you have an engagement letter prepared for the Hochman firm? If so, can you share?

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Permanent Subcommittee on Investigations
EXHIBIT #9811

KPMG 0027982

From: </O=KPMG/OU=US/CN=RECIPIENTS/CN=58930>
To: </O=KPMG/OU=US/CN=RECIPIENTS/CN=20499>
Sent: Saturday, January 12, 2002 12:00 AM
Subject: 2002-97

Tomorrow is the deadline for opting in with respect to the 2002-97 IRS initiative. The IRS will follow the timely mailing/filing rule of IRC section 7502. If your clients want to participate they need to send in the letter on or before tomorrow. We cannot make recommendation to clients regarding participation. anyone who is sending opt in letters should send them in a manner in which it can be tracked (FedEx, certified mail). I've attached a sample letter. Call me with any questions.

Joseph DePew
Tax Controversy Services
jdepew@kpmg.com
tel 404-614-8757
fax 404-222-7633
kpmg

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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KPMG 0026400

Permanent Subcommittee on Investigations
EXHIBIT #98mm

5/6/2003

ANNOUNCEMENT 2002-2 CLIENT LETTER (VERSION #1 —GENERAL PUBLIC)

DRAFT: Monday, January 28, 2002

Dear Client:

We are writing to inform you of a new IRS Announcement aimed at encouraging taxpayers to disclose tax shelters and other questionable items reported on their tax returns. The IRS is offering a limited window of opportunity during which taxpayers may voluntarily disclose certain transactions to the IRS and avoid the application of certain components of the section 6662 accuracy-related penalty. We recommend that you consider whether you can or should take advantage of this opportunity.

Announcement 2002-2 allows taxpayers the opportunity to avoid liability for the following components of the section 6662 penalty: (1) negligence or disregard of rules or regulations; (2) substantial understatement of income tax; (3) substantial or gross valuation misstatement (except for any portion of an underpayment attributable to a net section 482 transfer price adjustment, unless the documentation rules are satisfied); and (4) substantial overstatement of pension liabilities.

Disclosure under this initiative does not affect whether the IRS will impose any civil penalties other than the (4) components of the accuracy-related penalty listed above or pursue any potential criminal violations. Importantly, the Announcement states that a taxpayer's disclosure of an item creates no inference that the taxpayer's tax treatment of the item was improper or that the accuracy-related penalty would apply if there were an underpayment of tax. The Announcement also notes that taxpayers that do not disclose under this initiative are not prevented from demonstrating that they qualify for the reasonable cause exception to the accuracy-related penalty.

You have until the earlier of (1) April 23, 2002, or (2) the date the item or another item arising from the same transaction is raised during an examination (defined in the Announcement) to make the disclosure required by the Announcement.

In general, a 20 percent penalty may be imposed against a taxpayer for an underpayment of tax due to the above components of section 6662. In the case of a gross valuation misstatement, section 6662(h) allows the imposition of a 40 percent penalty. Section 6664 generally allows a taxpayer to avoid the accuracy-related penalty by a showing of reasonable cause and good faith.

In conjunction with the Announcement, on December 20, 2001, the IRS issued internal guidelines that require examiners to consider the section 6662 accuracy-related penalty for any underpayment attributable to a taxpayer's participation in a "listed transaction" — i.e., one that has been identified by the IRS as having

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KPMG 0033432

Permanent Subcommittee on Investigations

EXHIBIT #98nn

significant tax avoidance potential — or “other potentially abusive tax shelters” as described in the guidelines. (The current “listed transactions” are contained in Notice 2001-51, 2001-34 I.R.B. 190.)

Depending on your particular facts, including the likelihood of prevailing on the underlying merits and the likelihood of establishing reasonable cause and good faith, the disclosure initiative may be beneficial to (1) avoid any potential imposition of the accuracy-related penalty; (2) avoid the expenses and resources potentially associated with contesting an imposition of the penalty; and (3) put yourself in a better settlement and/or litigation position as to the tax issues involved in the transaction.

It is likely, however, that the IRS will require substantial documentation of the transaction — including opinion letters and other potentially confidential communications — before they will waive any penalty under the disclosure initiative. Therefore, it is important that you discuss your particular situation with a tax advisor. If you decide that you would like to engage KPMG to assist you analyzing whether to disclose any tax return items pursuant to the Announcement, we may request that you agree to a waiver of any potential conflict of interest.

Because of the time limit imposed by the Announcement, we recommend that you not delay in determining whether to take advantage of this initiative.

Sincerely,

KPMG LLP

Attachments: Announcement 2002-2
Internal IRS guidelines

2366

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=27962
Subject: amnesty format
Sent: 2002-01-29 20:18:42.241
Date: 2002-01-29 20:18:42.241
X-Folder: Sent Items

fyi

-----Original Message-----

From: Paule, Robin M
Sent: Tuesday, January 29, 2002 3:17 PM
To: Eischeid, Jeffrey A
Subject: amnesty format

Jeff:

Do you have a format for the amnesty filing? I have a few clients who would like to file.

Interestingly enough, my clients decided to call Quadra to see if they had given the IRS their names. Quadra was very helpful and told them that they had, indeed, given the IRS their names. Seems like a no brainer in that situation.

Thanks.

Robin

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KPMG 0025745

Permanent Subcommittee on Investigations

EXHIBIT #9800

2367

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=19228
Subject: Amnesty
Sent: 2002-03-18 21:43:58.161
Date: 2002-03-18 21:43:58.161
X-Folder: Sent Items

Me neither.

-----Original Message-----
From: Hasting, Carl D
Sent: Monday, March 18, 2002 4:20 PM
To: Eischeid, Jeffrey A
Subject: Amnesty

I don't know who they are "surveying" regarding number of amnesty filings - but I have a ton. I have clients who have disclosed OPIS, BLIPS and Short Option deals. Others are considering the Presidio T-Bond deal - but I don't know which way that one will go.

Carl

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KPMG 0025746

2368

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=13922
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=13922
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Announcement 2002-97
Sent: 2002-11-04 13:15:01.177
Date: 2002-11-04 13:15:02.571
X-Folder: OPIS

Ken,

Is someone from TCS (perhaps Joe Depew) going to draft the letter required under Announcement 2002-97 (the one indicating that the taxpayer wishes to participate in the settlement initiative) so that we use the same format for all KPMG clients? If so, when will this be done? I am asking now so we avoid a scramble around December 3rd. The preparation of this letter for specific clients assumes that we appropriately address the conflict issue with the applicable clients. Thanks for your help.

Richard J. Bloom
Senior Manager - Personal Financial Planning
KPMG LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
Telephone: 973-912-6470
Fax: 973-912-6168
e-mail: rbloom@kpmg.com

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KPMG 0025747

2369

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=58930
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=58930
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Announcement 2002-97
Sent: 2002-11-12 18:30:28.305
Date: 2002-11-12 18:30:29.202
X-Folder: OPIS
X-Attachments: Attachments\2002-97-participate.DOC

Guys,

Attached is a copy of the form that I intend on using to transmit to the IRS that a taxpayer would like to participate in the 2002-97 settlement. This is similar to the letter Sutherland Asbill is using. Does anyone have any objections to this? I have a taxpayer who wants this letter today.

Joseph DePew
Tax Controversy Services
jdepew@kpmg.com
tel 404-614-8757
fax 404-222-7633
kpmg

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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KPMG 0025748

2370

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Announcement 2002-97
Sent: 2002-10-07 17:00:15.274
Date: 2002-10-07 17:00:15.430
X-Folder: OPIS

Stay tuned for more information. The Announcement arguably raises more questions than it answers. We are attempting to obtain clarification from the government. As KPMG's position and "recommendations" mature, we'll keep you posted. In the meantime, we need to be contacting our FLIP/OPIS clients to let them know the "offer" is on the table - even though we can't tell them precisely what the offer is. If you have specific interpretative questions, please direct them to the TCS professional assisting you with a copy to Joe DePew. If I can help you in any way, let me know.

Jeff

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KPMG 0025749

2371

Unknown

From: Reilly, William A
Sent: Thursday, January 31, 2002 10:17 AM
To: Schwieger, Denise J
Subject: FW: Stratecon Revenue by Client URGENT ATTENTION

Denise,

Please fill out (or have someone) the four columns (on the right side, e.g., strategy, level of opinion, etc) on Stratecon rev. by client file below. If they are missing any of the TEMPEST or OHTELLO engagements please insert them. Thanks.

-----Original Message-----

From: Duer, Walter M
Sent: Wednesday, January 30, 2002 6:41 PM
To: Springer, Mark A; US-Stratecon MA Partners; US-Stratecon MW Partners; US-Stratecon NE Partners; US-Stratecon SE Partners; US-Stratecon SW Partners; US-Stratecon W Partners; Affonso, Dale A
Subject: FW: Stratecon Revenue by Client URGENT ATTENTION

Ladies and Gents:

As you are aware there exist a "Listing" requirement for "tax shelter" transactions albeit with exceptions. Each of you is required to fill out an EIF form on each transaction. Attention to this requirement is spotty and cannot be tolerated any longer..

Attached is a workbook on all Stratecon clients with fees over \$100k. for fiscal 2000 (includes 2/28/2000..the effective date), for fiscal 20001, for the STUB Period, and YTD fiscal 2002. Each you must review these lists immediately and indicate the Strategy, Level of Opinion, Completed Post 2/28/2000, and Partner. I need this tomorrow A.M...no exceptions...jump on this...I've also included the OMS Report which while not 100% accurate should be helpfull



STRATECON OMS
1-25-02.XLS (315...

]]

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Permanent Subcommittee on Investigations
EXHIBIT #98pp

KPMG 0023976

2372

DRAFT - BLIPS

February , 2002

[Addressee]

Dear _____:

As you know, the Internal Revenue Service recently announced that it generally would waive potential accuracy-related penalties for certain disclosed items, and we recommended that you take advantage of any opportunity afforded to you by this initiative. We are under examination with respect to our obligation to register and maintain lists on tax shelters, and we expect that the IRS will require us to furnish it with a list of clients that participated in transactions that the government may consider substantially similar to the transactions described in Notice 2000-44, 2000-2 C.B. 255. Accordingly, we continue to believe that, absent special circumstances, you should make a prompt disclosure in accordance with the IRS Announcement.

If you would like us to assist you in preparing the disclosure statement to request amnesty under the initiative, please execute the enclosed copy of the engagement letter and return it to me as soon as possible. As KPMG may have a potential conflict of interest in this matter in view of our prior advice on the transaction, the engagement letter includes a conflict waiver and you may wish to have an outside advisor review the letter before signing.

As a reminder, to qualify for amnesty, the disclosure must be made before the earlier of (a) the date the item or another item arising from the same transaction is an issue raised during an examination, or (b) April 23, 2002.

Sincerely,

[Name]
Partner
KPMG LLP

Enclosures

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KPMG 0033901

Permanent Subcommittee on Investigations
EXHIBIT #98qq

Unknown

From: Smith, Richard H (US/WEST AMP)
Sent: Tuesday, February 05, 2002 8:59 PM
To: Baumann, Dale R; Ito, Dennis A; Hasting, Carl D; Mccrimlisk, George H; Paule, Robin M; Affonso, Dale A; Rivkin, David; Collins, Erin M
Cc: Powell, Holli L
Subject: Amnesty letters

Dale, Dennis, Carl, George, Robin, Dale, David and Erin,

We are scheduling a conference call for tomorrow afternoon at 3pm PST to discuss our approach with certain clients who participated in FLIPs and OPIS transactions. Holli will forward a call-in number to you for this call.

Later this evening you will receive a message that I am sending on behalf of Mark Ely and David Brockway with five attached documents. Please read those documents prior to the call.

We will also discuss billing matters related to representing these clients on matters before the IRS and other tax authorities.

Thanks,

Richard

KPMG, LLP
Western Area Managing Partner – Tax
Phone: (650) 404-4652
rhsmith@kpmg.com

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Permanent Subcommittee on Investigations
EXHIBIT #98rr

KPMG 0027975

Unknown

From: Smith, Richard H (US/WEST AMP)
Sent: Thursday, February 07, 2002 12:06 PM
To: Paule, Robin M; Collins, Erin M; Mccrimlisk, George H; Hasting, Carl D; Baumann, Dale R; Affonso, Dale A; Rivkin, David; Ito, Dennis A
Subject: Amnesty discussions

Robin, Erin, George, Carl, Dale, David, Dennis, and Dale,

Thanks for taking the time to talk about the important matters at hand. I appreciate the effort and the zeal with which you are approaching this daunting task.

We need to make calls to affected clients regarding OPIS/FLIP transactions as soon as possible, but no later than Friday of this week.

Our priorities for making the calls to clients are as follows:

- clients for which no IRS exam is underway or clients who are under an IRS exam where the OPIS/FLIPs issue has not been raised
- clients for whom we expect the statute of limitations has expired
- clients who under IRS exam where OPIS/FLIPs is an issue in the exam (these should be completed by Monday)

In those calls we must cover the following:

1. We are following up to the letter Jeff Eischeid sent a few weeks ago. Pursuant to an IRS Summons, we are now required to list their names and provide this list to the IRS next Tuesday, February 12th. As a result, we strongly recommend that they disclose the transaction in accordance with IRS Announcement 2002-2, as discussed in the letter sent by Jeff. This Announcement encourages taxpayers to disclose questionable items reported on their tax returns. This needs to be done by Feb. 12th since it is likely the IRS will audit them when they receive the list from us. The advantage to disclosing is avoid potential penalties of up to 40% of the tax due and the added professional expenses and time in contesting the penalty (this could be substantial). This would also put the client in a better settlement position. Disclosure creates no inference that the item was improper. KPMG stands by our "more likely than not" opinion.
2. If they want our assistance with disclosure, we estimate our fees will range from \$1,500 to \$3,500 depending on the time involved in assembling the information for the disclosure and discussions with them to review. We will provide them an engagement letter to sign. We will also require them to sign a consent and waiver of any potential conflict on the part of KPMG in providing this service. The conflict exists because we have been issued an IRS Summons to disclose their name.
3. We recommend the client consider consulting his attorney or another adviser concerning whether to follow our recommendation and to make the disclosure provided in the Announcement. He and his attorney should also independently conclude that they are comfortable that KPMG can assist in preparing the disclosure, notwithstanding the potential conflict.

This is a summary, the script below controls the discussion if you see any discrepancies from what I stated above. This document should only be distributed to partners making the calls. **The client partner and Erin Collins should be on the call. I am also available to participate.** Holli Powell has my calendar and her number is [REDACTED]. Where neither Erin nor I are available for the call, please be sure to have another partner on the call with you. I will also send you a summary of potential questions and responses. Where the individual is a key relationship to an audit client, you should contact the audit partner after the call with the client and bring him/her up to date. We must document our discussions.

Although we do not believe we are required to disclose other transactions, Jeff Eischeid has recently sent a similar letter to other PPP affected individuals to advise them of the IRS Announcement. You will likely hear from these clients.

Billing:

Unless you have email approval from me, all representation of these clients must be pursuant to an engagement letter at 100% of standard. This does not mean that all (or for that matter any) of our engagements will be at 100% of standard. It means that we need to talk about billing and make a sound judgment together. If we have an existing engagement letter which caps or otherwise provides for fees at less than 100% of standard, I want to see the letter. These matters are

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KPMG 0027972

Permanent Subcommittee on Investigations
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2375

extremely important for risk and practice management purposes. I appreciate in advance, your willingness to work with me on a client by client basis to get to a good balanced answer.

Q&A talking points:

Sample questions and answers are attached below. To the extent that you have a discussion with a client who asks questions that are not in the talking points, please share those with this group along with your answer.

Threats of litigation:

Any implicit, explicit, veiled etc. threats of litigation must be reported to Erin and me immediately.

Attachments:



Talking Points.doc (34 KB)



Transmittal.doc (19 KB)



Engagement-Waiver.doc (32 KB)

List of Clients:

Hollie will distribute to each of you later today the list of clients from which I am working. Please let her know any corrections you have for that list. Separately we will distribute the list of clients that we have for the BLIPs transactions. It makes sense to get that in order as well.

Thanks,

Richard

KPMG, LLP

Western Area Managing Partner – Tax

Phone: (650) [REDACTED]

rsmith@kpmg.com

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Washington National Tax
TIDBITS

Internal Use Only - Not for Distribution or Circulation Outside the Firm

February 21, 2002

No. 02-03

**LIMITED OPPORTUNITY FOR PENALTY WAIVER:
IRS ANNOUNCEMENT 2002-2**

The IRS has issued an Announcement aimed at encouraging taxpayers to disclose tax shelters and other items that might be subject to challenge by the IRS on their tax return. The IRS is offering a limited window of opportunity during which taxpayers may voluntarily disclose certain transactions to the IRS and avoid the application of portions of the section 6662 accuracy-related penalty.

**A MANDATORY CONFERENCE CALL FOR TAX PARTNERS AND TAX
MANAGING DIRECTORS ON THIS TOPIC IS SCHEDULED FOR WEDNESDAY,
FEBRUARY 27, FROM 5:30-6:30 EST. CALL-IN INFORMATION IS:**

DOMESTIC Dial-In Information
888-989-4492 Passcode #22702

INTERNATIONAL Dial-In Information
712-271-0731 Passcode #22702



Weekly Tax
Solutions Conference

Add this appointment to your calendar!

For your convenience, you may drag and drop the attached appointment to the calendar icon on your Outlook shortcuts toolbar. This will automatically add the appointment to your Outlook calendar and send a reminder message to you 15 minutes before the call.

Announcement 2002-2

On December 21, 2001, the IRS announced in Announcement 2002-2 that it will waive the section 6662(b)(1), (2), (3), and (4) portions of the accuracy-related penalty on underpayments

Permanent Subcommittee on Investigations

EXHIBIT #98tt

XX-002116

attributable to certain tax shelter and other items if a taxpayer discloses to the IRS the tax treatment of those items. For this waiver to apply, a taxpayer must make the disclosure before the earlier of: (i) the date the item or another item arising from the same transaction is raised during an examination; or (ii) April 23, 2002.

The penalty waiver applies only to the specified portions of the accuracy-related penalty under section 6662(b): (1) negligence or disregard of rules or regulations; (2) substantial understatement of income tax; (3) substantial or gross valuation misstatement (except for any portion of an underpayment attributable to a net section 482 transfer price adjustment, unless the documentation rules are satisfied); (4) and substantial overstatement of pension liabilities. Disclosure under this initiative does not affect whether the IRS will impose any other civil penalties or pursue any potential criminal violations.

To make a disclosure described by this Announcement, a taxpayer must provide the IRS with the following information:

- A statement describing the material facts of the item
- A statement describing the tax treatment of the item
- The taxable years affected by the item
- The names and address of promoters, solicitors, or persons who recommended the taxpayer's participation and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate, and any of those persons' advisors, if known
- A penalty of perjury statement
- A statement agreeing to provide (if requested) copies of:
 - All transactional documents and, if the taxpayer's participation was promoted, solicited or recommended by any other party, all material received from that other party or its advisor(s);
 - All internal documents used by the taxpayer in its decision making, including, if applicable, information presented to the taxpayer's board of directors; and
 - All opinions and legal analyses of the item, whether prepared by the taxpayer or a tax professional on the taxpayer's behalf.

In addition, a Coordinated Issue Case (CIC) taxpayer must agree to address the disclosed item under the Accelerated Issue Resolution process, if requested by the IRS.

CIC taxpayers are to submit this information to the assigned team manager, with a copy to the Office of Tax Shelter Analysis (OTSA). Non-CIC taxpayers under examination as of December 21, 2001, are to submit this information to the examiner, with a copy to the OTSA. Non-CIC taxpayers not under examination as of December 21, 2001, are to submit this information to the OTSA.

The disclosure initiative does not apply to:

XX-002117

- A taxpayer involved in a transaction that did not occur, but for which the taxpayer claimed a tax benefit
- The fraudulent concealment of the amount or source of any item of gross income
- The concealment of the taxpayer's interest in, or signature or other authority over, a financial account in a foreign country
- The concealment of a distribution from, a transfer of assets to, or that the taxpayer was a grantor of, a foreign trust or
- The treatment of personal, household, or living expenses as deductible business expenses.

According to the IRS Announcement, a taxpayer's disclosure of an item creates no inference that the taxpayer's tax treatment of the item was improper or that the accuracy-related penalty would apply if there were no underpayment of tax. The Announcement also notes that taxpayers that do not disclose under this initiative are not prevented from demonstrating that they qualify for the reasonable cause exception to the accuracy-related penalty.

Sample Letter

Attached to this Tidbits is an informational letter (*filename: ANNOUNCEMENT2002-GENPUB21.doc*) that will be sent to clients through a centralized mailing. A list of clients to whom the letter is being sent will be provided to all Tax Partners and Tax Managing Directors shortly. **THIS LETTER SHOULD NOT BE SENT BY ANY KPMG PERSONNEL TO ANY CLIENT WITHOUT TAX PARTNER APPROVAL.**

Client Considerations

Clients may contact you after receiving the letter concerning the limited opportunity for penalty waiver provided for in Announcement 2002-2. You should also consider contacting key clients to alert them to the forthcoming letter.

It is firm policy not to advise the client on whether to make the disclosure in accordance with the Announcement. It is important that your clients are aware that this is their decision, not KPMG's. You may assist them by discussing with them the various factors that may go into their decision, but the ultimate decision will be the client's.

In helping your client determine whether to disclose in accordance with the Announcement, we recommend that numerous factors be considered by the client, including: (1) whether the transaction is a "listed transaction or substantially similar;" (2) the economics of the transaction; (3) the extent to which the particular solution is being or has been marketed; (4) the expiration of the applicable statute of limitation for any affected year; (5) the opinion level for the particular transaction; (6) the likelihood of satisfying the reasonable cause and good faith exception to the accuracy-related penalty; and (7) possible disclosure of the transaction by other participants. In addition, your client should also consider that the IRS will likely request the client to produce documents and communications that may be confidential or privileged in order to make an effective disclosure under the Announcement.

Note: Before discussing with a client the matters the client should consider in connection with the Announcement, you should obtain a signed engagement letter and conflict waiver. Sample engagement letters and conflict waivers are attached.

Attachments

We have attached the following documents for your convenience:

- Announcement 2002-2 (*filename: A2002-2 LMSB PenaltyWaiver (12-20-01)1.doc*)
- An article written by Mark Ely and published by TEI in *The Tax Executive* explaining the details of the Announcement (*filename: ElyArticle.pdf*)
- The sample informational letter described above (*filename: ANNOUNCEMENT 2002-GENPUB21.doc*)
- A sample engagement letter and conflict waiver to be used if KPMG was the advisor on the transaction (*filename: Engagement-Waiver.doc*)
- A sample engagement letter and conflict waiver to be used if KPMG was not the advisor on the transaction (*filename: Engagement-WaiverGen.doc*)
- The standard terms of engagement as an attachment to the engagement letter (*filename: tac.doc*)
- A disclosure statement template to be used if KPMG was the advisor on the transaction (*filename: DISCLOS=STATE-I.doc*)
- A disclosure statement template to be used if KPMG was not the advisor on the transaction (*filename: DISCLOSSTATE-no kpmg.doc*)
- A cover letter to the IRS for transmittal with the disclosure statement (*filename: COVERLETTER-DISCL.doc*)

In addition, all of these materials are posted on the DPP-Tax Homepage at http://taxkm.us.kworld.kpmg.com/homepages/dpp/content/Reference/penalty_waiver.htm.

Any assistance you give to your clients regarding this disclosure initiative should be coordinated with KPMG's Tax Controversy Services professionals in your local area or in Washington National Tax.

* * * * *

Questions concerning Announcement 2002-2 should be directed to the following Tax Controversy Services or Department of Professional Practice professionals:

- **Northeast:** Sharon Katz-Pearlman, Paul Schneiderman, and Miri Forster (New York), and David Click (Boston).
- **Midatlantic:** Patti Burquest and Ken Jones (Washington, D.C.).
- **Midwest:** Bob Aland and Mark Heroux (Chicago).

XX-002119

- **Southeast:** Sheldon Kay, Robert Patterson, and Joseph DePew (Atlanta), Paul Topolka (Greensboro), and Bernie McCarthy (Miami).
- **Southwest:** Victoria Sherlock (Houston) and Carla Howard (Dallas).
- **West:** Erin Collins (Los Angeles), William Quealy (San Diego and Phoenix), Wendy Abkin (San Francisco), and Paul Robeck (Portland).
- **Washington National Tax:** Mark Ely, Mike Dolan, Steve Friedman, Nancy Galib, Harve Lewis, Norlyn Miller, and Deborah Swann.
- **Department of Professional Practice:** Eve Elgin or Larry DeLap.

Message0299	
Subject:	FW: Amnesty and BLIPS
From:	Collins, Erin M
Date:	2/21/2002 6:22:02 PM
To:	Baumann, Dale R
.Message Body	
<p>-----Original Message----- From: Ely, Mark H Sent: Thursday, February 21, 2002 2:51 PM To: Affonso, Dale A Cc: Collins, Erin M; Smith, Richard A Subject: RE: Amnesty and BLIPS</p> <p>Don't think it will work for a number of reasons -- will call you later evening at the number below -- if better number, e mail it to me. Going to TEI meeting now. Thanks,</p> <p>-----Original Message----- From: Affonso, Dale A Sent: Thursday, February 21, 2002 3:40 PM To: Ely, Mark H Cc: Collins, Erin M; Smith, Richard A Subject: Amnesty and BLIPS</p> <p>Mark, Richard Smith suggested that I have you consider the following scenario raised in a meeting with a client that is in BLIPS. They understand that their names have not been put in a list to the IRS yet, but that there is a strong likelihood that day may come, and it may come after 4/22/02. It is also at least theoretically possible that their names may not be listed at some time in the future.</p> <p>In lieu of filing for Amnesty by 4/22/02 (which they believe is a guaranteed audit), they are proposing that they prepare amended returns for the purpose of disclosure of the BLIPS strategy. They are hoping of course that their names are not listed and turned over but if after 4/22 their names are turned over to the IRS, they believe they can file an amended return with adequate disclosure of the BLIPS and that that should protect them from penalty as much as or almost as much as an amnesty filing. If this is the case, it could give them, and maybe other of our taxpayers that are in other aggressive strategies another method of dealing with the penalties after 4/22/02 (i.e. if they are notified by us or someone else that we they are turning in their names) by getting a similar result as amnesty but without "turning themselves in" by 4/22/02. They would wait until they find out if the summons or other power is going to get their names.</p> <p>Please let me know ASAP. If this works, I am certain other clients would at least consider this in lieu of Amnesty.</p> <p>Dale A. Affonso Partner in Charge of Tax Services Los Angeles & Pacific Southwest KPMG LLP 355 South Grand Avenue, Suite 2000 Los Angeles, CA 90071 Phone: (213) 955-8790 Fax: (213) 630-8036</p> <p style="text-align: right;">KPMG 0050608</p> <p style="text-align: center;">Proprietary Material Confidentiality Requested</p>	

E-mail daffonso@kpmg.com

Outlook Header Information

Conversation Topic: Amnesty and BLIPS
Subject: FW: Amnesty and BLIPS
From: Collins, Erin M
Sender Name: Collins, Erin M
To: Baumann, Dale R
Received By: Baumann, Dale R
Delivery Time: 2/21/2002 6:22:02 PM
Creation Time: 2/21/2002 6:21:53 PM
Modification Time: 2/21/2002 6:22:02 PM
Submit Time: 2/21/2002 6:22:01 PM
Importance: 2/1
Priority: 2/0
Sensitivity: 2/0
Flags: 2/1
Size: 2/6207

2383

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=19228
Subject: Amnesty
Sent: 2002-03-18 21:43:58.161
Date: 2002-03-18 21:43:58.161
X-Folder: Sent Items

Me neither.

-----Original Message-----
From: Hasting, Carl D
Sent: Monday, March 18, 2002 4:20 PM
To: Eischeid, Jeffrey A
Subject: Amnesty

I don't know who they are "surveying" regarding number of amnesty filings - but I have a ton. I have clients who have disclosed OPIS, BLIPS and Short Option deals. Others are considering the Presidio T-Bond deal - but I don't know which way that one will go.

Carl

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KPMG 0025746

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Memorandum of Oral Advice

On _____, my partner _____ and I discussed certain matters with _____. We told him that KPMG LLP (KPMG) is under examination by the IRS for its alleged failure to register certain individual strategies as a tax shelter and for other penalties. We also said that in light of this examination, the firm has a potential conflict of interest that may in the future affect our ability to continue to provide certain services to him in matters relating to certain other transactions. We said that if we are asked to provide certain services in the future, such as representing the client in the event of an IRS audit, we will ask the client to sign a waiver before providing such additional services.

We discussed our recent correspondence concerning IRS Announcement 2002-2. We advised that since sending that letter, the firm has received a summons from the IRS compelling it to disclose an investor list with respect to participants in [name of solution]. We said that in light of this development, it is certain that we will disclose the name of the company to the IRS, and it is very likely that as a result the IRS will initiate an audit. Therefore, we reiterated our very strong recommendation that the company disclose as provided in the Announcement, if available. Given the protection from certain penalties that may be achieved by making the disclosure as described in the Announcement, the likelihood of an imminent IRS audit, and the ability to continue to claim the tax benefit of the transaction notwithstanding the taxpayer's disclosure, our firm reiterates its strong and unqualified recommendation to disclose.

We also recommended that the client consider consulting another adviser concerning whether to follow our recommendation and to make the disclosure provided in the Announcement.

We also told him that the firm would assist the company in making the disclosure, for a fee, if that is what it decides to do. If we are asked to provide this service, we will ask it to provide a written signed consent and waiver of any potential conflict on the part of KPMG in providing this service. We advised that we could only accept the consent and waiver if the company independently concludes that it is comfortable that KPMG can adequately and effectively assist by preparing the required disclosure, notwithstanding all implications it feels may result from any potential conflict of interest.

Our client had the following comments and questions:

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The client ultimately decided (to consult with/to not consult with another adviser) regarding the recommendation that it make the disclosure provided in the IRS Announcement. The client ultimately advised that, having consulted with another adviser, it decided to (make the disclosure) (not make the disclosure). It also said that it is [not] requesting that our firm assist him by preparing the required documentation to make the disclosure. [If requested to assist with disclosure:] We advised the company that we will provide a separate engagement letter that will include a conflict waiver to sign for this purpose.

Where applicable, a copy of this memo has been provided to the assurance partner of an audit client with respect to which _____ is a person in a position of significant influence..

XX-000919

April 17, 2002

By Federal Express

Dear Client:

We are writing to advise you that the IRS has directed KPMG LLP to disclose names, documents, opinions, and other information with respect to certain participants in the S Corporation Charitable Contribution transaction. At this time, it does not appear that KPMG is required to disclose your name to the IRS, however, KPMG must disclose the names of several other participants due to facts specific to their transactions. Such disclosure could result in the IRS compelling KPMG to disclose the names of all participants in the transaction at a future date.

The fact that we may be required to provide this information to the IRS does not, by itself, mean that the IRS will seek to disallow the tax benefits contemplated by the strategy. It does, however, make it more likely that the IRS would select your tax return for examination and audit the particular strategy. Therefore, we recommend that you not delay in considering the IRS disclosure initiative of Announcement 2002-2, which is aimed at encouraging taxpayers to disclose tax shelters and other items that might be subject to challenge by the IRS and that taxpayers may have reported on their tax returns. If you decide you want to take advantage of this disclosure initiative, the Announcement requires that you disclose before the earlier of (1) April 23, 2002, or (2) the date the item or another item arising from the same transaction is an issue raised during an examination. In a recent news release (IR-2002-45 (4/9/02)), however, the IRS stated that April 23 was the last day for disclosure.

Announcement 2002-2 allows taxpayers the opportunity to avoid liability for the following section 6662 penalties: (1) negligence or disregard of rules or regulations; (2) substantial understatement of income tax; (3) substantial or gross valuation misstatement (except for any portion of an underpayment attributable to a net section 482 transfer price adjustment, unless the documentation rules are satisfied); and (4) substantial overstatement of pension liabilities. A copy of the Announcement is enclosed.

Importantly, the Announcement states that a taxpayer's disclosure of an item creates no inference that the taxpayer's tax treatment of the item was improper or that the accuracy-related penalty would apply if there were an underpayment of tax. The Announcement also notes that taxpayers that do not disclose under this initiative are not prevented from

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demonstrating that they qualify for the reasonable cause exception to the accuracy-related penalty.

Under IRS internal guidelines, issued in conjunction with the Announcement, IRS examiners are required to consider the section 6662 accuracy-related penalty for any underpayment attributable to a taxpayer's participation in a "potentially abusive tax shelter" as described in the guidelines.

As KPMG advised you on the transaction, it may be perceived as having a potential conflict of interest in assisting you in your determination as to whether or not to make the disclosure. Therefore, we recommend that you seek the advice of another tax professional concerning whether to disclose pursuant to the Announcement. If you request, KPMG tax professionals will help you analyze whether it may be advisable to disclose this transaction or any other items you deem appropriate, and prepare the disclosure statement for filing with the IRS. If you decide that you want KPMG to help you, we will require that you sign a waiver of any potential conflict of interest.

I will be contacting you to discuss this important matter further.

Sincerely,

J. Council Leak
Partner
KPMG

Enclosure

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KPMG 0052495

Message4044	
Subject:	TCS Weekly
From:	Klein, Wendy (NSS-Tax)
Date:	4/22/2002 5:12:23 AM
To:	Stein, Jeff (US/Vice Chairman)
Message Body	
<p>This is really not my business but just watching your back. This is the TCS Weekly Update that Ken Jones issues to his people. Take a look at the content and the wide distribution list. Given the sensitivity of this situation should we putting all this in print? See areas in red highlighted</p> <p>-----Original Message----- From: Jones, Ken-WASH-DC Sent: Friday, April 19, 2002 2:24 PM To: Abkin, Wendy; Adelson, Jonathan S; Aland, Robert H; Benda, Jennifer E; Burquest, Patricia L; Click, David L; Collins, Erin M; DePew, Joseph M; Dolan, Michael P; Ely, Mark H; Forster, Miri C; Friedman, Steven M; Galib, Nancy M; Gonzalez, Loida D; Green, Jennifer B; Heroux, Mark S; Howard, Carla A; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Lewis, Harve; McCarthy, William B; Miller Jr., Norlyn D; Patterson, Robert E; Quealy Jr., William H; Robeck, Paul G; Roberts, Lauren G (US/WDC-DC); Schneiderman, Paul N; Sherlock, Victoria J; Swann, Deborah; Tombul, Bridget F; Topolka, Paul G Cc: Cavaliere, Christine D; Pershouse, William H Subject: TCS Weekly Update</p> <p>Orlando I suppose we couldn't have picked a worse time to hold our practice meeting ... IRS summonses, the 4/23 Amnesty Disclosure deadline, angry clients, angry KPMG professionals -- and I know that some of you will undoubtedly have to make a call here and there during our meeting. But I actually think we've picked the best time -- we're all stressed, we're busy, we're under a lot of pressures and we need to share our troubles, meet new TCSers, and, as Erin would put it ... "Bond." And bond, we will. We've got a challenging six months ahead of us ... new audit clients (we won Halliburton today) and a boatload of IRS audits for Blips, Opis, Midco, 401k and on and on -- so let's use the two days in Orlando to review where we've been and then get focused on where we are going. (I will try to schedule more of the "where we are going" stuff for early in the meeting because there are some hints that some folks will be in no condition on the second day to focus on anything.)</p> <p>The "IRS Matter" We have just hand-carried the lists of investors over to the IRS, for the following deals: MIDCO, FOCUS, INSURECO, OTHELLO, RIPPS/RIPSS II, SC2, SLOTS, TEMPEST, 357(c), and GLOBAL CURRENCY. Note that not all clients names were turned over for each of these Solutions so if you need to find out if a company or individual was on the list call or email me.</p>	

How's the Audit Game Going?

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file://W:\data\J06107583\710\WendyKlien%20HD%20Email\Message4044[45002].html

8/23/2003

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In case you haven't been following the Audit (Assurance) world, Andersen audit clients are dropping like flies. And while KPMG had a slow start in the game, we are starting to win some big ones. Here are two web sites that track the results....FYI.

<<http://www.accountingweb.com/cgi-bin/item.cgi?id=74745>>

<<http://www.forbes.com/2002/03/13/0313andersen.html>>

KEN JONES

Tax Controversy Services

kjones@kpmg.com <<mailto:kjones@kpmg.com>>

tel 202-533-3080

fax 202-533-8553

cell 703-362-1623

kpmg

Outlook Header Information

Conversation Topic: TCS Weekly
Subject: TCS Weekly
From: Klein, Wendy (NSS-Tax)
Sender Name: Klein, Wendy (NSS-Tax)
To: Stein, Jeff (US/Vice Chairman)
Delivery Time: 4/22/2002 5:12:23 AM
Creation Time: 4/22/2002 5:11:07 AM
Modification Time: 4/22/2002 5:12:24 AM
Submit Time: 4/22/2002 5:12:24 AM
Importance: 4/1
Priority: 4/0
Sensitivity: 4/0
Flags: 4/3
Size: 4/3783

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Confidentiality Requested

KPMG 0050429

Message0039	
Subject:	IRS Blips Audit Procedural Update
From:	Collins, Erin M
Date:	6/20/2002 1:52:16 PM
To:	Swartz, Susan K; Baumann, Dale R; Nuckolls, John M; Paule, Robin M; Hasting, Carl D; Mccrimlisk, George H; Rivkin, David; Miner, Jeffrey E; Wempen, Eric P; Faris, David W; Heil, Matthew C
CC:	Abkin, Wendy; Jones, Ken-WASH-DC
MessageBody	
<p>In case you have not heard what is going on with the IRS Blips cases here is a quick summary:</p> <ol style="list-style-type: none"> 1. IRS made a management decision to control all Blips cases (no matter where the Tp was located within the US) out of California's SB/SE groups. (Small Business/Self Employed) Normally SB/SE agents are not as sophisticated as LMSB agents. They normally handle the 1040 returns. Whereas LMSB handle large corporate clients. Right now LMSB agents are working Flips & Opis. So you will notice a big difference - mostly with giving you time to respond. SB/SE agents are use to short turn around time. 2. Robert Gee is the manager in San Francisco assigned to this project. He has direct line authority over the 40 California agents assigned to our blips cases. (25 agents in No. California & 15 in So. CA) 3. Robert has stated he is a hands on manager and there is and will be a high degree of coordination within exams. He has tight group of agents working on this and they plan on regular coordination. He has also stated that he plans on trying to have these cases done within the next 60 days. (yes, that is what he said) 4. Exams will not be looking at the merits of the transaction. (at this point) 5. The agents have been given specific instructions to get a complete file. As you may have noticed they also received form IDRs, and sample summonses and may have requested taxpayer interviews. 6. IRS priority: <ol style="list-style-type: none"> a. Get POAs for individual cases b. If necessary, get restricted consents signed (he asked if we preferred restricted consent - I said yes) c. Get documents <ol style="list-style-type: none"> i. First IDR will be issued with initial letter ii. If no response second follow up IDR iii. Third IDR - will be part of a summons (he wanted me to know they are ready to 	

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issue as many summonses as necessary. I gave him the we are here to help speech and anticipate that will not be an issue.)

d. He wanted us to know that the IRS has provided a lot of training on basis shifting cases.

e. Once the taxpayer's file is complete (hopefully 60 - 90 days) then the agent will await instructions, issue a 30-day, 90-day letter or possible start settlement discussions at a National level. But goal of agents - get all the necessary facts and most importantly the documents.

7. There will be about 5 SB/SE attorneys assigned to the project to assist if necessary.

8. Robert Gee seemed surprised to learn that we do not have all the documents in one location. He did not like the thought that he would have to deal with taxpayers, presidio, or others.

9. I also told him I was concerned that so many different agents were assigned to this project. He told me that there are 25 agents in No. California - 40 total throughout the state. He did not tell me the number of exams but told me it was more than 250. (The same group of agents are working PWC's son of boss cases)

10. He discussed the fact that if a taxpayer was already under examination for another transaction the case would likely stay with that agent. In other words, if the client did an opis and blips the opis agent would probably work the case.

11. He also acknowledged the fact that the audit letters were going out the door for 187 taxpayers and all of them should be received this month. He also said the reason for the 2 week turn around was to make sure they got the taxpayers attention.

12. We discussed the fact that our internal procedures that may slow down the initial response time and I did not want the agents to think we were not cooperating - since we have a potential conflict and needed to have the clients sign waivers before we can represent them. In some cases it will entail speaking with outside counsel before the engagement letters/conflict letters were signed. I told him we will need more time on the front end for administrative reasons but did not want to appear as if we were not cooperating. Some clients will move fast while others may take longer and we have a lot of calls to make. Although I asked for 4 weeks he said he would tell his agents to give us 2 but based on a case by case basis other arrangements could be made by the agent.

12. I told him I suspected that KPMG will not represent all taxpayers where we were involved in preparing their returns. Some would probably hire outside counsel.

Bottom line: He wanted us to know he is the decision maker and is here to help make this a smooth process and appreciated our assistance and participation.

1. So if there are any problems we should go through him. I was volunteered by our TCS group to be the spokesperson with Robert. So if you have a particular problem that can not be resolved with the agent let me know and we will elevate it to Robert Gee.

2. Once you tell the agent that KPMG has been engaged and provide a current POA the agents will expect the documents two weeks from that date. So plan your production of the POA wisely.

3. What we have done on some of the cases here was to agree to produce the local KPMG records within 2 weeks of the POA, KPMG Atlanta documents within 2 weeks from then, review TP's records and provide anything that wasn't previously provided 2 weeks after that. I think as long as you keep the info coming it will buy you goodwill. But with so many different agents I can imagine we won't have some problems.

4. He wanted to know the IRS was going to examine all of the Strategic Fund returns and Presidio is the current TMP for all of those cases.

5. Waiver agreement under Announcement 2002-2. Right now they are trying to determine who has authority to sign those agreements on behalf of SB/SE. So you might consider holding off providing those documents until after the IRS has provided you a copy. I have attached a copy of the agreement so that you will know what it looks like.

My recommendation: make sure you give the appearance of cooperation to the agents. They have been given orders to move forward fast and if necessary issue summonses. Lets hope we don't need to go there. Wendy Abkin & I will be trying to assist you on these cases so if you need something call and lets get this done.

Lets share information so that we do not have to recreate the wheel. Wendy can be reached at 415-438-7099 and you can reach me at 213-955-8568.

Attachment

ERIN COLLINS.pdf

Outlook Header Information

Conversation Topic: FLIP/OPIS
 Subject: IRS Blips Audit Procedural Update
 From: Collins, Erin M
 Sender Name: Collins, Erin M
 To: Swartz, Susan K; Baumann, Dale R; Nuckolls, John M; Paule, Robin M;
 Hasting, Carl D; Mccrimlisk, George H; Rivkin, David; Miner, Jeffrey E; Wempen,

2393

Eric P; Faris, David W; Heil, Matthew C
CC: Abkin, Wendy; Jones, Ken-WASH-DC
Received By: Baumann, Dale R
Delivery Time: 6/20/2002 1:52:16 PM
Creation Time: 6/20/2002 1:52:07 PM
Modification Time: 6/20/2002 2:23:56 PM
Submit Time: 6/20/2002 1:52:10 PM
Importance: 6/1
Priority: 6/0
Sensitivity: 6/0
Flags: 6/17
Size: 6/165696

KPMG 0050119

Proprietary Material
Confidentiality Requested

Unknown

From: Collins, Erin M
Sent: Monday, June 24, 2002 3:27 PM
To: Baumann, Dale R; Miner, Jeffrey E; Nuckolls, John M; Swartz, Susan K; Liston, Shannon L; Paule, Robin M; Hasting, Carl D; Northrup, Todd R; Mccrimlisk, George H; Wempen, Eric P; Faris, David W; Rivkin, David; Heil, Matthew C; Pace, Katherine A; Ito, Dennis A; Hutchison, Mark-Warner Cntr; Bendheim, Redge E; Affonso, Dale A; Carbo, Deke G; Bendheim, Redge E; Farwell, Randal H
Cc: Abkin, Wendy
Subject: 6-21-02 Blips Examination Update

I have been told by most of you that I should keep the updates coming and that they are helpful. If you are on the distribution list you are either lucky enough to be handling a blips audit or are the partner/relationship partner. If you know of someone that should be added let me know.

Administrative matters:

1. By the end of next week we should have some templates to use in your responses. Since the IRS' IDR are identical we might as well follow suit.
2. As you know the firm has instructed us to review any responses sent to the IRS. You can contact me, Wendy Abkin in our SF office or Jon Adelson in NY.
3. If you have not already done so you should put in a request to the Atlanta office to get a copy of their files. We will need them for production.

Update:

Spoke with the IRS manager, Robert Gee, late Friday, June 21st about a couple of screw ups. The one I like best was where we contacted the agent last Friday & asked for more time to get the paperwork done for the engagement and POA. The agent gave us a couple of weeks. The following week the agent showed up at the taxpayer's office to interview them. The client asked if he spoke with KPMG. The agent said yes, but since KPMG did not have a POA he could not deal with KPMG and thought he would follow up with the TP. Fortunately, the agent was sent home. I also like the one where the client got a "no change" letter from agent #1 and on the next day he got a blips IRS exam notice from agent #2 for the same year. But I have a feeling the client does not like that story. I am sure as this process evolves we will have many more stories.

Anyway, Robert said he has advised his agent to give us the time upfront to get the paperwork in order and depending on the facts can give us more time if necessary. He told us to feel free to say Robert Gee has agreed to this. If you really need 4 weeks then explain your reasons, such as the client is out of the country - the client is going through a divorce. But they still want us to show "good faith" by moving on production.

He feels spreading out the production in 2 week intervals works for them. Just keep the information flowing with open communication. We have one agent already talking about summons. He assured me

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1

KPMG 0027962

Permanent Subcommittee on Investigations

EXHIBIT #98aaa

that no summons will be issued without his authorization and he will contact us before that happens.

Noteworthy Items:

Robert said all of the 1999 examination notices should have been mailed by now and they are about to send the 2000 examination notices. He also said some of the 2000 notices may be sent by LMSB and made a remark that if those agents want to give 90 days to respond that is their decision but he is not providing that guidance to his agents. So you might want to consider contacting those 2000 clients and let them know it is coming.

He expects interviews will take place for those TPs in California but they have no plans on sending agents on airplanes to do the interviews. I was afraid to ask what does that mean for Tps 500 miles away from the agent. Does that require a plane ride or are they expecting to interview all CA clients? But as the end of the fiscal year approaches (9-30) their travel budget will be tight and may impact their decision. So we can hope for the best.

He is also reconsidering transferring cases to a LMSB agent assigned to that TP's flip or opis exam for prior year. But they are still working the kinks out of that and will let us know.

Waiver & privilege documents. He said a number of representatives have asked to hold off production of any documents until the waiver agreement is signed. He hated that. He wanted us to send in what we have that is not privileged and not hold up production. He said he has advised his agents NOT to agree to that. He also said they will prepare the waiver and send to us. But explained most of the agents are not familiar with the process and we should be patient. Just request the agent to prepare the waiver & have it signed then send to rep. for TP signature and production of privileged documents.

2396

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=19228
Subject: OPIS Settlements
Sent: 2002-08-05 18:22:05.775
Date: 2002-08-05 18:22:05.775
X-Folder: Sent Items

Agree.

Thanks

-----Original Message-----

From: Hasting, Carl D
Sent: Monday, August 05, 2002 2:21 PM
To: Eischeid, Jeffrey A
Subject: RE: OPIS Settlements

Now that's a loaded question....

Give up that amount. I think settlements will be really easy if the clients can keep 40%.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, August 05, 2002 11:17 AM
To: Hasting, Carl D
Subject: RE: OPIS Settlements

Clients keep, or give, 56-70%???

-----Original Message-----

From: Hasting, Carl D
Sent: Monday, August 05, 2002 2:16 PM
To: Eischeid, Jeffrey A
Subject: OPIS Settlements

By the way - among my clients, the "sweet spot" seems to be around 65% to 70%. I think we would settle the majority of them in that range. Above 70%, many of them start seriously thinking about engaging counsel and discussing litigation.

Carl

**Proprietary Material
Confidentiality Requested**

KPMG 0025724

Permanent Subcommittee on Investigations

EXHIBIT #98bbb

2397

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=19228
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=19228
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: OPIS Settlements
Sent: 2002-08-05 20:43:20.228
Date: 2002-08-05 20:43:21.900
X-Folder: OPIS

I figured as much. But even 30% to 35% would be nice to offer them.

Thanks

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, August 05, 2002 11:49 AM
To: Hasting, Carl D
Subject: FW: OPIS Settlements

Not likely to see 40%.

**Proprietary Material
Confidentiality Requested**

KPMG 0025725

Unknown

From: Collins, Erin M
Sent: Tuesday, August 20, 2002 10:03 PM
To: Mccrimisk, George H; Rivkin, David; Swartz, Susan K; Wempen, Eric P; Heil, Matthew C; Paule, Robin M; Hasting, Carl D; Liston, Shannon L; Nuckolls, John M; Faris, David W; Chang, Julia K
Subject: FYI - Changes to the Waiver Agreement Blips

Wendy Abkin (TCS- SF) negotiated some changes to the Announcement 2002-2 Waiver Agreement with Robert Gee (IRS Manager in charge of BLIPS exams) to include the practitioner privilege since our opinion letters don't fall under the language as currently drafted by the IRS. It is our understanding that Robert Gee and IRS counsel have approved but we have not been seeing the changes incorporated by the agents. So check your waiver agreements to see if the practitioner privilege - 7525 is included and if not you may want to ask them to amend to reflect the changes below.

Specifically, the agreement would be modified to read as follows (the underlined portion is the new addition we requested and the bolded portion is what IRS added):

"This agreement confirms that the Internal Revenue Service will not assert that [Taxpayer's] production of the documents listed below constitutes a subject matter waiver of the attorney-client privilege, the Tax Practitioner privilege under IRC 7525, or the work product doctrine with respect to other documents addressing the same subject matters as those discussed in the listed documents. **Nothing in this agreement, however, constitutes a concession by the Internal Revenue Service that I.R.C. section 7525 applies to any accountant work product.**"

"This agreement does not constitute a concession by the Service that the documents are subject to protection by the attorney-client privilege, the tax practitioner privilege, or the work product doctrine. This agreement is not intended to limit in any way the Service's right to contest any privilege claims that [Taxpayer] may assert with respect to any other documents."

These changes are also being requested in appropriate flips/opis cases. Remember the federally authorized practitioners' privilege was not effective for communication before July 22, 1998. If you have any question feel free to call me or Wendy.

Thanks.

Proprietary Material
 Confidentiality Requested

5/5/2003

Permanent Subcommittee on Investigations
 EXHIBIT #98ccc

KPMG 0027490

Unknown

From: Eischeid, Jeffrey A
Sent: Tuesday, October 01, 2002 7:47 AM
To: Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Friedlander, Janice B; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hasting, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Subject: FW: UPDATE TO FLIP/OPIS CLIENTS

fyi

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Monday, September 30, 2002 6:29 PM
To: Abkin, Wendy; Adelson, Jonathan S; Aland, Robert H; Benda, Jennifer E; Bruss, Jonathan; Burquest, Patricia L; Click, David L; Collins, Erin M; DePew, Joseph M; Foster, Hiri C; Gonzalez, Loida D; Green, Jennifer B; Heroux, Mark S; Howard, Carla A; Kitzpearman, Sharon D; Kay, Sheldon-ATLANTA M; McCarthy, William B; Patterson, Robert E; Quealy Jr., William H; Robeck, Paul G; Schneideman, Paul N; Sherlock, Victoria J; Topolka, Paul G
Cc: Eischeid, Jeffrey A
Subject: UPDATE TO FLIP/OPIS CLIENTS

I am emailing all of you not just those with FLIP/OPIS clients -- because I think everyone in the TCS practice should know this information.

We expect that the IRS will announce its administrative settlement program for the FLIP/OPIS transactions on Oct. 7th. The FLIP/OPIS coalition (including me) will be meeting with Bob Brazzil from IRS, and he will go over the terms of the deal. We expect that the IRS will also send letters to taxpayers and perhaps publish a notice. We also expect that the administrative settlement offer will be somewhere south of the offer that was sought by the coalition (30%ish of the basis shift loss amount). I suspect that it may be as low as 20% of the basis shift loss amount. Those of you with FLIP OPIS clients should immediately coordinate with the appropriate PFP (or other) partner and tell our clients about this development. Additionally, you may want to tell clients about today's Tax Court FLIP opinion -- which it has nothing to do with the substantive merits it certainly represents a strong push back by the Tax Court in effect telling the IRS that it will not be allowed to circumvent the rules simply because it thinks that the transaction is "abusive." If you have any questions, please give me a call ... but, again, for those of you with Flip/Opis clients ... we need to get this info to these clients and the appropriate KPMG partners ASAP. Thanks.

KEN JONES
Tax Controversy Services
kjones@kpmg.com
tel 202-533-3080
fax 202-533-8553
cell 703-362-1623
kpmg

Proprietary Material
Confidentiality Requested

2400

Unknown

From: Eischeid, Jeffrey A
Sent: Monday, November 25, 2002 12:43 PM
To: Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hastling, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Subject: FW: Supplemental IRS guidance on FLIP/OPIS

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Monday, November 25, 2002 11:33 AM
To: Eischeid, Jeffrey A; Lewis, Harve; Abkin, Wendy; Adelson, Jonathan S; Burquest, Patricia L; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G
Subject: Supplemental IRS guidance on FLIP/OPIS

Everything you wanted to know ... and more.

KEN JONES
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kpmg

Proprietary Material
Confidentiality Requested

KPMG 0027492

2401

Unknown

From: Eischeid, Jeffrey A
Sent: Monday, November 25, 2002 12:43 PM
To: Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hasting, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Subject: FW: Supplemental IRS guidance on FLIP/OPIS

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Monday, November 25, 2002 11:33 AM
To: Eischeid, Jeffrey A; Lewis, Harve; Abkin, Wendy; Adelson, Jonathan S; Burquest, Patricia L; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G
Subject: Supplemental IRS guidance on FLIP/OPIS

Everything you wanted to know ... and more.

KEN JONES
Tax Controversy Services
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cell 703-362-1623
kpmg

Proprietary Material
Confidentiality Requested

KPMG 0027493

Unknown

From: Eischeid, Jeffrey A
Sent: Monday, December 09, 2002 5:23 PM
To: Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hastling, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slatery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Subject: FW: State amnesty programs

fyi

-----Original Message-----

From: DePew, Joseph M
Sent: Friday, December 06, 2002 2:32 PM
To: Adelson, Jonathan S; Jones, Ken-WASH-DC; Burquest, Patricia L; Topolka, Paul G; Patterson, Robert E; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Heroux, Mark S; Collins, Erin M; Abkin, Wendy
Cc: Eischeid, Jeffrey A
Subject: State amnesty programs

In conjunction with our clients participating in settlements such as 2002-97 for FLIP/OPIS, we should work with the SALT practice to determine if the particular state(s) that the client files in has any sort of amnesty program. CT had a program that ended in November. NY has a program that runs until January 31, 2003, whereby you amend your return and have zero penalty and a reduction of 2% of the underpayment interest. The link to NY's program is below. We have a client who is taking the 2002-97 settlement and will save almost 1.5 million in interest by doing the NY amnesty.

http://www.nystaxamnesty.com/forms_pubs.htm

Joseph DePew
Tax Controversy Services
 jdepew@kpmg.com
 tel 404-614-8757
 fax 404-222-7633
 kpmg

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

Proprietary Material
 Confidentiality Requested

KPMG 0027494

2403

Unknown

From: Eischeid, Jeffrey A
Sent: Wednesday, July 10, 2002 11:33 AM
To: Carl Hastling; Carol Warley; Carolyn Branan; Dale Baumann; Daniel Slattery; David Rivkin; Deke Carbo; Dennis Ito; Douglas Ammerman; Eugene Schorr; George Jandl; George Mccrimlik; Glen Wright; J Cohen; Janice Friedlander; Jay Smolin; Jeffrey Eischeid; John Maughan; Katherine Pace; Neil Tendler; Randall Hamilton; Remo, Dee Ann; Richard Wise; Robert Gibson; Robert Hottle; Robert Jordan; Robert Perez; Robin Paule; Thomas Maguire; Timothy Speiss; Tracie Henderson; William Goldberg
Subject: IRS Letter
Importance: High

Please find attached a copy of the letter that is going out today to all FLIP/OPIS taxpayers and representatives. The letter discusses the IRS positions as to why the transaction does not work, that the IRS feels it has a strong case and that they are actively considering penalties. The letter then goes on to invite taxpayers/ reps to suggest resolution strategies to Bob Brazzil who is the IRS leader on this project and if they would like to meet with Mr. Brazzil they can call and schedule an appointment. The letter specifically states that the purpose of this opportunity is NOT to negotiate the resolution of any particular case.

What we need to do —

Contact clients today as a courtesy and let them know that the letter is on its way. Advise them that if they or their outside representative would like to attend that the option will be open to them, but that the IRS has indicated that this opportunity is NOT to negotiate the resolution of any particular case. Advise them that KPMG is sending Ken Jones, National Partner in Charge of Tax Controversy to zealously represent all of KPMG's clients in this matter.

Jeff

**Proprietary Material
Confidentiality Requested**

KPMG 0027495

2404

Unknown

From: Eischeid, Jeffrey A
Sent: Monday, October 28, 2002 9:59 AM
To: Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hastling, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Subject: IRS Q&As on Opis Settlement
Follow Up Flag: Follow up
Flag Status: Flagged

fyi

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Sunday, October 27, 2002 3:06 PM
To: Eischeid, Jeffrey A; Abkin, Wendy; Adelson, Jonathan S; Burquest, Patricia L; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G
Subject: IRS Q&As on Blips/Opis Settlement

The IRS posted this to its website on Friday. (go to <http://www.irs.gov/businesses/corporations/article/0,,id=97384,00.html>) It answers many of the questions that have been asked ... but not all of them. Also, it refers to some attachments ... which I could not find on the website.

KEN JONES
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cell 703-362-1623
kpmg

Proprietary Material
Confidentiality Requested

KPMG 0027496

2405

Unknown

From: Paule, Robin M
Sent: Friday, December 28, 2001 1:46 PM
To: Collins, Erin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: RE: FTB/IRS exams

We need to have this list compiled by Thursday, January 3. Please provide this information to me or Erin via e-mail by then.

Thanks.

-----Original Message-----

From: Collins, Erin M
Sent: Thursday, December 27, 2001 5:50 PM
To: Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: FTB/IRS exams

The FTB has agreed to suspend any state audits if we notify them of which taxpayer is also under IRS examination. If you have a client under exam with both the fed & state let me know and we will pass that information along. I would assume you might want to discuss this with your client first. But the FTB is pushing us for a list to suspend cases ASAP.

We need to provide the FTB with the clients name, FTB auditor name and a copy of some IRS IDR or other document (restricted consent) that shows the IRS has spotted the issue (flips/opis/blips) and they will suspend the state case until the final conclusion of the IRS exam.

Dale - inquiring minds would like to know if you have an engagement letter prepared for the Hochman firm? If so, can you share?

Proprietary Material
Confidentiality Requested

Unknown

From: Mccrimlisk, George H
Sent: Monday, December 31, 2001 1:21 PM
To: Paule, Robin M
Subject: RE: FTB/IRS exams

I do not have anyclients that are under California examination.

-----Original Message-----

From: Paule, Robin M
Sent: Friday, December 28, 2001 10:46 AM
To: Collins, Erin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: RE: FTB/IRS exams

We need to have this list compiled by Thursday, January 3. Please provide this information to me or Erin via e-mail by then.

Thanks.

-----Original Message-----

From: Collins, Erin M
Sent: Thursday, December 27, 2001 5:50 PM
To: Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: FTB/IRS exams

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We need to provide the FTB with the clients name, FTB auditor name and a copy of some IRS IDR or other document (restricted consent) that shows the IRS has spotted the issue (flips/opis/blips) and they will suspend the state case until the final conclusion of the IRS exam.

Dale - inquiring minds would like to know if you have an engagement letter prepared for the Hochman firm? If so, can you share?

2407

Unknown

From: Rivkin, David
Sent: Wednesday, March 20, 2002 3:17 PM
To: Collins, Erin M; Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Mccrimlisk, George H
Cc: Affonso, Dale A; Smith, Richard H (US/WEST AMP)
Subject: RE: Final Docs Sent to IRS by collation

May we send these to our clients that did OPIS or FLIP transactions?

-----Original Message-----

From: Collins, Erin M
Sent: Wednesday, March 20, 2002 10:35 AM
To: Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Affonso, Dale A; Smith, Richard H (US/WEST AMP)
Subject: Final Docs Sent to IRS by collation

Attached are the final docs sent to IRS from the collation in response to the IRS' questions.

<< File: AO_677749_2 Redacted.DOC >> << File: AO_691363_3 Redacted.DOC >> << File:
AO_697016_1 Redacted.DOC >>

Proprietary Material
Confidentiality Requested

Unknown

From: Collins, Erin M
Sent: Wednesday, March 20, 2002 7:23 PM
To: Rivkin, David; Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Mccrimlisk, George H
Cc: Affonso, Dale A; Smith, Richard H (US/WEST AMP)
Subject: RE: Final Docs Sent to IRS by collation

yes, you may share these w/clients.

KEN JONES
Tax Controversy Services
kjones@kpmg.com
tel 202-533-3080
fax 202-533-8553
cell 703-362-1623
kpmg

-----Original Message-----

From: Rivkin, David
Sent: Wednesday, March 20, 2002 12:17 PM
To: Collins, Erin M; Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Mccrimlisk, George H
Cc: Affonso, Dale A; Smith, Richard H (US/WEST AMP)
Subject: RE: Final Docs Sent to IRS by collation

May we send these to our clients that did OPIS or FLIP transactions?

-----Original Message-----

From: Collins, Erin M
Sent: Wednesday, March 20, 2002 10:35 AM
To: Paule, Robin M; Baumann, Dale R; Hasting, Carl D; Rivkin, David; Mccrimlisk, George H
Cc: Affonso, Dale A; Smith, Richard H (US/WEST AMP)
Subject: Final Docs Sent to IRS by collation

Attached are the final docs sent to IRS from the collation in response to the IRS' questions.

<< File: AO_677749_2 Redacted.DOC >> << File: AO_691363_3 Redacted.DOC >> << File:
AO_697016_1 Redacted.DOC >>

Proprietary Material
Confidentiality Requested

2409

Unknown

From: Powell, Holli L
Sent: Wednesday, February 06, 2002 12:25 PM
To: Baumann, Dale R; Ito, Dennis A; Hasting, Carl D; Mccrimlisk, George H; Paule, Robin M; Affonso, Dale A; Rivkin, David; Collins, Erin M
Cc: Smith, Richard H (US/WEST AMP)
Subject: RE: Amnesty letters

The dial-in information for the call referenced below is:

Dial-In Number: 877-917-2511
Passcode: 35170#

Thank you,
Holli

-----Original Message-----

From: Smith, Richard H (US/WEST AMP)
Sent: Tuesday, February 05, 2002 5:59 PM
To: Baumann, Dale R; Ito, Dennis A; Hasting, Carl D; Mccrimlisk, George H; Paule, Robin M; Affonso, Dale A; Rivkin, David; Collins, Erin M
Cc: Powell, Holli L
Subject: Amnesty letters

Dale, Dennis, Carl, George, Robin, Dale, David and Erin,

We are scheduling a conference call for tomorrow afternoon at 3pm PST to discuss our approach with certain clients who participated in FLIPs and OPIS transactions. Holli will forward a call-in number to you for this call.

Later this evening you will receive a message that I am sending on behalf of Mark Ely and David Brockway with five attached documents. Please read those documents prior to the call.

We will also discuss billing matters related to representing these clients on matters before the IRS and other tax authorities.

Thanks,

Richard

KPMG, LLP
Western Area Managing Partner – Tax
Phone: (650) 404-4652
rhsmith@kpmg.com

Proprietary Material
Confidentiality Requested

2410

Unknown

From: Wempen, Eric P
Sent: Friday, November 02, 2001 1:02 PM
To: Mccrimlik, George H
Subject: OPIS Questions

George,

It was great speaking with you this morning. I know you mentioned that you would let me look at your responses before they went out, but I was wondering if I could also get a look at the questions just in case the IRS agent is trying to pull different things out of the two cases to see how we respond. I doubt it, but you never know, and there's a chance it might change some of our responses over here. Would you mind having Janie send me over a copy of the questions your client received from Joni Politzer at the IRS? (My fax number is (818) 702-0602.)

As I mentioned, I am waiting on a review by Robin and Erin before I send off my answers – they have both been really busy and have not given me the final okay yet.

If some of our clients on the east coast are using an outside law firm in Atlanta, it occurred to me that we may also want to coordinate our answers with this law firm. With regard to our firm "position," no one has gotten back to me on whether it is a firmwide position not to release the outside Opinion for the Opis deals due to attorney-client privilege, but that is what we did. I'm hoping it has been our answer across the board and will let you know if I hear anything.

Regards,
Eric

Proprietary Material
Confidentiality Requested

KPMG 0027502

2411

DRAFT
CONSENT FORM FOR THOSE
WITH SEPARATE REPRESENTATION

Dear [NAME OF CLIENT]_____:

This letter is written as a follow-up to our meeting on _____ in which my partner, _____ and I met with you to discuss certain matters relating to your investment in (OPIS/FLIPS). At an earlier meeting in September, 2001, we[KPMG] had advised you of an IRS letter to us regarding tax shelter registration (and the associated client list maintenance requirements) in December, 2000 with respect to a transaction that the IRS has said may be described in Notice 2001-45. KPMG had responded to that IRS inquiry by stating that while it provided tax advice with respect to OPIS, it is the firm's view that OPIS was not subject to the requirements of Section 6111 and 6112 of the Internal Revenue Code. We have now advised you that KPMG recently received a letter from the IRS, which advises KPMG that the firm itself is under examination for its alleged failure to register the OPIS transaction, for potential penalties as a promoter, return preparer, and for other penalties.

As we advised you when we met, we consider it necessary to notify you of this examination of KPMG in light of the ongoing IRS examination of your 199_ [joint] federal income tax return. We also advised you that the IRS may ask KPMG for a list of investors in the OPIS transaction and possibly other transactions [such as FLIP], and may make other demands of the firm as part of its examination of the firm.

In light of our receipt of this letter from the IRS, and the examination of KPMG, we advised you that KPMG has a potential conflict of interest concerning our continued representation of you in the IRS audit of your 199___ return. As we explained, KPMG is not taking a position adverse to [OPIS] [FLIP] investors in the examination, but it is possible that circumstances may develop in the KPMG examination that could adversely affect KPMG's ability to represent you in your audit.

For that reason, we strongly recommended that you retain an attorney to represent you in the IRS audit. We also strongly urged you to consult with an attorney concerning the potential conflict of interest we discussed. We strongly recommended that you retain an attorney to represent you as your primary adviser in the IRS audit.

We have told you that if you follow these recommendations, KPMG would consider assisting you and your attorney in the ongoing IRS examination, for a fee, if that is what the attorney recommends and that is what you want. If we were to do so, we have explained to you that we would need to receive from you a written signed consent to and waiver of this potential conflict in order for us to be allowed to continue to provide service. We advised that we could only accept the consent and waiver if you and your attorney independently conclude that you are comfortable that KPMG can adequately and effectively represent you notwithstanding all the implications you both feel may result from the potential conflict of interest.

Proprietary Material
Confidentiality Requested

KPMG 0027503

You inquired of us as to _____ and we have responded to your inquiries as follows: _____. You have told us that you have consulted with counsel _____ [NAME of attorney] pursuant to our recommendation. After consulting with counsel, you have told us that you want KPMG to continue to act as your primary representative in the ongoing IRS audit. We have told you that KPMG is willing to do so, however, the firm must obtain from you a consent to such representation and a waiver of the potential conflict of interest. Please countersign a copy of this letter, consenting to and waiving the potential conflict of interest.

Sincerely,

for KPMG

I have read the forgoing letter and it accurately sets forth the nature of the subjects discussed with _____ and _____ of KPMG on _____ [DATE]. Since that meeting, I have conferred with _____ [NAME OF COUNSEL] regarding the potential conflict of interest that exists if KPMG continues to represent me in the audit of my 199__ federal income tax return. After receiving independent legal advice, I have decided to waive that conflict and I hereby request KPMG to represent me in the audit of my 199__ federal income tax return and consent to have KPMG continue to represent me in that audit. I understand that I am free to terminate such representation at any time. I acknowledge that I understand the potential conflict of interest, that I have asked all questions of KPMG about it that I wish to ask, and KPMG has fully answered such questions to my complete satisfaction.

date

2413

DRAFT
CONSENT FORM FOR THOSE WITHOUT
SEPARATE REPRESENTATION

Dear [NAME OF CLIENT]_____:

This letter is written as a follow-up to our meeting on _____ in which my partner, _____ and I met with you to discuss certain matters relating to your investment in (OPIS/FLIPS). At an earlier meeting in September, 2001, we[KPMG] had advised you of an IRS letter to us regarding tax shelter registration (and the associated client list maintenance requirements) in December, 2000 with respect to a transaction that the IRS has said may be described in Notice 2001-45. KPMG had responded to that IRS inquiry by stating that while KPMG provided tax advice with respect to OPIS, it is the firm's view that OPIS was not subject to the requirements of Section 6111 and 6112. We have now advised you that KPMG recently received a letter from the IRS, which advises KPMG that the firm itself is under examination for its alleged failure to register the OPIS transaction, for potential penalties as a promoter, return preparer, and for other penalties.

As we advised you when we met, we consider it necessary to notify you of this examination of KPMG in light of the ongoing IRS examination of your 199_ [joint] federal income tax return. We also advised you that the IRS may ask KPMG for a list of investors in the OPIS transaction and possibly other transactions [such as FLIP], and may make other demands of the firm as part of its examination of the firm.

In light of our receipt of this letter from the IRS, and the examination of KPMG, we advised you that KPMG has a potential conflict of interest concerning our continued representation of you in the IRS audit of your 199___ return. As we explained, KPMG is not taking a position adverse to [OPIS] [FLIP] investors in the examination, but it is possible that circumstances may develop in the KPMG examination that could adversely affect KPMG's ability to represent you in your audit.

For that reason, we strongly recommended that you retain an attorney to represent you in the IRS audit. We also strongly urged you to consult with an attorney concerning the potential conflict of interest we discussed. We strongly recommended that you retain an attorney to represent you as your primary adviser in the IRS audit.

We have told you that if you follow these recommendations, KPMG would consider assisting you and your attorney in the ongoing IRS examination, for a fee, if that is what the attorney recommends and that is what you want. If we were to do so, we have explained to you that we would need to receive from you a written signed consent to and waiver of this potential conflict in order for us to be allowed to continue to provide service. We advised that we could only accept the consent and waiver if you and your attorney independently conclude that you are comfortable that KPMG can adequately and effectively represent you notwithstanding all the implications you both feel may result from the potential conflict of interest.

Proprietary Material
Confidentiality Requested

KPMG 0027505

2414

You inquired of us as to _____ and we have responded to your inquiries as follows: _____. You have told us that you have decided not to retain another adviser but choose to have KPMG as your primary representative in the ongoing IRS audit. We have told you that KPMG is willing to do so, however, the firm must obtain from you a consent to such representation and a waiver of the potential conflict of interest. Please countersign a copy of this letter, consenting to and waiving the potential conflict of interest.

Sincerely,

for KPMG

I have read the forgoing letter and it accurately sets forth the nature of the subjects discussed with _____ and _____ of KPMG on _____ [DATE]. Since that meeting, I have conferred with _____ [NAME OF COUNSEL] regarding the potential conflict of interest that exists if KPMG continues to represent me in the audit of my 199__ federal income tax return. After receiving independent legal advice, I have decided to waive that conflict and I hereby request KPMG to represent me in the audit of my 199__ federal income tax return and consent to have KPMG continue to represent me in that audit. I understand that I am free to terminate such representation at any time. I acknowledge that I understand the potential conflict of interest, that I have asked all questions of KPMG about it that I wish to ask, and KPMG has fully answered such questions to my complete satisfaction.

date _____

Proprietary Material
Confidentiality Requested

KPMG 0027506

2415

DRAFT
CONSENT FORM FOR THOSE WITHOUT
SEPARATE REPRESENTATION

Dear [NAME OF CLIENT]_____:

This letter is written as a follow-up to our meeting on _____ in which my partner, _____ and I met with you to discuss certain matters relating to your investment in (OPIS/FLIPS). At an earlier meeting in September, 2001, we[KPMG] had advised you of an IRS letter to us regarding tax shelter registration (and the associated client list maintenance requirements) in December, 2000 with respect to a transaction that the IRS has said may be described in Notice 2001-45. KPMG had responded to that IRS inquiry by stating that while KPMG provided tax advice with respect to OPIS, it is the firm's view that OPIS was not subject to the requirements of Section 6111 and 6112. We have now advised you that KPMG recently received a letter from the IRS, which advises KPMG that the firm itself is under examination for its alleged failure to register the OPIS transaction, for potential penalties as a promoter, return preparer, and for other penalties.

As we advised you when we met, we consider it necessary to notify you of this examination of KPMG in light of the ongoing IRS examination of your 199_ [joint] federal income tax return. We also advised you that the IRS may ask KPMG for a list of investors in the OPIS transaction and possibly other transactions [such as FLIP], and may make other demands of the firm as part of its examination of the firm.

In light of our receipt of this letter from the IRS, and the examination of KPMG, we advised you that KPMG has a potential conflict of interest concerning our continued representation of you in the IRS audit of your 199__ return. As we explained, KPMG is not taking a position adverse to [OPIS] [FLIP] investors in the examination, but it is possible that circumstances may develop in the KPMG examination that could adversely affect KPMG's ability to represent you in your audit.

For that reason, we strongly recommended that you retain an attorney to represent you in the IRS audit. We also strongly urged you to consult with an attorney concerning the potential conflict of interest we discussed. We strongly recommended that you retain an attorney to represent you as your primary adviser in the IRS audit.

We have told you that if you follow these recommendations, KPMG would consider assisting you and your attorney in the ongoing IRS examination, for a fee, if that is what the attorney recommends and that is what you want. If we were to do so, we have explained to you that we would need to receive from you a written signed consent to and waiver of this potential conflict in order for us to be allowed to continue to provide service. We advised that we could only accept the consent and waiver if you and your attorney independently conclude that you are comfortable that KPMG can adequately and effectively represent you notwithstanding all the implications you both feel may result from the potential conflict of interest.

Proprietary Material
Confidentiality Requested

KPMG 0027507

2416

You inquired of us as to _____ and we have responded to your inquiries as follows: _____. You have told us that you have decided not to retain another adviser but choose to have KPMG as your primary representative in the ongoing IRS audit. We have told you that KPMG is willing to do so, however, the firm must obtain from you a consent to such representation and a waiver of the potential conflict of interest. Please countersign a copy of this letter, consenting to and waiving the potential conflict of interest.

Sincerely,

for KPMG

I have read the forgoing letter and it accurately sets forth the nature of the subjects discussed with _____ and _____ of KPMG on _____ [DATE]. Since that meeting, I have conferred with _____ [NAME OF COUNSEL] regarding the potential conflict of interest that exists if KPMG continues to represent me in the audit of my 199__ federal income tax return. After receiving independent legal advice, I have decided to waive that conflict and I hereby request KPMG to represent me in the audit of my 199__ federal income tax return and consent to have KPMG continue to represent me in that audit. I understand that I am free to terminate such representation at any time. I acknowledge that I understand the potential conflict of interest, that I have asked all questions of KPMG about it that I wish to ask, and KPMG has fully answered such questions to my complete satisfaction.

date _____

**Proprietary Material
Confidentiality Requested**

KPMG 0027508

Unknown

Sent: Friday, November 15, 2002 5:33 PM
To: Paule, Robin M; Hasting, Carl D; Rivkin, David; Baumann, Dale R; Swartz, Susan K; Wempen, Eric P; Miner, Jeffrey E; Heil, Matthew C; Mccrimisk, George H; Chang, Julia K; Alfonso, Dale A; Bendheim, Redge E; Northrup, Todd R
Subject: Settlement Initiative Update

In case you have not heard this from another source. Yesterday, the group had a conference call with Bob Brazzil, IRS Industry Director in charge of the 302/318 settlement initiative. He provided some additional details regarding the settlement:

- 1) He confirmed that a taxpayer's agreement on or before 12-3-02 to participate is **NOT** binding. He stated the taxpayer can express a written interest in the settlement by 12-3 then after the computations are complete the taxpayer will have to make a decision to sign up or not. It is not until they sign an agreement to assess and a closing agreement that it is binding. For settlement computations where penalties are asserted Bob indicated that he thinks the IRS will be willing to address the penalties only in an effort to resolve them while putting the merits of the deduction on hold. We talked about having exam work the penalty issue. If they wanted to assert the penalty then the taxpayer could ask for fast track settlement. At which point appeals would assign an appeals officer to the case to try and resolve the issue. Hopefully, we will be able to convince the IRS that penalties do not apply. At that point the taxpayer will either have to take the settlement or have the IRS issue a 90 letter setting up the full amount of the loss claimed on their return.
- 2) Bob understands that taxpayers will not finalize the deal if there is a penalty. He wants us to keep track of agents that are taking a hard line on penalties or that appear to be inconsistently applying factors.
- 3) Bob thought a new round of FAQs had been released this morning. The FAQ can be found on the IRS webpage. (I checked, and they haven't, but I assume they will be on the web soon.)
<http://www.irs.gov/businesses/corporations/article/0,,id=97384,00.html>
- 4) Bob likes the idea of bringing in a collections agent prior to closing, for those taxpayers that are concerned about payment. He is amenable to putting installment terms into the closing agreement or doing a separate contemporaneous agreement. They are also thinking about setting up a liaison from collections for FLIP settlements.
- 5) He understands that we have some questions on computational issues, and asked us to call Carol Poindexter. He is going to call Carol and tell her we need some responses on the calculation issues ASAP.

Erin M. Collins
Tax Controversy Services
emcollins@kpmg.com
tel 213-955-8568
fax 213-955-8650
KPMG LLP

Proprietary Material
Confidentiality Requested

KPMG 0027509

5/6/2003

ANNOUNCEMENT 2002-2 CLIENT LETTER

Dear Client:

We are writing to our clients generally to inform them of a new IRS Announcement aimed at encouraging taxpayers to disclose tax shelter and other items that might be subject to challenge by the IRS that they may have reported on their tax returns. The IRS is offering a limited window of opportunity during which taxpayers may voluntarily disclose certain transactions to the IRS and avoid the potential application of certain components of the section 6662 accuracy-related penalty with respect to these transactions.

You may or may not find that this opportunity is applicable or advantageous to you after evaluating your particular situation. We did, however, want to bring this matter to your attention, given the brief period for which disclosure is available.

Announcement 2002-2 allows taxpayers the opportunity to avoid potential liability for certain components of the accuracy-related penalty.

Importantly, the Announcement states that a taxpayer's disclosure of an item creates no inference that the taxpayer's tax treatment of the item was improper or that the accuracy-related penalty would apply if there were an underpayment of tax. The Announcement also notes that taxpayers that do not disclose under this initiative are not prevented from demonstrating that they qualify for the reasonable cause exception to the accuracy-related penalty.

If you decide that you wish to take advantage of this program, the Announcement requires that you disclose before the earlier of (1) April 23, 2002, or (2) the date the item or another item arising from the same transaction is an issue raised during an examination (defined in the Announcement).

In conjunction with the Announcement, on December 20, 2001, the IRS issued internal guidelines that require examiners to consider the section 6662 accuracy-related penalty for any underpayment attributable to a taxpayer's participation in a "listed transaction" — i.e., one that has been identified by the IRS as having significant tax avoidance potential — or "other potentially abusive tax shelters" as described in the guidelines. (The current "listed transactions" are contained in Notice 2001-51, 2001-34 I.R.B. 190.)

Depending on your particular facts, including the likelihood of prevailing on the underlying merits and the likelihood of establishing reasonable cause and good faith, the disclosure initiative may be beneficial with respect to one or more transactions reported on your tax return to (1) avoid any potential imposition of the accuracy-related penalty for disclosed items; (2) avoid the expenses and resources potentially associated with contesting an imposition of the penalty; and

(3) put yourself in a better settlement and/or litigation position as to the tax issues involved in the transaction.

It is likely, however, that the IRS will require substantial documentation of the transaction — including opinion letters and other potentially confidential communications — before it will waive any penalty under the disclosure initiative. Therefore, it is important that you discuss your particular situation with a tax advisor. If you decide that you would like to engage KPMG to assist you analyzing whether it may be advisable to disclose any tax return items pursuant to the Announcement, we may request that you agree to a waiver of any potential conflict of interest.

Because of the time limit imposed by the Announcement, we recommend that you not delay in determining whether to take advantage of this initiative.

Sincerely,

KPMG LLP

Attachments: Announcement 2002-2

Unknown

From: Eischeid, Jeffrey A
Sent: Monday, October 07, 2002 1:00 PM
To: Ammerman, Douglas K; Branan, Carolyn B; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandi, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimlisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Tendler, Neil J; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A; Baumann, Dale R; Carbo, Deke G; Hasting, Carl D; Henderson, Tracie K; Speiss, Timothy P; Warley, Carol G
Cc: Jones, Ken-WASH-DC; DePew, Joseph M
Subject: Announcement 2002-97

Stay tuned for more information. The Announcement arguably raises more questions than it answers. We are attempting to obtain clarification from the government. As KPMG's position and "recommendations" mature, we'll keep you posted. In the meantime, we need to be contacting our FLIP/OPIS clients to let them know the "offer" is on the table - even though we can't tell them precisely what the offer is. If you have specific interpretative questions, please direct them to the TCS professional assisting you with a copy to Joe DePew. If I can help you in any way, let me know.

Jeff

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations

EXHIBIT #98ddd

KPMG 0027976

Unknown

From: Jones, Ken-WASH-DC
Sent: Monday, November 04, 2002 4:12 PM
To: Jones, Ken-WASH-DC; Taylor, Theresa S; Ely, Mark H; Lewis, Harve; Sherlock, Victoria J; Collins, Erin M; Abkin, Wendy; Heroux, Mark S; Adelson, Jonathan S; Katz-pearlman, Sharon D; Burquest, Patricia L; DePew, Joseph M; Kay, Sheldon-ATLANTA M; Topolka, Paul G; Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hasting, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A; Heath, R. Jeffrey; Karpen, Patrick N; Monaco, John W; Powell, Gary N; Toole, G. Maxwell
Subject: RE: Script

Everyone: Attached is a list of law firms that are handling FLIP/OPIS cases. Note that there are easily another 15 or so law firms ... but these are firms that we have dealt with in the past. Note that we are not making a recommendation, although if someone wants to talk about the various strengths/weaknesses of one firm vs. another ... we can do that.

KEN JONES
Tax Controversy Services
 kjones@kpmg.com
 tel 202-533-3080
 fax 202-533-8553
 call 703-362-1623
 kpmg

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Friday, November 01, 2002 5:40 PM
To: Taylor, Theresa S; Jones, Ken-WASH-DC; Ely, Mark H; Lewis, Harve; Sherlock, Victoria J; Collins, Erin M; Abkin, Wendy; Heroux, Mark S; Adelson, Jonathan S; Katz-pearlman, Sharon D; Jones, Ken-WASH-DC; Burquest, Patricia L; DePew, Joseph M; Kay, Sheldon-ATLANTA M; Topolka, Paul G; Ammerman, Douglas K; Baumann, Dale R; Branan, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hasting, Carl D; Henderson, Tracie K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A; Heath, R. Jeffrey; Karpen, Patrick N; Monaco, John W; Powell, Gary N; Toole, G. Maxwell
Subject: Script

Attached is the script ... waiver language and list of attorneys to follow.

<< File: 7BFC011.DOC >>

KEN JONES
Tax Controversy Services

Proprietary Material
 Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #98eee

KPMG 0033413

2422

kjones@kpmg.com
tel 202-533-3080
fax 202-533-8553
cell 703-362-1623
kpmg

**Proprietary Material
Confidentiality Requested**

KPMG 0033414

ATTORNEY LIST

NAME	FIRM	ADDRESS	BUSINESS PHONE	MOBILE PHONE	HOME PHONE	FAX	E-MAIL
Matthew Sperry Philip Cook	Alston & Bird	One Atlantic Center 1201 West Peachtree Street Atlanta, GA 30309-3424	(404) 881-7553				
Millford B. Hatcher, Jr. (Mil)	Jones Day	3500 SunTrust Plaza 303 Peachtree Street, NE Atlanta, GA 30308-3242	(404) 581-8510				
Val J. Albright	Baker & McKenzie	2300 Trammell Crow Center 2001 Rose Ave. Dallas, TX 75201	(214) 978-3074				
Larry A. Campagna	Chamberlain, Hrdlicka, White, Williams & Martin	1200 Smith Street Suite 1400 Houston, TX 77002	(713) 654-9609				
David Aury Charles Hodges		191 Peachtree St., NE Atlanta, GA 30303	(404) 659 1410				
Charles P. Rettig	Hochman, Salkin, Rettig, Toscher & Perez, P.C.	9150 Wilshire Boulevard Suite 300 Beverly Hills, CA 90212- 3414	(310) 281-3242 Main Office # (310) 281-3200				

Prepared by P. J. Brennan, Sub-Committee on Administration

2424

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=58930
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=58930
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: OPIS
Sent: 2002-11-08 04:25:51.481
Date: 2002-11-08 04:25:51.976
X-Folder: OPIS

I have attended several interviews of clients.

We can discuss Monday morning if you would like..

-----Original Message-----

From: Bloom, Richard J
Sent: Thursday, November 07, 2002 10:48 PM
To: Eischeid, Jeffrey A; Jones, Ken-WASH-DC; DePew, Joseph M; Lewis, Harve
Cc: Christensen, Lance D; Tendler, Neil J
Subject: OPIS

The IRS auditor of a client of mine has requested an interview with the client to gather information so that she could determine whether or not to assess the accuracy related penalty on an OPIS transaction. Do any of you know of any clients that have gone through or will be going through this process? If so, is there any intelligence that you can share. If not, do you have advice that we can give to the client. The client has already signed a conflict waiver letter (in early 2002), has retained an attorney and we have been retained through the attorney. If necessary, we can have another conflict discussion. Thanks for your help.

Richard J. Bloom
Senior Manager - Personal Financial Planning
KPMG LLP
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
Telephone: 973-912-6470
Fax: 973-912-6168
e-mail: rbloom@kpmg.com

KPMG 0024443

Proprietary Material
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Permanent Subcommittee on Investigations
EXHIBIT #98fff

Unknown

From: Collins, Erin M
Sent: Friday, December 06, 2002 4:16 PM
To: Paule, Robin M; Hasling, Carl D; Baumann, Dale R; Rivkin, David; Ito, Dennis A; Mccrimisk, George H; Swartz, Susan K; Miner, Jeffrey E; Quock, Erika L; Wempen, Eric P; Northrup, Todd R; Heil, Matthew C; Chang, Julia K
Cc: Abkin, Wendy; Jones, Ken-WASH-DC
Subject: Blips - Form 872-I Statute Extension Request

Robert Gee, IRS manager assigned to the blips project, told me the IRS is in the process of sending out statute extensions to our clients. The Service has taken a conservative position and is requesting taxpayers sign a Form 872-I. Basically a Form 872-I not only keeps the statute for assessment open for all issues on the Form 1040 but it also keeps open the statute for any flow through adjustments for any and all TEFRA partnerships that may flow through to the 1040. The form does not require the IRS to identify which TEFRA partnerships are keep open rather it keeps open the statute open for any flow through adjustment. This consent is the complete opposite of what we did on the flips/opis clients.

I told Robert I was going to recommend to our clients NOT to sign the 872-I rather we wanted a restricted consent. He said that was our right and understood that is what we did for blips/opis. He said they were working on restricted language. He did not commit that the Service would do restricted consents but certainly implied it. When you receive the 872-I I would suggest you push back to the agent and tell them you want to extend the statute but wanted a restricted consent to the blips adjustment.

Call me if you have any questions.

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5/5/2003

KPMG 0027977

Permanent Subcommittee on Investigations
EXHIBIT #98ggg

Unknown

From: Hasting, Carl D
Sent: Saturday, December 21, 2002 9:39 AM
To: Collins, Erin M
Subject: FW: BLIPS & Statute of Limitations Issue

What are the rumors about Presidio??

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, December 20, 2002 9:27 AM
To: Ammerman, Douglas K; Baumann, Dale R; Branam, Carolyn B; Carbo, Deke G; Cohen, David (US/CHICAGO); Eischeid, Jeffrey A; Fuller, Diane D; Gibson, Robert G; Goldberg, William J; Hamilton, Randall A; Hasting, Carl D; Henderson, Trade K; Hottle, Robert Y; Ito, Dennis A; Jackson, William M; Jandl, George P; Jones, Allan L (US/Minneapolis); Jordan, Robert M; Maguire, Thomas E; Maughan, John F; Mccrimisk, George H; O'Neal, Kenneth; Pace, Katherine A; Paule, Robin M; Perez, Robert L; Peters, Marsha F; Remo, Dee Ann; Rivkin, David; Schorr, Eugene G; Slattery, Daniel M; Smolin, Jay M; Speiss, Timothy P; Tendler, Neil J; Warley, Carol G; Weld, Gary E; Wise, Richard; Wolfson, Neil E; Wright, Glen A
Cc: Jones, Ken-WASH-DC
Subject: FW: BLIPS & Statute of Limitations Issue

fyi

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Friday, December 20, 2002 12:06 PM
To: Eischeid, Jeffrey A; Abkin, Wendy; Adelson, Jonathan S; Burquest, Patricia L; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G
Subject: BLIPS & Statute of Limitations Issue

Everyone: Please assure KPMG professionals and clients that we are diligently working on the Presidio/Statute of Limitations issue. Erin and the coalition are working on setting up a meeting with the IRS after the first of the year to discuss our proposal to designate our clients as the TMPs. We (Jeff Eischeid) is also talking directly to Presidio folks to determine how they might assist us (there are various possibilities). Finally, there are various rumors out there about Presidio -- but let's don't deal in rumors. Again, we are working on a solution ... and hope to have one sometime in January.

KEN JONES
Tax Controversy Services
kjones@kpmg.com
tel 202-533-3080
fax 202-533-8553
cell 703-362-1623
kpmg

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Permanent Subcommittee on Investigations
EXHIBIT #98hhh

KPMG 0027488

ANNOUNCEMENT 2002-2 CLIENT LETTER (TRACT, MIDCO, ECONOMIC LIABILITY, BLIPS) DRAFT: Tuesday, May 06, 2003

Deleted: Wednesday, March 27, 2002
Inserted: Wednesday, March 27, 2002
Deleted: Tuesday, March 26, 2002

Dear Client:

We previously notified you of a recent IRS Announcement aimed at encouraging taxpayers to disclose tax shelters and other items that might be subject to challenge by the IRS and that taxpayers may have reported on their tax returns. The IRS is offering a limited window of opportunity during which taxpayers may voluntarily disclose certain transactions to the IRS and avoid the application of certain components of the section 6662 accuracy-related penalty with respect to these transactions.

We represented you in connection with the transaction [SELECT ONE, USE THE LANGUAGE IN PARENTHESIS—(1) Notice 2001-17, 2001-9 I.R.B. 730 (involving a loss on the sale of stock acquired in a section 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor had not yet taken into account for federal income tax purposes)—(2) Notice 2001-16, 2001-9 I.R.B. 730 (involving the use of an intermediary to sell assets of a corporation)—(3) Notice 2000-15, 2000-1C.B. 826, item (6) (involving distributions described in Treas. Reg. section 1.643(a)-8 from a charitable remainder trust)—(4) Notice 2000-44, 2000-2 C.B. 255 (involving generating losses resulting from an increase in the basis of partnership interests)] and indicated that it was possible that one or more of your investment, legal, or tax advisors, including KPMG, would be required to provide to the IRS a list of investors in this transaction, whether entered into before or after the date it became a "listed" transaction. A copy of this letter is attached.

We are writing to you at this time to inform you that the IRS has asked KPMG LLP to turn over names, documents, opinions, and other information relevant to their participation in the transaction. Because of this development, we believe that it is imperative that you not delay in considering the disclosure opportunity, which requires that you disclose before the earlier of (1) April 23, 2002, or (2) the date the item or another item arising from the same transaction is an issue raised during an examination.

As KPMG advised you on the transaction, it may be perceived as having a potential conflict of interest in assisting you in your determination whether or not to make the disclosure. Therefore, we strongly urge you to consider seeking the advice of another tax professional concerning whether to disclose pursuant to the Announcement. If you request, KPMG tax professionals will help you analyze whether it may be advisable to disclose this transaction or any other items you deem appropriate, and prepare the disclosure statement for filing with the IRS. If you decide that you want KPMG to help you, we will require that you sign a waiver of any potential conflict of interest.

[Relationship Partner] will be contacting you to discuss this important matter further.

Sincerely,

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Permanent Subcommittee on Investigations
EXHIBIT #98iii

KPMG 0033899

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[Name]
Partner
KPMG LLP

Cc: [Relationship Partner]

KPMG 0033900

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ANNOUNCEMENT 2002-2 CLIENT LETTER (VERSION #2 — BLIPS (to extent not under exam and issue raised))
DRAFT: Wednesday, May 07, 2003

Dear Client:

We are writing to advise you of an IRS Announcement aimed at encouraging taxpayers to disclose tax shelters and other questionable items reported on their tax returns. The IRS is offering a limited window of opportunity during which taxpayers may voluntarily disclose certain transactions to the IRS and avoid the application of portions of the section 6662 accuracy-related penalty. If you qualify under the Announcement for the penalty waiver, we believe that a prompt disclosure may provide you with significant protection against certain penalties and that, absent special circumstances, you should make a prompt disclosure in accordance with the Announcement.

Announcement 2002-2, along with News Release IR-2001-121, allows taxpayers the opportunity to avoid liability for the following section 6662 penalties: (1) negligence or disregard of rules or regulations; (2) substantial understatement of income tax; (3) substantial or gross valuation misstatement (except for any portion of an underpayment attributable to a net section 482 transfer price adjustment, unless the documentation rules are satisfied); and (4) substantial overstatement of pension liabilities.

Disclosure under this initiative does not affect whether the IRS will impose any civil penalties (other than the components of the accuracy-related penalty listed above) or pursue any potential criminal violations. Importantly, Announcement 2002-2 states that a taxpayer's disclosure of an item creates no inference that the taxpayer's tax treatment of the item was improper or that the accuracy-related penalty would apply if there were an underpayment of tax. The Announcement also notes that taxpayers that do not disclose under this initiative are not prevented from demonstrating that they qualify for the reasonable cause exception to the accuracy-related penalty.

The disclosure initiative applies to all items except items resulting from transactions that involve or contain:

- A step that did not occur, but for which the taxpayer claimed a tax benefit
- The fraudulent concealment of the amount or source of any item of gross income
- The concealment of the taxpayer's interest in, or signature or other authority over, a financial account in a foreign country
- The concealment of a distribution from, a transfer of assets to, or that the taxpayer was a grantor of, a foreign trust or
- The treatment of personal, household, or living expenses as deductible business expenses.

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EXHIBIT #98jjj

You have until the earlier of (1) April 23, 2002, or (2) the date the item or another item arising from the same transaction is raised during an examination to make the disclosure required by the Announcement. The Announcement explains that an item is an issue raised during an examination "if the person examining the return (the examiner) communicates to the taxpayer knowledge about the specific item or on or before December 21, 2001, the examiner has made a request to the taxpayer for information, and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item" (emphasis added). If you submit the disclosure pursuant to Announcement 2002-2 and you are not under examination, the disclosure must be sent to the Office of Tax Shelter Analysis (OTSA); otherwise the disclosure should be given to the examiner

Under section 6662(a), a 20 percent penalty may be imposed against a taxpayer for an underpayment of tax due to: (1) negligence or disregard of rules or regulations; (2) substantial understatement of income tax (i.e., more than a 10% understatement); (3) substantial income tax valuation misstatement; (4) substantial overstatement of pension liabilities; and (5) substantial estate or gift tax valuation understatement. In the case of a gross valuation misstatement, section 6662(h) allows the imposition of a 40 percent penalty. Section 6664 generally allows a taxpayer to avoid an accuracy-related penalty by a showing of reasonable cause and good faith.

Under Internal IRS guidelines issued on December 20, 2001, examiners are required to consider the section 6662 accuracy-related penalty for any underpayment attributable to a taxpayer's participation in a "listed transaction" — i.e., one that has been identified by the IRS as having significant tax avoidance potential. (The current list is contained in Notice 2001-51, 2001-34 I.R.B. 190.) These guidelines also require examiners to contact Large and Mid-Size Business (LMSB) field counsel and OTSA once they have identified and evaluated facts regarding a "potentially abusive tax shelter" — e.g., a transaction that meets two out of the five characteristics in Reg. section 1.6011-4T(b)(3) or where there is no business purpose, or in which a significant purpose is the avoidance or evasion of federal income tax, and the tax benefits claimed are unusual or not of a kind clearly contemplated by the Code. In the case of "listed transactions", the examiner must obtain approval of the Director of Field Operations (DFO) to impose or not impose the accuracy-related penalty. In the case of "potentially abusive tax shelters," the examiner must obtain approval of the DFO to impose the penalty. If you submit the disclosure pursuant to Announcement 2002-2, however, the guidelines do not require the involvement of any IRS personnel beyond the examiner.

You entered into a transaction that the government may consider to be substantially similar to one of the transactions described in Notice 2000-44, 2000-2 C.B. 255. Any transaction substantially similar to one of the transactions

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described in Notice 2000-44 is a "listed transaction" and is subject to the procedures set forth above if you are, or come under, examination. The IRS has made a request for information to KPMG which, in the IRS's view, would require us to provide them with a list of our clients who have participated in this or similar transactions, along with related documentation. We also understand that the IRS has recently asked for information related to this transaction from at least one taxpayer. Therefore, it is highly likely that KPMG or another investment, legal, or tax advisor, will be required to provide to the IRS a list of investors in this transaction.

If the IRS learns of the transaction from another source and raises it in an examination of your return, you will be precluded from taking advantage of the penalty waiver unless you have complied with the Announcement prior to the date the IRS raises the issue on an examination of your return.

We recommend that you make the disclosure required by the Announcement for the following reasons: (1) to avoid any potential imposition of the accuracy-related penalty; (2) to avoid the expenses and resources potentially associated with contesting an imposition of the penalty; and (3) to put yourself in a better settlement and/or litigation position as to the tax issues involved in the transaction.

As KPMG advised you on the transaction and may have a potential conflict of interest, you may want to consider seeking the advice of another tax professional concerning whether to disclose under the Announcement. If, having considered whether to seek the advice of another professional, you decide that you want KPMG to help you with preparing the disclosure statement and filing it with the IRS, we will request that you sign a waiver of any potential conflict of interest.

Because of IRS focus on this area and the time limit imposed by the Announcement, we recommend that you not delay in considering the disclosure opportunity provided by the Announcement if your transaction is not yet under examination and if your tax year affected by the transaction is not yet closed.

We will be contacting you to discuss this important matter further.

Sincerely,

Jeff Eischeid
National Partner-in-Charge of []
KPMG LLP

Attachments: Announcement 2002-2
News Release, IR-2001-121

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KPMG 0026551

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KPMG 0026552

4

Attorney Client Privilege—Privileged and Confidential
Internal Use Only—Not to be provided to Client

Talking Points

1. *What kind of examination is this?*
The IRS is conducting a civil examination of the firm for allegedly failing to register two PFP transactions. The Service has directed that the firm provide information concerning other transactions as a result of this examination for alleged failure to register.
2. *Does the firm have to turn over the client's name?*
Yes. The firm has received summonses from the IRS. A summons is a very powerful investigative tool that Congress gave to the IRS to assist it in the determination of tax liability. The firm is required by law to comply with a valid summons. OGC and our outside counsel firm have each determined that the summonses that the firm has received are valid and enforceable in most respects. The summonses require the firm to provide the IRS with investor lists for certain transactions.
3. *What will the IRS likely do with the information it receives?*
While we are uncertain, it is very likely that the IRS will quickly open examinations of companies and individuals whose names are disclosed to the IRS.
4. *Does the firm also have to turn over other information pertaining to my participation in the transaction?*
Yes. The IRS has also summoned documents. The firm is required to produce documents in its custody, such as engagement letters, its work papers, and "deal documents." It may also have to produce copies of tax opinions.
5. *The client indicates that it does not want to permit the firm to disclose its name or documents pertaining to its participation—after all, don't the records belong to the client?*
No, accountant's work papers do not belong to the client. There is a statute or rule to this effect in virtually every state. They belong to the firm.
6. *Does the IRS already have my name—has it been disclosed already?*
Possibly. Another provider may have already provided a list concerning the transaction to the IRS.
7. *Is the firm providing information to the IRS voluntarily?*
No. It has received a summons from the IRS and must surrender the information in accordance with law.
8. *What about documents that may be legally privileged?*

The firm is not producing copies of documents as to which the client may assert a legal privilege. These will be withheld, but they are required to be listed on a privilege log that will be furnished to the IRS. For example, if the firm issued a tax opinion after July 27, 1998, it will not be produced, but it will instead be identified on a privilege log. If an opinion was issued to the client by a law firm, it will similarly be withheld and listed on a privilege log.

8. *The engagement was through an attorney or law firm and the client advises that it considers disclosure of its name and/or any documents to be a waiver of privilege.* Please ask the client's attorney to contact OGC (Steve Gremminger) or King & Spalding (Kevin Dinan).
10. *Does the firm still stand behind the tax opinion that it issued to me?*
Yes. It is important to recognize that the IRS examination of KPMG for possible failure to register (we do not believe that we were required to register anything) has nothing to do with the underlying substantive merits of any particular strategy.
11. *Client says it did not expect to get audited:*
It should not be surprised. Remind the client that it was informed about the risks at the time when it first learned about the transaction, that the tax opinion we issued was MLTN [or higher], that there was always the expectation that the IRS would discover the transaction and commence an audit—and that the company would defend the audit and proceed to litigate if necessary. Also, some clients may have made disclosures of various transactions on their tax returns, and those disclosures were certainly likely to trigger IRS scrutiny.
12. *Are other taxpayers who did a similar transaction under audit?*
Possibly; in the case of certain transactions, yes.
13. *Are firms besides KPMG being asked to provide information about their clients to the IRS?*
To the best of our knowledge, yes. We understand that most of the Big 5 firms have received such requests, as well as some law firms and others. According to the tax press, the IRS boasts that it has sent requests to 30 promoters.
14. *Client indicates that it is contacting the media:*
Make no comment. Please notify George Ledwith, firm Director of Communications, in Montvale. Please also notify OGC and either Rick or Jeff.
15. *Client threatens litigation against the firm:* Please notify OGC (Steve Gremminger) and DPP-Tax (Larry Delap).
16. *Client wants its litigation attorney to talk with the firm partners, or client's attorney calls a partner to interrogate him:* Explain that this is not permitted

under firm procedures, and refer the client to OGC. Make no statement. Please also notify OGC.

17. *Client says that it expects the firm to agree to a tolling or standstill agreement (an agreement that the firm and the client mutually agree to suspend the tolling of the applicable statute of limitation for commencement of litigation against the firm):* Do not agree. Consider pointing out that the client as yet has no damages—it will have the opportunity to contest any amount the Service asserts. Tell the client that it should not expect that the firm would agree to this, but that it is a legal matter that you are referring to OGC. Notify OGC.
18. *Will the firm return professional fees paid by the client?*
No. These are sophisticated clients that understood the risks inherent in these transactions at the time of their decision to participate. They were informed about the risk by our firm and possibly by another professional adviser. Services were performed by the firm pursuant to an engagement letter that was agreed to by the client, often after consultation with an attorney, accountant, or other professional adviser. The engagement letter provides a limitation of liability that was agreed to by the client, in favor of the firm. The engagement letter also provides that the client will indemnify the firm against actions by third parties. Because the client was told about, understood, and was mindful of risk, and because the IRS audit of his return is not unexpected but was anticipated years ago, there is no reason for the firm to agree to refund fees.
19. *Will the firm agree to indemnify the client, either for any penalties that may be asserted, or for the tax that may be asserted?*
No. The firm does not indemnify clients as a matter of policy. The firm did not insure the client's risk. Also, to the extent that the client is demanding that there be an indemnity for taxes asserted, this is the client's own legal obligation and is not the firm's responsibility. To the extent that the client may claim that the firm should indemnify any interest asserted, explain that this is not the firm's obligation and moreover, the client has had the beneficial use of the money.
20. *If the client is audited, will the firm pay for the legal defense of the audit or any litigation?*
No. This is the client's responsibility and is not the firm's obligation
21. *If the client is audited, will the firm provide audit defense without charge?*
Only to the extent that the original engagement letter may so provide. Otherwise, if the client wants our assistance with representation in an audit, we will charge for such service, and we will ask the client to sign a new, separate engagement letter. Any such service will only be provided if the client signs a waiver of potential conflict of interest on the part of the firm. The potential conflict of interest is attributable to the fact that the firm is under IRS audit with respect to alleged failure to register the transaction, and for other penalties. There is no

requirement that the client sign a waiver unless we are providing additional services. If we are, then a waiver is required before the services are performed.

22. *Will the firm charge the client for its services in the preparation of the Disclosure Statement described in Announcement 2000-02?*
Yes. Explain that the firm must charge for this service. Also explain that since the Statement will be similar to Statements that are being prepared for other clients, the fee will be modest.
23. *The client filed a return during 1999 and thinks that it can play the audit lottery instead of making the disclosure that we are unqualifiedly recommending that it consider making. What should we tell this client?*
Tell it that this is its own decision, and that it should consider seeking the advice of another professional adviser about this decision.
24. *The client is considering seeing another adviser, either about the disclosure, about his situation, or the audit:*
Encourage the client to do this. Tell the client that if, after having consulted with the other adviser, it still wants the assistance of the firm for other services related to the transaction, we will assist—but we will require that the client sign a conflict waiver. If the client wants to hire another adviser to represent the company in the audit, encourage the client to do so. If the client says that the adviser and the company want the firm to assist the adviser, we can agree to do so, for a fee, under a separate engagement letter. Whether to have this type of arrangement going forward is the attorney's and the client's decision.
25. *What about Announcement 2002-02: Can my company still take advantage of it?*
Yes. The completed forms need to be mailed by April 23, 2002.
26. *What strategies will the firm no longer market?*
The firm is currently reviewing all current strategies to determine which should no longer be discussed with clients.
27. *The client says that if it had worked with a law firm rather than an accounting firm, the transaction would not be disclosed to the IRS. Is this true?*
No. First, we understand that the IRS is also currently aggressively seeking information from major law firms at this time. Second, the fact that an engagement is performed through a law firm will not necessarily shield the transaction from the IRS. For example, the name of a client is ordinarily not privileged. Nor will transaction documents ordinarily be privileged. And if a transaction is reported on a tax return, ordinarily documents relating to the transaction, except perhaps the opinion of counsel, will be available to the IRS upon audit.

DRAFT –BLIPS DISCLOSURE STATEMENT

Voluntary Disclosure Under Announcement 2002-2

CLIENT NAME AND ADDRESS

SSN:

[Choose one of the following two paragraphs]**[1. Non-CIC taxpayer under examination as of December 21, 2001]**

[I/We] [am/are] a non-Coordinated Industry Case (CIC) taxpayer, under examination as of December 21, 2001. Pursuant to the PROCEDURES FOR MAKING THE DISCLOSURE contained in the Announcement, the original of this statement was given to the examiner, NAME OF EXAMINER, on DATE. A copy of the statement is being submitted to the Office of Tax Shelter Analysis.

[2. Non-CIC taxpayer not under examination as of December 21, 2001]

[I/We] [am/are] a non-Coordinated Industry Case (CIC) taxpayer, not under examination as of December 21, 2001. Pursuant to the PROCEDURES FOR MAKING THE DISCLOSURE contained in the Announcement, this statement is being submitted to the Office of Tax Shelter Analysis.

The following information is provided as required by the Announcement.

INFORMATION REQUIRED TO MAKE DISCLOSURE**1. STATEMENT DESCRIBING MATERIAL FACTS OF THE ITEM**

[Caution: The description below assumes that an individual (or other non-pass-through entity) client participated directly in the transaction. If the client, however, participated in the investment indirectly through a pass-through entity, the statement below must be supplemented to also briefly describe the material facts surrounding that particular investment structure.]

During calendar year [year], [I/We] engaged Presidio Growth LLC (Presidio), a registered investment advisor, to provide [me/us] with investment advisory services and

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KPMG 0033907

trading strategies with respect to foreign exchange contracts. Utilization of a high degree of leverage was integral to the Presidio trading strategies. Presidio assisted [me/us] in structuring the requisite financing package.

[I/We] and two limited liability companies owned or controlled by Presidio invested in a newly created limited liability company (the "Investment Fund"). Presidio acted as Investment Advisor to the Investment Fund and, in such capacity, facilitated the purchase of foreign currency contracts and other foreign currency-based financial instruments. The purchase of such foreign currency contracts and other financial instruments involved full economic risk to [me/us] in the foreign currency markets with price movements (up or down) in the purchased securities. [I/We] realized either profits or losses based upon the price movements of the foreign currency contracts and other financial instruments. No one provided [me/us] with any assurances or guarantees that [I/we] would make money in any of these transactions. [I/We] [was/were] at all times subject to market risks for both reward and loss.

Such investment strategy may be viewed as similar to the transactions described in Notice 2000-44.

2. STATEMENT DESCRIBING THE TAX TREATMENT

In the alternative:

During calendar year [year], [I/We] realized and recognized a capital loss with respect to [my/our] participation in the Investment Fund.

During calendar year [year], [I/We] realized and recognized an ordinary loss with respect to [my/our] participation in the Investment Fund.

During calendar year [year], [I/We] realized and recognized an ordinary loss and a capital loss with respect to [my/are] participation in the Investment Fund.

The loss was recognized upon disposition of the [stock and/or Euros] received upon liquidation of [my/our] interest in Investment Fund. This loss was largely attributable to [my/our] position that the loan premium obligation [I/We] contributed to the Investment Fund was not a liability for purposes of Code Section 752.

3. TAXABLE YEARS AFFECTED BY THE ITEM

The tax year(s) affected by this item was (were) the year(s) ending XXXX.

4. COORDINATED INDUSTRY CASE TAXPAYER

[I/We] [am/are] not a Coordinated Industry Case taxpayer.

5. NAMES AND ADDRESSES REQUIRED

[LIST ALL THOSE THAT APPLY]

Presidio Investment Advisors, LLC
333 Hayes Street, Suite 200
San Francisco, California 94102
(Address as of December 31, 1998)

Presidio Advisory Services, LLC
333 Hayes Street, Suite 200
San Francisco, California 94102

[I/We] engaged [Insert name(s) of applicable financial advisor(s) listed above] to act as [my/our] financial advisor and to arrange the establishment of the investment entities and [my/our] acquisition of [my/our] investment in the transaction.

[Insert names and addresses of general partners and/or managers of the partnerships involved and identify their roles.]

[If applicable, insert the name and address of Brown & Wood and explain (a) whether Presidio or the client engaged B& W, and (b) the nature of the services provided by B& W. Note the following: In most cases, Presidio engaged Brown & Wood to provide a concurring tax opinion. In some cases, clients entered into separate engagement letters with B&W. In most cases, clients did not. In most cases, BLIPS clients paid B&W for their opinion. In BLIPS, B&W was typically paid directly by Presidio.]

[If applicable, insert the name and address of any other advisor Client consulted before engaging Presidio, such as attorneys, bankers, investment advisors, etc.]

KPMG LLP
[Insert appropriate local address]

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KPMG advised me on the tax aspects of the transaction.

6. STATEMENT AGREEING TO PROVIDE INFORMATION

To the extent required by the Announcement, [I/We] [agrees/agree] to provide if requested:

1. All transactional documents, including agreements, contracts, instruments, schedules, and, if participation in the transaction was promoted, solicited or recommended by any other party, all material received from that party or that party's advisor.
2. All internal documents or memoranda used by it in its decision-making process, including, if applicable, information presented to the Board of Directors.
3. All opinions and memoranda that provide a legal analysis of the item, whether prepared by the taxpayer or a tax professional on our behalf.

STATEMENT UNDER PENALTY OF PERJURY

Under penalties of perjury, I [WE in case of a joint return] declare that I [WE in the case of a joint return] have examined the foregoing statement, and to the best of my [OUR in the case of a joint return] knowledge and belief, this statement contains all the relevant facts relating to this disclosed item and such facts are true, correct, and complete.

[TYPE NAME(S)-- BOTH SPOUSES MUST SIGN IF A JOINT RETURN]

DATE

DRAFT – OPIS DISCLOSURE STATEMENT

Voluntary Disclosure Under Announcement 2002-2

CLIENT NAME AND ADDRESS

TIN:

[Choose one of the following three paragraphs]

[1. Non-CIC taxpayer under examination as of December 21, 2001]

[Entity name/I] [is/am] a non-Coordinated Industry Case (CIC) taxpayer, under examination as of December 21, 2001. Pursuant to the PROCEDURES FOR MAKING THE DISCLOSURE contained in the Announcement, the original of this statement was given to the examiner, NAME OF EXAMINER, on DATE. A copy of the statement is being submitted to the Office of Tax Shelter Analysis.

[2. Non-CIC taxpayer not under examination as of December 21, 2001]

[Entity name/I] [is/am] a non-Coordinated Industry Case (CIC) taxpayer, not under examination as of December 21, 2001. Pursuant to the PROCEDURES FOR MAKING THE DISCLOSURE contained in the Announcement, this statement is being submitted to the Office of Tax Shelter Analysis.

[3. CIC taxpayer]

[Entity name] is a Coordinated Industry Case (CIC) taxpayer. Pursuant to the PROCEDURES FOR MAKING THE DISCLOSURE contained in the Announcement, this statement is being submitted to the Office of Tax Shelter Analysis. The original of this letter was given to the team manager, NAME OF TEAM MANAGER, on DATE.

The following information is provided as required by the Announcement.

INFORMATION REQUIRED TO MAKE DISCLOSURE

STATEMENT DESCRIBING MATERIAL FACTS OF THE ITEM

[Caution: The description below assumes that an individual (or other non-pass-through entity) client participated directly in the transaction. If the client, however, participated in the investment indirectly through a pass-through entity, the

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EXHIBIT #98mmm

KPMG 0048661

statement below must be supplemented to also briefly describe the material facts surrounding that particular investment structure.]

During calendar year [year], [Entity name/I] engaged [Presidio/Quellos/ Quadra], a registered investment advisor, to provide [it/me] with investment advisory services and trading strategies designed to permit [Entity name/me] to acquire both directly, and indirectly, a position in the shares of a foreign financial institution selected by [Entity name/me]. Pursuant to this engagement, [Presidio/Quellos/Quadra] facilitated the purchase of shares and options in a foreign financial institution. The purchase of the foreign financial institution shares and options involved full economic risk to [Entity name/me] in the stock market movement (up or down) of the foreign financial institution securities. [Entity name/I] realized either profits or losses based upon the movement of the foreign financial institution shares. No one provided [Entity name/me] with any assurances or guarantees that [it/I] would make money in any of these transactions. [Entity name/I] was at all times subject to market risks for both reward and loss.

In addition to the direct investments in the foreign financial institution, [Presidio/Quellos/Quadra] facilitated an indirect investment in a foreign financial institution through [for FLIP clients: a warrant to acquire control of an offshore investment company; for OPIS clients: a total return swap agreement with respect to the investment activities of an offshore investment company.]

The offshore investment company used a combination of derivative securities, call/put options and long positions in foreign financial institution stock to optimize its overall portfolio position. A prime underlying tenet of the investment strategy was to maximize the degree of available leverage to finance the investment in foreign financial institution securities.

Such investment strategy may be viewed as similar to the transactions described in Notice 2001-45.

2. STATEMENT DESCRIBING THE TAX TREATMENT

During calendar year [year], [Entity name/I] realized and recognized a capital [gain or loss] with respect to [its/my] indirect investment in the foreign financial institution stock. During calendar year(s) [year(s)], [it/I] recognized capital losses upon disposition of [its/my] direct investments in the foreign financial institution stock.

The capital loss upon disposition of the direct investments in the foreign financial institution stock was largely attributable to [its/my] position that the offshore investment company's tax basis in the foreign financial institution shares that it sold pursuant to a redemption transaction should be allocated to [Entity name/me] pursuant to Treas. Reg. Section 1.302-2(c).

3. TAXABLE YEARS AFFECTED BY THE ITEM

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The tax year(s) affected by this item was (were) the year(s) ending XXXX.

4. COORDINATED INDUSTRY CASE TAXPAYER

[CHOOSE ONE]

[Entity name/I] [is/am] not a Coordinated Industry Case taxpayer.

[Entity name] is a Coordinated Industry Case taxpayer and agrees to address this disclosed item under the Accelerated Issue Resolution process described in Rev. Proc. 94-67, 1994-2 C.B. 800, if requested to do so.

5. NAMES AND ADDRESSES REQUIRED

[LIST ALL THOSE THAT APPLY]

Presidio Investment Advisors, LLC
333 Hayes Street, Suite 200
San Francisco, California 94102
(Address as of December 31, 1998)

Presidio Advisory Services, LLC
333 Hayes Street, Suite 200
San Francisco, California 94102

Quellos Group
601 Union Street
56th Floor
Seattle, Washington 98101

Quadra Custom Strategies, LLC
601 Union Street
56th Floor
Seattle, Washington 98101

[Entity name/I] engaged [Insert name(s) of applicable financial advisor(s) listed above] to act as [its/my] financial advisor and to arrange the establishment of the investment entities and [Entity name's/my] acquisition of [its/my] investment in the transaction.

[Insert names and addresses of general partners and/or managers of the partnerships involved and identify their roles.]

[If applicable, insert the name and address of Brown & Wood and explain (a) whether Presidio/Quellos/Quadra or the client engaged B& W, and (b) the nature of the services provided by B& W. Note the following: In most cases, Presidio/Quellos/ Quadra engaged Brown & Wood to provide a concurring tax

opinion. In some cases, clients entered into separate engagement letters with B&W. In most cases, clients did not. In most cases, OPIS clients paid B&W for their opinion. In FLIP, B&W was typically paid directly by Presidio/Quellos/Quadra.]

[If applicable, insert the name and address of any other advisor Client consulted before engaging Presidio/Quellos/Quadra, such as attorneys, bankers, investment advisors, etc.]

KPMG LLP
[Insert appropriate local address]

KPMG advised me on the tax aspects of the transaction.

6. STATEMENT AGREEING TO PROVIDE INFORMATION

To the extent required by the Announcement, [Entity name/I] [agrees/agree] to provide if requested:

1. All transactional documents, including agreements, contracts, instruments, schedules, and, if participation in the transaction was promoted, solicited or recommended by any other party, all material received from that party or that party's advisor.
2. All internal documents or memoranda used by it in its decision-making process, including, if applicable, information presented to the Board of Directors.
3. All opinions and memoranda that provide a legal analysis of the item, whether prepared by the taxpayer or a tax professional on our behalf.

STATEMENT UNDER PENALTY OF PERJURY

Under penalties of perjury, I [WE in case of a joint return] declare that I [WE in the case of a joint return] have examined the foregoing statement, and to the best of my [OUR in the case of a joint return] knowledge and belief, this statement contains all the relevant facts relating to this disclosed item and such facts are true, correct, and complete.

[TYPE NAME, AND TITLE IF APPLICABLE – BOTH SPOUSES MUST SIGN IF A JOINT RETURN]

DATE

[NOTE: if the taxpayer is a corporation, the declaration must be signed and dated by an officer of the corporation who has personal knowledge of the facts. If the

2445

corporate taxpayer is a member of an affiliated group filing consolidated returns, an officer of the common parent of the group must also sign and date the statement under penalty of perjury.]

2446

DRAFT
Prepared at the direction of the Office of General Counsel
PRIVILEGED AND CONFIDENTIAL

Procedures followed to identify strategies for response to IRS summons

1. Ran EIF Report for Strategy
2. Requested OMS Report for Strategy
3. Compared EIF Report and OMS Reports
4. Sent message to Strategy Deployment Team, TSP on EIF and OMS Report with copy to SLL, WNT PIC, General Counsel, TCS SLL, Midatlantic AMP, WNT TCS, and TIC requesting confirmation of information needed for the summons response
5. Collected responses and made requested changes to EIF and OMS
6. TIC partner responsible for Strategy followed-up with professionals who did not respond
7. Sent second message to TSPs requesting copies of engagement letters and M-1 information for each engagement identified
8. Sent third message to TSPs with the updated EIF Report showing who will be disclosed and where there are still questions

Permanent Subcommittee on Investigations

EXHIBIT #98nnn

XX-001750

**TECHNICAL DISCUSSION PAPER ON THE SECTION 6662
TAX SHELTER PENALTY RULES**

Summary

The 20-percent substantial understatement penalty is one of the accuracy-related penalties in section 6662 of the Internal Revenue Code. The substantial understatement penalty contains some tough rules in the case of items attributable to "tax shelters." A "tax shelter" is any entity, investment, plan or arrangement with "a significant purpose" of avoiding or evading federal income tax for items with respect to transactions entered into after August 5, 1997.

To avoid the substantial understatement penalty for a tax shelter position, the taxpayer must prove that there was "substantial authority" for the position and that the taxpayer reasonably believed that the position was more likely than not correct. The taxpayer also may avoid the penalty by qualifying for the reasonable cause exception to the penalty. The preferable way to demonstrate reasonable cause is by relying upon a tax opinion concluding that the more-likely-than-not standard is satisfied. Because the more-likely-than-not standard represents a higher level of authority than the substantial authority standard, the opinion does not also have to conclude that the substantial authority standard is satisfied.

The penalty exposure is greater for corporate than for non-corporate taxpayers participating in tax shelters, because Treasury regulations make it more difficult for a corporation participating in a tax shelter to qualify for reasonable cause relief. According to the regulations, there may not be reasonable cause protection for a tax shelter position of a corporation if the tax shelter lacked significant business purpose, the tax benefits were unreasonable in relation to the taxpayer's investment, or there was a confidentiality agreement. This uncertainty increases the need for a penalty opinion in this context. In some cases, a second opinion also may be advisable.

Overview

The section 6662 accuracy-related penalty applies if any portion of an underpayment of tax is attributable to one of the types of misconduct listed in that section. These types of misconduct include:

- Negligence
- Disregard of a rule or regulation, and
- A substantial understatement of income tax.

The amount of the penalty generally is 20 percent of the portion of the tax underpayment that is attributable to the misconduct. There is no "stacking" of penalties. For example, if a tax underpayment is due both to negligence and to a substantial understatement, the maximum penalty would be 20 percent of the tax underpayment.

There is a reasonable cause exception for all of the accuracy-related penalties. Thus, the accuracy-related penalty cannot apply if the taxpayer establishes that there was reasonable cause for the underpayment and the taxpayer acted in good faith. The determination of whether a taxpayer qualifies for the reasonable cause and good faith exception is made on a case-by-case basis, taking into account all facts and circumstances.

Substantial Understatement Penalty

Understatement Must be Substantial

The substantial understatement penalty generally applies if there is an understatement of income tax on a taxpayer's federal income tax return that is considered to be substantial. For this purpose, an understatement is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the return, or \$5,000 (\$10,000 for a C corporation).

Tougher Rules for Tax Shelters

In General

The substantial understatement penalty contains some of the toughest rules for taxpayers participating in "tax shelters." A "tax shelter" is any entity, investment, plan or arrangement with "a significant purpose" of avoiding or evading federal income tax, in the case of items with respect to transactions entered into after August 5, 1997. For earlier transactions, "the principal purpose" is substituted for "a significant purpose" in deciding whether a transaction is a "tax shelter."

In general, this penalty can be avoided in the case of a tax shelter position only if the taxpayer can prove to the IRS that there was substantial authority for the position and that the taxpayer reasonably believed, at the time the return was filed, that there was a greater than 50-percent likelihood that the position would be upheld if challenged by the IRS (the "more-likely-than-not standard"). A taxpayer also may avoid the penalty by demonstrating that the taxpayer qualifies for the reasonable cause exception to the penalty. The preferable way to do this is by relying upon a tax opinion letter concluding that the tax shelter position satisfies the more-likely-than-not standard. Because the more-likely-than-not standard represents a higher level of authority than the substantial authority standard, the opinion does not also have to conclude that the substantial authority standard is satisfied. (Outside the tax shelter context, the penalty can be avoided if there is substantial authority for the position, or if there is a reasonable basis for the position and the position is adequately disclosed to the IRS.)

Corporate v. Non-corporate Taxpayers

In recent years, Congress and the IRS have toughened the substantial understatement penalty rules for corporations in tax shelters. This has increased the need for, and value of, a KPMG penalty opinion letter in this context.

First, corporate participants in tax shelters face additional substantial understatement penalty risk, because the only way a corporate participant can avoid the penalty is by establishing that the corporation qualifies for the reasonable cause and good faith exception to the penalty. (A non-corporate participant, by contrast, can avoid the penalty either (i) by qualifying for the reasonable cause exception, or (ii) if there is substantial authority for the position and the non-corporate participant reasonably believes that there is a greater than 50-percent likelihood that the position will be upheld if challenged by the IRS.)

Second, Treasury regulations impose stricter reasonable cause rules for corporations in tax shelters. As with non-corporate participants in shelters, to establish reasonable cause by relying on a tax opinion, the opinion would have to conclude that there was a greater than 50-percent likelihood that the position would be upheld if challenged by the IRS. However, the regulations state that this may not be enough for a corporate participant in a tax shelter to establish reasonable cause if one or more “negative factors” is present.

These “negative factors” are that:

- the taxpayer’s participation in the tax shelter lacked significant business purpose,
- the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer’s investment in the shelter, or
- the taxpayer agreed with the organizer or promoter of the shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter. *See* Treas. Reg. § 1.6664-4(e)(3).

Reliance on a KPMG Opinion Letter to Establish Reasonable Cause

Value of an Opinion Letter

A taxpayer’s reliance on professional advice will constitute reasonable cause and good faith if, under all the circumstances, the reliance was reasonable and the taxpayer acted in good faith (*e.g.*, the taxpayer provided the professional with all the relevant facts). A KPMG opinion letter provides clients with a significant advantage in proving reasonable cause.

Requirements for an Opinion Letter

A tax opinion letter will provide reasonable cause protection, however, only if the opinion letter satisfies certain criteria.

- ***The opinion must conclude, based on a well-reasoned analysis, that there is a greater than 50-percent likelihood that the tax shelter position will be upheld if challenged by the IRS;***
- ***The opinion must be based on pertinent facts and law.*** The opinion must be based on all pertinent facts and circumstances and the law as it relates to those facts and circumstances. For example, the opinion must take into account the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring it in a particular manner.
- ***The opinion must not be based on unreasonable factual or legal assumptions.*** The opinion also must not be based upon unreasonable factual or legal assumptions, representations, statements, findings, or agreements of the taxpayer or any other person.

Concurring Opinion Letters

In some cases, a concurring opinion letter may be advisable. For example, depending upon the facts and circumstances, a concurring opinion letter may be advisable if the first opinion letter is issued by the firm that promotes the underlying tax strategy.

Disregard of a Regulation

If a tax shelter position may be contrary to a temporary or final Treasury regulation, an opinion letter should address both the disregard and substantial understatement penalties.

Corporate Tax Shelter Regulations

Eve Elgin, DPP
Norlyn Miller, WNT
Teri Culbertson, WNT

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Permanent Subcommittee on Investigations
EXHIBIT #98ppp

**FOR INTERNAL USE ONLY --
NOT TO BE USED FOR CLIENT PRESENTATIONS**

XX-002121

Overview

- Treasury has spoken
- Loudly
- At practitioners and taxpayers

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Registration

Confidential Corporate Tax Shelter:

- Significant purpose to avoid federal income tax for a direct or indirect corporate participant;
- Offered to ANY potential participant under conditions of confidentiality; and
- Fees in excess of \$100k in the aggregate.

Registration

- Significant Purpose
 - Listed transaction
 - Lacking economic substance
 - Other tax-structured transactions
- Exceptions:
 - No reasonable basis for denial by IRS
 - IRS determines not subject to registration

Registration

■ Confidentiality

All facts and circumstances considered (including prior conduct)

Disclosure limited in any way

Any promoter knows or has reason to know transaction protected

- Exception - written agreement expressly authorizing disclosure

Registration

- Fees in excess of \$100k
 - All fees in aggregate for transaction
 - All fees from substantially similar transactions must be aggregated

Registration

- When - Shelter must be registered by later of:

First offered for sale after Feb. 28, 2000, or offered on or before but sold after Feb. 28, 2000, or

August 26, 2000

- Exception for binding contract entered into on or before Feb. 28, 2000⁷

Registration

■ How - File Form 8264 (Rev. 11-99)

Type "Confidential Corporate Tax Shelter Filed Under section 301.6111-2T" at top

Complete certain lines

File with IRS Kansas City Service Center

Registration

Sanctions

- Penalty is greater of: 50% of fees paid to ALL promoters of tax shelter, or \$10,000
- Penalty increases to 75% if failure is intentional

List of Investors

Requirements

- Maintain list of investors who acquire interests in tax shelters after Feb. 28, 2000
- Make list available for inspection, upon request by IRS
- Retain list

List of Investors

Potentially Abusive Tax Shelter

- Required to be registered under section 6111(d)
- Other entity, plan, or arrangement as defined under section 6111 - without confidentiality

List of Investors

Who Must Maintain List

- Organizer -- Includes a promoter
- Seller

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List of Investors

Sanctions

- \$50 per failure to list, unless reasonable cause
- Maximum penalty = \$100k per shelter per calendar year

Corporate Reporting

Requirements

- Attach statement to return, and
- File statement with IRS National Office
- Retain records

Corporate Reporting

Sanctions

- Increased taxpayer exposure to accuracy-related penalty
- Increased preparer exposure?

2465

Corporate Reporting

Reportable transaction?

- Listed

Returns filed after Feb. 28, 2000

Reduces taxpayer's federal income tax liability by \$1 m/\$2 m

Same or substantially similar to transaction listed in IRS guidance

2466

16

XX-002136

Corporate Reporting

Reportable transaction?

- Other?

Transaction entered into after Feb. 28, 2000

Reduces taxpayer's federal income tax liability by \$5 m/10 m

You have at least 2 of the following 6 factors:

17

XX-002137

Corporate Reporting

- Confidentiality agreement
- Protection against loss (e.g., insurance, indemnity)
- Promoter fees in excess of \$100k and contingent on taxpayer's participation

Corporate Reporting

- Greater than \$5 m book-tax difference
- Tax-indifferent party with more favorable tax result for taxpayer
- Difference in US-foreign characterization of significant aspect of transaction

Corporate Reporting

Reportable transaction?

- You don't have at least one of the following exceptions:

2470

Ordinary course of business, in form consistent with customary commercial practice, and:

- Would have participated on similar terms regardless of tax benefits, or

20

XX-002140

Corporate Reporting

- Longstanding and generally accepted understanding that tax benefits are allowable

No reasonable basis for denying significant portion of the tax benefits

Identified in published IRS guidance

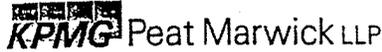
2471

DPP Review

Send questions via Outlook to:

US-SHELTER REGS

2472



21700 Oxnard Street, Suite 1200
Woodland Hills, CA 91367

Telephone 818 227 6900



Telefax 818 702 0602

COPY

September 5, 1997

Private & confidential
Mr. Jeff Greenstein
Quadra Advisors, LLC
999 Third Avenue, Suite 4150
Seattle, Washington 98104

Dear Jeff,

This letter sets forth our understanding of the terms of KPMG Peat Marwick LLP's ("KPMG") agreement with Quadra Advisors, LLC ("Quadra") regarding our two firms' work on a variety of financial strategies that may be undertaken therewith (the "Strategies") by clients of either firm ("Clients").

Scope of KPMG's Services

KPMG has agreed to provide Clients with an analysis of one or more aspects of the Strategies and of the applicable tax consequences, including but not limited to federal tax consequences, of the various transactions that may be undertaken in connection with a Strategy. Such analysis shall include a tax opinion to the Client, delivered by KPMG or such other party as acceptable to the Client, as to the tax treatment of a Strategy and the transactions related thereto. Such opinion shall be delivered to the Client and may not be used or relied upon, or distributed to, any other party without KPMG's prior written consent. The foregoing analysis and tax opinion are referred to herein as the "Tax Advice." In no event shall Quadra be responsible for rendering any Tax Advice.

Scope of Quadra's Services

KPMG understands that individual Clients may engage Quadra to provide the Client with investment advisory services. These services will relate exclusively to the valuation of securities involved in and the execution of transactions to be undertaken in connection

Member Firm of
KPMG International

XX-001988

CONFIDENTIAL

QA- RPZ

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Permanent Subcommittee on Investigations

EXHIBIT #99a

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 KPMG Peat Marwick LLP

Mr. Jeff Greenstein
Quadra Advisors, LLC
September 5, 1997
Page 2

with a Strategy. Such advice described in the foregoing sentence is referred to herein as the "Financial Advice." In no event shall KPMG be responsible for rendering any Financial Advice. KPMG cannot be mentioned in any securities offering, marketing materials, or other documents without KPMG's prior written consent.

Sincerely,
KPMG Peat Marwick, LLP



Gregg Ritchie
Partner

Accepted and Confirmed:

Quadra Advisors, LLC

By: 

Date: 9/18/97

XX-001989

CONFIDENTIAL

CONFIDENTIALITY AGREEMENT

Quadra Capital Advisors (hereinafter the "Company") and KPMG Peat Marwick LLP (hereinafter "KPMG") desire to enter into a professional relationship with one another. In order for such relationship to be meaningful, it will be necessary for the Company to discuss with KPMG proprietary and confidential information relating to the Company's business.

As consideration for the Company agreeing to disclose such information to KPMG and for other good and mutual consideration, the receipt and sufficiency of which are hereby acknowledged, KPMG and the Company hereby agree as follows:

- 1. All information heretofore and hereafter disclosed by the Company to KPMG in writing and expressly labeled "Confidential" pertaining to the Company shall be deemed for the time period ending three years from KPMG's receipt of such information to be confidential information ("Confidential Information").
2. Notwithstanding the foregoing, the obligations of confidentiality under this Agreement shall not apply to Confidential Information that:
(a) is already known to KPMG at the time it is disclosed to KPMG;
(b) has been independently developed by KPMG;
(c) becomes or has become publicly known through no wrongful act of KPMG;
(d) has been or is received by KPMG from a third party without a restriction on disclosure; or
(e) is required by law, court or administrative order to be disclosed.
3. KPMG shall retain all Confidential Information in confidence, exercising the same standard of care used by KPMG to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. KPMG shall not use Confidential Information for any purpose other than in furtherance of the purposes described in the introductory paragraph of this Agreement (i.e., in furtherance of its professional services for the Company).
4. In the event disclosure of Confidential Information is required of KPMG under provisions of any law or court or administrative order, KPMG will use all reasonable efforts to notify the Company of the obligation to make such disclosure in advance of the disclosure in order that the Company will have a reasonable opportunity to object.
5. KPMG's obligations under this Agreement shall survive the termination of its association with the Company.
6. The provisions of this Agreement shall not be construed as preventing KPMG from:
(i) conducting its engagements for the Company in accordance with firm policies and professional standards; or
(ii) conducting its normal review and quality assurance processes with regard to engagements for the Company.

KPMG 0047279

08/01/98 17:52 FAX 212 549 8181 ID:818-818-227-6964 KPMG W/C PFF

Proprietary Material Confidentiality Requested

Permanent Subcommittee on Investigations EXHIBIT #99b

- 7. If KPMG violates this Agreement, then the Company shall be entitled, if it so elects, to institute and prosecute proceedings to obtain relief by way of injunction to enforce its rights hereunder.
- 8. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement and such document is signed by both parties.
- 9. This Agreement constitutes the full and complete understanding and agreement of the parties hereto with respect to the subject matter covered herein and supersedes all prior and contemporaneous oral or written understandings and agreements with respect thereto.
- 10. If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction, such provision shall be amended under the court's supervision so as to be enforceable to the fullest extent permitted by such court, and the remaining provisions shall nevertheless remain in full force and effect.
- 11. KPMG shall review Confidential Information in a timely manner. Assuming the strategy or strategies included in such Confidential Information meets the technical and strategic alliance requirements set forth by KPMG and its Department of Professional Practice, KPMG will use its best efforts to improve them (if required), maintain professional confidentiality as outlined herein, and distribute the strategy or strategies to its clients and targets. Prior to distribution of the Strategy to third parties, KPMG and the Company will enter into negotiation of a business agreement intended to define each firm's role in marketing and assisting clients in proposed execution of the Strategy and the consideration to be paid to each firm for its respective role. Such agreement will also provide that all engagements with respect to such Strategy will be executed exclusively through the Company. Nothing in this Agreement shall prohibit or restrict KPMG's right to develop, use, market, assist third parties in the implementation of any products, ideas, methodologies or other services similar to or competitive with those of the Company disclosed in the Confidential Information. The Company acknowledges that KPMG may already possess or have developed products, ideas, methodologies or services similar to or competitive with those of the Company disclosed in the Confidential Information. KPMG shall in all events remain free to use in course of its business its general knowledge, skills and experience incurred before, during or after the activities hereunder.
- 12. KPMG understands and agrees that monetary damages may not be a sufficient remedy for a breach of this Agreement and that the Company may be entitled to seek injunctive or other equitable relief to remedy or forestall any such breach. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

KPMG 0047280

KPMG W/C PFF ID:818-227-6564 JUN 03 98 13:53 No.015 P.05

Proprietary Material
Confidentiality Requested

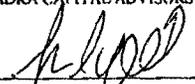
13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties intending to be legally bound, have executed this Agreement as of the later date set forth below.

KPMG PEAT MARWICK LLP

QUADRA CAPITAL ADVISORS

By 

By 

Date: 6/4/98

Date: 6/3/98

KPMG 0047281

JUN 03 1998 13:54 NY 015

ID:818-227-3964

KPMG W/C PFP

Proprietary Material
Confidentiality Requested

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08 04:48 17:51 FAX 212 849 8141

QUADRA ASSOCIATES, LLC

001 001



QUADRA ASSOCIATES, LLC

390 Madison Avenue, 32nd Floor, New York, NY 10022, (212) 849-8140, Fax (212) 849-8181

FAX COVER SHEET

PERSONAL & CONFIDENTIAL

DATE: June 4, 1998

TIME: 5:45 P.M.

TO: Gregg W. Ritchie
KPMG Peat Marwick LLP

PHONE: 818-227-6905
FAX: 818-227-6964

FROM: Larry B. Scheinfeld

PAGES: 4 Including Cover Page

Gregg,

Attached is a signed copy of the Confidentiality Agreement. Please sign the copy and fax it back to me as soon as you can.

I look forward to working with you.

Larry

(Faxed in Larry Scheinfeld's absence.)

The information in this facsimile message is privileged and confidential. It is intended only for the use of the recipient named above (or the employee or agent responsible to deliver it to the intended recipient). If you received this in error, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this message in error please notify us by telephone immediately, and return the original message to us at the above address via postal service. We will reimburse you for such costs. Thank you.

Proprietary Material
Confidentiality Requested

KPMG 0047282

2479

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18727
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18727
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: BLIPS/OPIS Update
Sent: 2000-02-24 16:38:02.051
Date: 2000-02-24 16:38:03.853
X-Folder: OPIS

As a follow-up to my earlier message, I spoke last night with Larry Scheinfeld of Quadra. As you may know, Quadra facilitated significant trades on behalf of PwC with respect to their OPIS transactions during late 1999. It is Larry's understanding that PwC continues to issue MLTN opinions with respect to 1999 transactions.

I will keep you posted on additional updates.

Doug Ammerman
Personal Financial Planning
KPMG LLP
Orange County Office
(714) 850-4455
Fax (714) 850-4410
dammerman@KPMG.com

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #99c

KPMG 0025791

EXHIBIT A

DRAFT – For Discussion Purposes Only

[Date]

PERSONAL & CONFIDENTIAL

Mr. Jeffrey I. Greenstein
Quadra Custom Strategies, LLC
999 Third Avenue, Suite 4150 I
Seattle, Washington 98104

Dear Jeff:

This letter shall serve as the Operating Agreement setting forth the terms of KPMG LLP's ("KPMG") agreement with Quadra Custom Strategies, LLC ("Quadra") regarding an investment strategy utilized by a life insurance policy variable account (the "LINCS Strategy").

I. Commercial Exploitation of the LINCS Strategy

A. KPMG and Quadra shall work together from time to time in connection with implementation of the LINCS Strategy (a strategy that Quadra has expended resources in designing and developing) for investors, which may include limited liability companies, family limited partnerships, or trusts established by such investors (each referred to herein as "Investor"). Any Investor for whom GAAP basis financial statements are prepared shall be advised to discuss the appropriate accounting treatment of the LINCS Strategy with their independent accountant.

B. KPMG's Compensation:

KPMG and Quadra shall enter into separate contracts with each Investor and fees payable to KPMG or Quadra will not be dependent on the services of the other. Investor and KPMG will mutually agree on KPMG's fee, which shall reflect the complexity of KPMG's role and value of KPMG's services. Such fee will not be dependent on the amount invested in, investments results of, nor on tax savings projected or achieved from, the LINCS Strategy. KPMG shall not receive a fee from Quadra, directly or indirectly, for its role in implementing a LINCS Strategy.

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #99d

KPMG 0026509

Mr. Jeffrey I. Greenstein
Quadra Advisors, LLC
October 8, 1999
Page 2

DRAFT – For Discussion Purposes Only

II. Quadra's Commitments

- A. Quadra shall use reasonable efforts to refer opportunities for accounting, tax, and consulting services to KPMG relating to the LINC Strategy.
- B. Quadra's development costs shall be borne by Quadra.

III. KPMG's Commitments

- A. KPMG will use its best efforts to introduce Quadra to clients who are considering implementing the LINC Strategy within a reasonable period following the date KPMG completes a more-likely-than-not opinion letter with respect to the LINC Strategy and obtains approval from its Department of Professional Practice to market the LINC Strategy.
- B. KPMG shall maintain the confidentiality of the LINC Strategy, subject to legal and regulatory disclosure requirements.
- C. KPMG's development costs shall be borne by KPMG.
- D. KPMG will notify Quadra of its ability to prepare a tax opinion of at least a "more-likely-than-not" level regarding the LINC Strategy within 60 days from the date Quadra provides detailed information concerning the LINC Strategy.
- E. If KPMG concludes that it can prepare a more-likely-than-not opinion letter with respect to the LINC Strategy, KPMG will provide Quadra with a draft of such opinion letter within 120 days from the date Quadra provides detailed information concerning the LINC Strategy.

IV. Term of the Operating Agreement

This Agreement shall have a term of twelve (12) months, running from the date of Quadra's counter-signature below, and the term may be extended by mutual written agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days prior written notice thereof.

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Confidentiality Requested

KPMG 0026510

Mr. Jeffrey I. Greenstein
Quadra Advisors, LLC
October 8, 1999
Page 3

DRAFT – For Discussion Purposes Only

V. No Creation of a Joint Venture

By execution of this agreement, KPMG and Quadra agree that they are not engaged in any actual or implied form of joint venture.

VI. Waiver of Modification

Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement and that is signed by both Quadra and KPMG.

VII. Non Assignment

This agreement may not be assigned without the prior written consent of the Parties hereto.

Please indicate your agreement to the foregoing by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

KPMG LLP

Jeffrey A. Eischeid
Partner

JAE:tst
cc: Larry B. Scheinfeld

ACCEPTED:

Quadra Advisors, LLC

Jeffrey I. Greenstein

Date

Message0211	
Subject:	FW: Quadra vs. KPMG
From:	Collins, Erin M
Date:	3/6/2002 12:04:52 PM
To:	Hasting, Carl D; Paule, Robin M; Rivkin, David; Baumann, Dale R; Mccrimlisk, George H; Smith, Richard H (US/WEST AMP)
CC:	Miner, Jeffrey E; Wempen, Eric P
Message Body	
<p>FYI - it is our understanding that Quadra is sending this letter out to our clients. I suspect they are trying to take the position that KPMG was the promoter not Quadra. Can you imagine Quadra trying to cover their rear ends. Let the games begin.</p> <p>-----Original Message----- From: Jones, Ken-WASH-DC Sent: Tuesday, March 05, 2002 2:15 PM To: Adelson, Jonathan S; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-pearlman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G Subject: Quadra vs. KPMG</p> <p>----- KEN JONES Tax Controversy Services kjones@kpmg.com tel 202-533-3080 fax 202-533-8553 cell 703-362-1623 kpmg</p>	
Attachment	
Quadra 022602 Letter.pdf	

Outlook Header Information	
Conversation Topic: Quadra vs. KPMG	
Subject: FW: Quadra vs. KPMG	
From: Collins, Erin M	
Sender Name: Collins, Erin M	
To: Hasting, Carl D; Paule, Robin M; Rivkin, David; Baumann, Dale R; Mccrimlisk, George H; Smith, Richard H (US/WEST AMP)	
CC: Miner, Jeffrey E; Wempen, Eric P	
Received By: Baumann, Dale R	
Delivery Time: 3/6/2002 12:04:52 PM	
Creation Time: 8/9/2003 9:43:06 PM	
Modification Time: 8/9/2003 9:43:06 PM	
Submit Time: 3/6/2002 12:04:47 PM	
Importance: 3/1	
KPMG 0050612	
Proprietary Material Confidentiality Requested	

Permanent Subcommittee on Investigations
EXHIBIT #99e

2484

Page 2 of 2

Priority: 3/0
Sensitivity: 3/0
Flags: 3/272
Size: 3/56706

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Confidentiality Requested

KPMG 0050613

Unknown

From: Collins, Erin M
Sent: Wednesday, March 06, 2002 3:07 PM
To: McCrinisk, George H
Subject: FW: Quadra vs. KPMG

-----Original Message-----

From: Collins, Erin M
Sent: Wednesday, March 06, 2002 11:05 AM
To: Hasting, Carl D; Paule, Robin M; Rivkin, David; Baumann, Dale R; McCrinisk, George H; Smith, Richard H (US/WEST AMP)
Cc: Miner, Jeffrey E; Wempen, Eric P
Subject: FW: Quadra vs. KPMG

FYI - it is our understanding that Quadra is sending this letter out to our clients. I suspect they are trying to take the position that KPMG was the promoter not Quadra. Can you imagine Quadra trying to cover their rear ends. Let the games begin.

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Tuesday, March 05, 2002 2:15 PM
To: Adelson, Jonathan S; Collins, Erin M; DePew, Joseph M; Heroux, Mark S; Katz-peartman, Sharon D; Kay, Sheldon-ATLANTA M; Sherlock, Victoria J; Topolka, Paul G
Subject: Quadra vs. KPMG

KEN JONES
Tax Controversy Services
kjones@kpmg.com
tel 202-533-3080
fax 202-533-8553
cell 703-362-1623
kpmg

Proprietary Material
Confidentiality Requested

KPMG 0027987

Permanent Subcommittee on Investigations
EXHIBIT #99f

MAR-05-2002 16:38

Quadra Capital Management, LP

fax to Ken Jones

February 26, 2002

REDACTED

We are aware that KPMG may have recently sent you a letter about IRS Announcement 2002-2 ("the Announcement"), which allows taxpayers the opportunity to avoid liability for certain accuracy-related penalties. We understand that KPMG may also have supplied you with a draft disclosure letter to send to the IRS. As KPMG may have acknowledged in its letter to you, its interests in this matter may not be consistent with yours.

While we cannot provide you with tax advice or generally advise on the disclosure letter, if you anticipate utilizing this draft letter, we want to call to your attention the requirement of paragraph 5 of the Announcement. Paragraph 5 requires that you identify the individual or entity that "promoted, solicited or recommended" your involvement in a transaction. The draft letter provided by KPMG may imply that our firm "promoted, solicited or recommended" your transaction to you. Although we believe it would be appropriate to name our firm as a party who received fees as a result of your participation in accordance with Paragraph 5, it is not accurate to name our firm as the party who promoted, solicited, or recommended your transaction. In addition, the draft letter may fail to mention that your tax advisor is likely the party that in fact brought the transaction related to your tax return positions to your attention and "promoted, solicited or recommended" your transaction.

Lastly, we urge you to consult your files to ensure that if our firm is referenced as a party who received fees as a result of your participation, the Quadra entity that provided the investment advice related to your transaction is properly identified.

We understand it is important that accurate information is provided to the IRS, and we suggest that you consider the response to question 5 carefully.

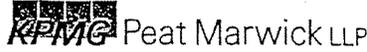
Sincerely,

Quadra Capital Management, LP

KPMG 0027988

TOTAL P.02

Proprietary Material
Confidentiality Requested



21700 Oxnard Street, Suite 1200
Woodland Hills, CA 9136

Telephone 818 227 6900



Telefax 818 702 0602

September 10, 1997

PERSONAL & CONFIDENTIAL

Mr. John Larson
Presidio Advisors, LLC
470 Third Street, Suite. 210
San Francisco, California 94107

Dear John:

This letter shall serve as the Operating Agreement setting forth the terms of KPMG Peat Marwick LLP's ("KPMG") agreement with Presidio Advisors, LLC ("Presidio") regarding a foreign leveraged investment strategy (the "Strategy") and certain other tax advantaged strategies.

I. Commercial Exploitation of the Strategy

- A. Presidio shall not disclose the Strategy to other national accounting firms without prior express written agreement of KPMG.
- B. KPMG shall offer Presidio the right of first refusal to present the Product to KPMG's clients.
- C. KPMG Strategy Fee Schedule:

If a Strategy transaction is originated by contact initiated by KPMG, the following fees shall be paid to KPMG (either by an unrelated foreign company or, where appropriate, directly by Presidio via the professional fee hedging arrangement):

<u>Deal Size</u>	<u>KPMG Fee as % of Transaction</u>
\$10 to \$15 million	100 bps (\$100,000)
\$15 to \$20	105 bps
\$20 to \$25	110 bps
\$25 to \$30	115 bps
\$30 to \$35	120 bps
\$35 to \$40	125 bps
\$40 to \$45	130 bps
\$45 and greater	135 bps *

* Subject to per deal negotiation if warrant price is less than 700 bps.

- D. If a Strategy transaction is originated by a source other than KPMG, Presidio shall pay a fee to KPMG to encompass the following services:
 - tax opinion
 - tax structuring and advice
 - KPMG goodwill



CONFIDENTIAL
P41292

Permanent Subcommittee on Investigations
EXHIBIT #99g

 Peat Marwick LLP

Mr. John Larson
September 10, 1997
Page 2

The amount to be paid for such services shall be negotiated on a per deal basis, pursuant to general guidelines that the parties shall promptly discuss and agree upon. KPMG recognizes that its fee in such case may be less than the KPMG Strategy Fee schedule described in section IC above.

- E. If a Strategy transaction is originated by a source other than KPMG, Presidio shall use its best efforts to assist KPMG in developing a broad-based relationship with that investor.

II. Derivatives of the Strategy

- A. Presidio shall offer KPMG a right of first refusal to jointly exploit any products that are derived from the Strategy on a basis comparable to this Operating Agreement.
- B. KPMG shall review Strategy derivative(s) in a timely manner. Assuming such Strategy derivative meets the technical and other requirements set forth by KPMG and its Department of Professional Practice- Tax, KPMG will use its best efforts to improve the Strategy derivative(s), maintain professional confidentiality, and distribute the Strategy.

III. Presidio's Commitments

- A. Presidio shall offer KPMG a right of first refusal for all the tax-based products Presidio develops.
- B. Presidio shall use its best efforts to assist KPMG in developing tax products that KPMG may bring to Presidio's attention.
- C. If another accounting firm brings a product idea to Presidio, Presidio shall not enter into a joint venture with that firm or exploit such product without KPMG's express prior written consent.
- D. Presidio shall use its best efforts to refer opportunities for accounting, tax, and consulting services to KPMG.
- E. Presidio shall not itself render accounting services.

IV. KPMG's Commitments

- A. KPMG shall use its best effort to introduce Presidio to its clients, on a right of first refusal basis, who are considering the implementation of the Strategy.
- B. KPMG shall use its best effort to introduce Presidio, on a right of first refusal basis, in situations where Presidio creates a "capital based" tax product (i.e., tax products or transactions requiring third-party financial intermediaries) that is also offered by other providers.

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 Peat Marwick LLP

Mr. John Larson
September 10, 1997
Page 3

- C. KPMG shall maintain the confidentiality of tax products developed by Presidio, subject to legal disclosure requirements (i.e., court orders and subpoenas). KPMG shall use its best efforts to assist in developing and distributing new tax products with Presidio.
- D. It is understood that KPMG will incur time and out-of-pocket expenses in jointly developing products with Presidio. KPMG's development costs shall be borne by KPMG.
- E. The KPMG role in new products could, without limitation, include the following:
 - distribution/finder
 - tax opinion
 - structure and advice
 - KPMG goodwill

V. Term of the Operating Agreement

The Operating Agreement shall have a twelve (12) month initial term, running from the date of Presidio's counter-signature below, and the term may be extended by mutual written agreement.

Sincerely,

KPMG Peat Marwick LLP

By: 
Gregg W. Ritchie
Partner

ACCEPTED AND CONFIRMED:

Presidio Advisors, LLC

By: 
Dated: August 29, 1997

CONFIDENTIAL
P41294

2490

Author: Larry Delap at KPMG_Silicon_Valley2
Date: 6/5/98 12:00 PM
Priority: Normal
Receipt Requested
TO: Gregg W. Ritchie at KPMG Warner Center
CC: John T. Lanning at KPMG NSS Park
CC: James D. Carney at KPMG Sacramento
Subject: Re[2]: Presidio Alliance Form

----- Message Contents -----

Gregg -

Based on a reading of the "Operating Agreement", Jim Carney has concluded this would be a Level II alliance that would require Management Committee approval.

There are two reasons for this conclusion:

1. The right of first refusal offered by KPMG to Presidio under I.B. and IV.A.
2. The commitment in IV.C. and D. to jointly develop products.

If the agreement could be renegotiated to change the two offers of "right of first refusal" to "best efforts" and to eliminate the commitment to jointly develop products, Jim would view it as a Level I alliance (which would not require Management Committee approval).

Larry

----- Reply Separator -----

Subject: Re: Presidio Alliance Form
Author: Larry Delap at KPMG_Silicon_Valley2
Date: 6/5/98 9:35 AM

Gregg -

With respect to the "risk management" section:

1. The statement that "all of the clients are individuals" is not correct. The "midco" transactions, for example, may be marketed to corporations. Note that the "Market" on page 1 of the form is said to include corporations.
2. Even if all clients were individuals, I don't think that necessarily means there would be no independence issue. A project for a CEO of an audit client could present an independence issue, for example. I have confirmed this matter with John Guinan of DPP-Assurance.
3. The first box under "Risk Management Considerations" refers to potential independence issues related to the ALLIANCE (not the products). Wouldn't the procedures include obtaining confirmation that Presidio is not and will not be an audit client of KPMG and obtaining a written statement of ownership of Presidio from Pfaff. For example, if an audit client is an investor in Presidio, there conceivably could be an independence issue. Also, as Deutsche Bank is an audit client of KPMG, we need to make certain that the OPIS transaction would not be viewed as somehow compromising our independence with Deutsche Bank. I

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KPMG 0047208

Permanent Subcommittee on Investigations
EXHIBIT #99h

discussed this issue with Bob Lambert last summer and he did not see a problem. However, to be on the safe side, I think we should get the views of John Guinan (who recently assumed the position Bob Lambert formerly held). I will take care of that.

4. The second box would be the place to discuss product independence issue. An appropriate response might be:

Generally, the products will not be offered to audit clients. In the event a product is proposed to be offered to an audit client, the proposed arrangement will be discussed with DPP-Tax, who will consult with DPP-Assurance, to determine that the arrangement would not cause an independence problem.

Most products will be provided to high net worth individuals. We will verify that a prospective individual client is not an attest client (e.g., compilation of personal financial statements). We also will determine whether the individual is in a position of significant influence over an audit client. If so, we will discuss the facts with DPP-Tax, who will consult with DPP-Assurance, to determine whether we could or could not provide the product to the individual without giving rise to an independence issue.

5. The third box, like the first box, refers to the ALLIANCE, rather than the products. Presumably, the procedures to be followed here would be similar to those indicated above for the first box.

6. It appears the fourth box should discuss potential conflicts of interest of the alliance rather than of the products. As you indicate elsewhere an intention to form alliances with other boutique investment banking firms, doesn't that create a potential conflict of interest?

7. I think it is essential the fifth box include an exposition of the tax risks. Among other things:

- a. There is a risk that the tax benefits sought by the investors will be disallowed and a risk the IRS will assert penalties against them. To mitigate risks to KPMG arising from any such disallowance or assertion, we will require signed engagement letters that clearly state the underlying strategies involve both investment and tax risks and limit KPMG's liability to a relatively small amount.
- b. It is likely that certain strategies offered under the proposed alliance should be registered with the IRS as "tax shelters". We have determined there is a reasonable basis for not registering strategies under development as tax shelters. There is a risk the IRS would disagree with our determination and impose monetary penalties on KPMG. There is also a risk the IRS could seek to impose criminal penalties on, and/or suspend from practice before the IRS, the firm or one or more of its personnel due to failure to register, but the probability the IRS would do so is viewed as remote.
- c. If the IRS disallows the tax benefits to one of our clients, and that client takes the issue to court, there is the possibility of negative publicity to the firm relative to alleged promotion of "abusive" tax shelters.

Larry

2492

Reply Separator

Subject: Presidio Alliance Form
Author: Gregg W. Ritchie at KPMG_WARNER_CENTER
Date: 6/4/98 4:49 PM

As you requested, attached is a copy of the Firm's alliance form requesting approval of a level I alliance with Presidio Advisors. I have also attached a copy of our current business agreement with them for your reference.

I have executed a hardcopy of the attached and will fax it to you this afternoon.

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KPMG 0047210



Prospective Alliance Form FOR KPMG INTERNAL USE ONLY

To be completed by KPMG sponsoring partner. Wherever possible attach appropriate documentation and supporting details to this form. Please complete all information requested. Failure to do so may delay the approval process. Direct questions concerning the Alliance process to James D. Carney, Principal in Charge, DPP—Consulting (212-909-5838).

Prospective Alliance Background Information	
Name of Organization Presidio Advisors, LLC	Contact Name Robert Pfaff
Organization's Audit Firm None	Contact Telephone (303)295-1314
Address of Organization (include all divisions/departments of the organization relevant to this proposed alliance).	
Mr. John Larson, 470 Third Street, Suite 210, San Francisco, California, 94107	
Mr. Robert Pfaff, 1735 19th Street, Suite 300, Denver, Colorado, 80202	
Products and Services Offered by the Organization	
Tax advantaged strategies and investment advisory services.	
Market for Products and Services Offered by the Organization	
High Net Worth Individuals and Corporations.	
Presence of Organization in KPMG Markets	
Assist in execution of strategies for KPMG clients and targets. Presidio provides a wide range of tax advantaged products for this market. They do not compete with KPMG for tax or other services.	

Prospective Alliance Background Information, continued	
Client References (include three with name, title, firm, phone number, and summary of results).	
1.	
2.	
3.	
Financial/Business History (attach annual report or D&B report, if available)	
• Revenue Unknown (private company)	
• Locations San Francisco & Denver	
• Number of Clients Approximately 20	
What other due diligence processes have been followed to investigate the background, integrity, and competence of the organization under consideration?	
Robert Pfaff was a former partner at KPMG with an outstanding reputation. He is well known to the senior leadership of the tax department. The other principal is John Larson, a former Senior Manager at KPMG (12 yrs). He is also well known to us given his background at KPMG. Their assistant is Kerry Moskalik, also a former KPMG employee (8 yrs). All of these individuals have the highest degree of integrity and competence.	
Sales Representative Compensation Plan	
N/A	

REDACTED

Prospective Alliance Information
Purpose of Alliance (sponsoring KPMG partner's point of view) Presidio is critical to the success of our tax products group in several ways. First, the principals have demonstrated their creativity in creating tax advantaged strategies during their years at KPMG. Second, they have the ability to execute these strategies from an investment perspective. Finally, they give KPMG the ability to offer strategies (theirs and our own) on a turnkey basis.
Training Support Offered by Prospective Alliance Organization N/A
Technical Support Offered by Prospective Alliance Organization Given their unique creative talents in the tax advantaged and international tax areas, Bob Pfaff and John Larson represent significant technical resources for KPMG. As Presidio, they have continued to create high value, creative ideas and have brought them to KPMG for review and distribution to our clients.
Sales/Marketing Support Offered by Prospective Alliance Organization Presidio meets directly with our clients where their products are offered. Often, they are joined by members of the Capital Transaction Strategies team in their presentations to ensure that KPMG's interests are properly represented.
Lead Generation Support Offered by Prospective Alliance Organization Presidio has brought several opportunities to KPMG for our participation. Typically, the opportunities have resulted in value added fees in excess of \$250,000. We expect these opportunities to continue once the alliance is formalized.
Demonstration Products Available from Prospective Alliance Organization Foreign Leveraged Investment Program (they implemented 6 of these strategies with our clients prior to its termination), Offshore Portfolio Investment Strategy (pending DPP review), Midco transactions (including FIRPTA applications), Ordinary Loss product (generates enhanced depreciation deductions).
Other Areas of Support from Prospective Alliance Organization

KPMG Information	
Sponsoring Partner Gregg W. Ritchie	Function <input type="checkbox"/> Assurance X Tax <input type="checkbox"/> Consulting
Telephone +8181227-6905	LOB/Industry Personal Financial Planning
LOBs/Practices That Will Deliver Related Services	
Financial Capital Strategies team, Capital Transaction Strategies team, Mergers & Acquisitions practice	
Personal Financial Planning department, and International Tax Services	
Impact the products and services being offered will have on current and potential future product and service offerings of the firm:	
Presidio's products will significantly enhance our ability to deliver high value innovative products through the tax	
department. Furthermore, their execution capabilities (particularly with respect to capital formation) will allow	
us to offer turnkey solutions with respect to our own products.	
Benefits to KPMG of entering into this agreement:	
Significant revenue potential, enhancement of our technical resources dedicated to research and development of new	
products, and validation of our turnkey approach to tax products.	

Prospective Alliance Form 11/97 FOR KPMG INTERNAL USE ONLY

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Confidentiality Requested

KPMG 0047214

Agreement Information	
REQUIRED: Type of Agreement (see Appendix C)	Terms of the Agreement X Attached <input type="checkbox"/> Unknown at Present
Level I	
Training KPMG will need to undertake: 1. to sell/represent offerings None 2. to install/integrate/deliver services None	Number of KPMG staff already trained/experienced in the offering(s) Approximately 25
Areas of Financial Investment and Required Financial Investment (if any)	
KPMG's financial commitment to the alliance will be manifest via the dedication of human resources to support the research and development of product ideas and sales costs involved with making client presentation. KPMG is already committed to such expenses in connection with the budgets for the Capital Transaction Strategies and Financial Capital Strategies national teams.	
Business Justification for the Alliance	
Annual Revenue Expectations (project for three years) YEAR FY99 REVENUE EXPECTATION \$10 million YEAR FY00 REVENUE EXPECTATION \$12 million YEAR 01 REVENUE EXPECTATION \$15 million	Sources of Revenue KPMG's share of value added fees associated with their strategies. During FY97 and 98, strategies implemented by Presidio personnel resulted in fees to KPMG of approximately \$11 million.
Annual Number of Deals (project for three years) YEAR FY99 NUMBER OF DEALS 40 YEAR FY00 NUMBER OF DEALS 50 YEAR FY01 NUMBER OF DEALS 60	Average Deal Size \$250,000
Competitive Offerings Similar tax products (gain shelters, ordinary losses) In most cases, offerings are complementary.	Competitive Alliances None. However, we intend to continue to form alliances with others, including Quadra Capital Advisors, Fortrend, and other boutique investment banking firms.
Risk Management Considerations	
Describe the procedures followed to ensure this proposed alliance does not present any Independence issues.	
Presidio is not currently (nor is it expected to become) and audit client of KPMG. Based on the representations of its owners, Presidio is currently owned by the principals noted above and they do not expect any outside investment in the company. While participants in some of the strategies we will be jointly delivering may include audit clients (i.e., John Guinan and Larry DeLap have concluded their participation does not represent an independence issue.	
Describe any potential Independence issues and the methods by which KPMG will deal with them.	
Generally, the products will not be offered to audit clients. In the event a product is proposed to be offered to an audit client, the proposed arrangement will be discussed with DPP-Tax, who will consult with DPP-Assurance, to determine that the arrangement would not cause an independence problem.	
Most products will be provided to high net worth individuals. We will verify that a prospective individual client is	

Prospective Alliance Form 11/97 FOR KPMG INTERNAL USE ONLY

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REDACTED

KPMG 0047215

not an attest client (e.g., compilation of personal financial statements). We also will determine whether the individual is in a position of significant influence over an audit client. If so, we will discuss the facts with DPP-Tax, who will consult with DPP-Assurance, to determine whether we could or could not provide the product to the individual without giving rise to an independence issue.

Risk Management Considerations, continued	
Describe the procedures followed to ensure this proposed alliance does not present any conflicts of interest.	
See discussion above. Any such issues will be resolved in concert with DPP-Tax.	
Describe any potential conflicts of interest and the methods by which KPMG will deal with them.	
The CaTS team may forge other alliances with boutique tax advantaged firms in furtherance of specific product offerings. To prevent any potential conflicts of interest, we will enter into Confidentiality agreements with each respective firm to protect the proprietary nature of the product. Furthermore, we will enter into a specific business agreement with each firm to set forth the guidelines/roles/compensation of each firm with respect to the product. These types of agreements will require the approval of DPP-Tax (at a minimum). As we have no other such agreements at this time, there should be no conflicts at this time.	
Discuss any other risk management issues (e.g., product maturity, reputation of alliance firm) and what will be done to mitigate them.	
<p>a. There is a risk that the tax benefits sought by the investors will be disallowed and a risk the IRS will assert penalties against them. To mitigate risks to KPMG arising from any such disallowance or assertion, we will require signed engagement letters that clearly state the underlying strategies involve both investment and tax risks and limit KPMG's liability to a relatively small amount.</p> <p>b. It is likely that certain strategies offered under the proposed alliance should be registered with the IRS as "tax shelters". We have determined there is a reasonable basis for not registering strategies under development as tax shelters. There is a risk the IRS would disagree with our determination and impose monetary penalties on KPMG. There is also a risk the IRS could seek to impose criminal penalties on, and/or suspend from practice before the IRS, the firm or one or more of its personnel due to failure to register, but the probability the IRS would do so is viewed as remote.</p> <p>c. If the IRS disallows the tax benefits to one of our clients, and that client takes the issue to court, there is the possibility of negative publicity to the firm relative to alleged promotion of "abusive" tax shelters.</p>	

Approvals	
Function Business Leader (Assurance, Consulting, or Tax)	Date
Department of Professional Practice <input type="checkbox"/> Consulting <input type="checkbox"/> Assurance <input type="checkbox"/> Tax	Date
Office of the Chairman and Management Committee (following approval above).	Date

2500

KPMG Peat Marwick LLP

Financial Services

21700 Oxnard St, Suite 1200
Woodland Hills, Calif 91367

Telephone 818-227-6900
Fax 818-702-0602

Date July 2, 1998

Page 1 of 2

To Larry DeLap
Organization KPMG Mountain View
Fax 818-960-0746

From Gregg W. Ritchie
Department Tax Services
Tel 818-227-6905
Fax 818-227-6964

Subject **Presidio Operating Agreement**

Attached is a copy of the executed amendment to our agreement with Presidio. If you concur that the revised agreement allows us to treat our relationship with Presidio as a Level 1 alliance, I would appreciate your and John Lanning's approval of our alliance as soon as possible. Please let me know if you have any other questions or comments.

The information contained in this facsimile message is privileged and confidential information intended solely for the use of the addressee listed above. If you are neither the intended recipient nor the employee or agent responsible for

delivering this message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the telefaxed information is strictly prohibited. If you have

received this telefax in error, please immediately notify us by telephone (call collect to the number listed above) to arrange for the return of the original document to us.

Proprietary Material
Confidentiality Requested

KPMG 0047222

Permanent Subcommittee on Investigations

EXHIBIT #99i

SENT BY:

7- 2-98 : 12:38 : PRESIDIO ADVISORS-

KPMG W/C PFP:# 2/ 2

Peat Marwick LLP

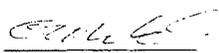
Addendum to the KPMG Peat Marwick LLP/Presidio Advisors, LLC Operating Agreement dated September 10, 1997

KPMG Peat Marwick LLP and Presidio Advisors, LLC hereby agree to the following modifications in their Operating Agreement dated September 10, 1997

- Commercial Exploitation of Strategy
 - B. Provision is eliminated
- Derivatives of Strategy
 - A. Presidio shall use its best efforts to present to KPMG any products that are derived from the Strategy on a basis comparable to this Operating Agreement.
- Presidio's Commitments
 - A. Presidio shall use its best efforts to offer to KPMG all the tax-based products Presidio develops.
 - B. Presidio shall use its best efforts in developing tax products brought to Presidio by KPMG. Presidio's development costs shall be borne by Presidio.
- KPMG's Commitments
 - A. KPMG shall use its best efforts to introduce Presidio to its clients who are considering the implementation of the Strategy.
 - B. KPMG shall use its best efforts to introduce Presidio in situations where Presidio creates a "capital based" tax product (i.e., tax products or transactions requiring third-party financial intermediaries) that is also offered by other providers.
 - D. KPMG's development costs shall be borne by KPMG.

the other provisions of our agreement dated 9-10-97, are

ACCEPTED AND CONFIRMED on July 2, 1998:

By: 
 Greg W. Ritchie
 Partner, KPMG Peat Marwick LLP

By: 
 John Larson
 Presidio Advisors, LLC

CONFIDENTIAL INFORMATION - NOT TO BE DISCLOSED TO ANY OTHER PARTY

KPMG 0047221

Proprietary Material
Confidentiality Requested

2502

KPMG W/C PFP

ID:818-227-6964

JUL 02'98 13:11

TRANSMIT CONFIRMATION REPORT

NO. : 005
RECEIVER : Tax Middlefield
TRANSMITTER : KPMG W/C PFP
DATE : JUL 02'98 13:12
DURATION : 01'07
MODE : STD
PAGES : 02
RESULT : OK

Proprietary Material
Confidentiality Requested

KPMG 0047223

2503

August 6, 1998

PERSONAL & CONFIDENTIAL

Presidio Advisors, LLC
470 Third Street, Suite 210
San Francisco, California 94107
Attn: John Larson

Dear John:

As you are aware, we are in the process of structuring and negotiating a replacement to the agreement, dated September 10, 1997, as amended July 2, 1998, (the "Agreement"), between KPMG Peat Marwick LLP ("KPMG") and Presidio Advisors, LLC ("Presidio") regarding a foreign leveraged investment strategy (the "Strategy") and certain other tax advantaged strategies.

During the intervening period, I wish to emphasize the importance to KPMG and its client base of maintaining our understanding that KPMG and Presidio are not engaged in any actual or implied form of joint venture, alliance or other mutuality of interest.

Please indicate your agreement to the foregoing by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

KPMG PEAT MARWICK LLP

Jeffrey A. Eischeid
Partner

JAE:tst
JAE/EJBOPIS.DOC

ACCEPTED:

Presidio Advisors, LLC

Name:
Title:

Date

Proprietary Material
Confidentiality Requested

KPMG 0026288

Permanent Subcommittee on Investigations
EXHIBIT #99j

Addendum to the KPMG Peat Marwick LLP/Presidio Advisors, LLC Operating Agreement dated September 10, 1997

KPMG Peat Marwick LLP and Presidio Advisors, LLC hereby agree to the following modifications in their Operating Agreement dated September 10, 1997:

- Commercial Exploitation of Strategy
 - B. Provision is eliminated
- Derivatives of Strategy
 - A. Presidio shall use its best efforts to present to KPMG any products that are derived from the Strategy on a basis comparable to this Operating Agreement.
- Presidio's Commitments
 - A. Presidio shall use its best efforts to offer to KPMG all the tax-based products Presidio develops.
 - B. Presidio shall use its best efforts in developing tax products brought to Presidio by KPMG. Presidio's development costs shall be borne by Presidio.
- KPMG's Commitments
 - A. KPMG shall use its best efforts to introduce Presidio to its clients who are considering the implementation of the Strategy.
 - B. KPMG shall use its best efforts to introduce Presidio in situations where Presidio creates a "capital based" tax product (i.e., tax products or transactions requiring third-party financial intermediaries) that is also offered by other providers.
 - D. KPMG's development costs shall be borne by KPMG.

ACCEPTED AND CONFIRMED on July 2, 1998:

By: _____
Gregg W. Ritchie
Partner, KPMG Peat Marwick LLP

By: _____
John Larson
Presidio Advisors, LLC

2505

August 6, 1998

Via Telefax

PRIVATE & CONFIDENTIAL

Mr. Robert Pfaff
Presidio Advisors, LLC
470 Third Street, Suite 210
San Francisco, California 94107

Dear Bob:

We are pleased that you have engaged us to advise Presidio Advisors, LLC ("Presidio") and its affiliates regarding its ongoing acquisition program. Consistent with our current firmwide practice, this letter is intended to confirm the scope and financial terms of our engagement.

We will advise Presidio on tax and business issues related to its US acquisition program. Also, where possible, we will introduce financing or acquisition candidates to Presidio. Our work for Presidio will have several parts:

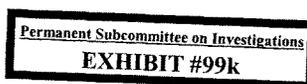
1. We will develop or modify tax-based acquisition strategies to meet Presidio's particular needs;
2. We will perform due diligence review of acquisition targets as needed; and
3. We will assist your legal counsel, bankers, and other advisors in implementing your acquisition strategies.

Our professional fees are based on the complexity of our role and on the value of services provided, rather than directly on the hours we spend. We will bill you at a minimum amount of \$10,000 for each transaction in which we participate, whether the transaction closes or not. We will also bill you for research we undertake.

Finally, we will bill you on a value-added basis for transactions that are consummated. Our fee will be based upon our contribution to the success of the transaction. Factors that we will take into account in determining our billing will include the size of the transaction, the potential tax savings our strategies may produce, the creativity of our

Proprietary Material
Confidentiality Requested

KPMG 0026286



2506

Page 2
Mr. Robert Pfaff
Presidio Advisors, LLC
5/7/2003

ideas, the quality and timeliness of our services, and our interaction with other key members of your team, such as commercial bankers, lawyers, investment bankers, and investment advisors.

Our invoices must be paid within fifteen (15) days of receipt.

Please sign the enclosed copy of this letter to confirm our agreement.

Very truly yours,

KPMG Peat Marwick LLP

Jeffrey A. Eischeid
Partner

JAE:tst
Enclosure

ACCEPTANCE:

Robert Pfaff

Date:

JAEFP806.DOC

Proprietary Material
Confidentiality Requested

KPMG 0026287

2507

August 6, 1998

PERSONAL & CONFIDENTIAL

Presidio Advisors, LLC
470 Third Street, Suite. 210
San Francisco, California 94107
Attn: John Larson

Dear John:

As you are aware, we are in the process of structuring and negotiating a replacement to the agreement, dated September 10, 1997, as amended July 2, 1998, (the "Agreement"), between KPMG Peat Marwick LLP ("KPMG") and Presidio Advisors, LLC ("Presidio") regarding a foreign leveraged investment strategy (the "Strategy") and certain other tax advantaged strategies.

During the intervening period, I wish to emphasize the importance to KPMG and its client base of maintaining our understanding that KPMG and Presidio are not engaged in any actual or implied form of joint venture, alliance or other mutuality of interest.

Please indicate your agreement to the foregoing by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

KPMG PEAT MARWICK LLP

Jeffrey A. Eischeid
Partner

JAE:tst
JAEVEJBOPIS.DOC

ACCEPTED:

Presidio Advisors, LLC

Name:
Title:

Date

Proprietary Material
Confidentiality Requested

KPMG 0026288

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 - B. KPMG shall use its best efforts to introduce Presidio in situations where Presidio creates a "capital based" tax product (i.e., tax products or transactions requiring third-party financial intermediaries) that is also offered by other providers.
 - D. KPMG's development costs shall be borne by KPMG.

ACCEPTED AND CONFIRMED on July 2, 1998:

By: _____
Gregg W. Ritchie
Partner, KPMG Peat Marwick LLP

By: _____
John Larson
Presidio Advisors, LLC

August 19, 1998

PERSONAL & CONFIDENTIAL

Mr. John Larson
Presidio Advisors, LLC
470 Third Street, Suite 210
San Francisco, California 94107

Dear John:

This letter amends and restates the Operating Agreement, dated September 10, 1997 as amended July 2, 1998 setting forth the terms of KPMG Peat Marwick LLP's ("KPMG") agreement with Presidio Advisors, LLC ("Presidio") regarding a foreign leveraged investment strategy (the "Strategy") and certain other tax advantaged strategies.

I. Commercial Exploitation of the Strategy

A. KPMG and Presidio shall work together from time to time in connection with implementation of the Strategy and certain other tax advantaged strategies (each collectively defined herein as a "Strategy Transaction") for individual investors, which may include limited liability companies, family limited partnerships, or trusts established by such investors (each referred to herein as "Investor"). Any Investor for whom GAAP basis financial statements are prepared shall be advised to discuss accounting for the Strategy with their independent accountants.

B. KPMG's Compensation:

KPMG and Presidio shall enter into separate contracts with each Investor and fees payable to KPMG or Presidio will not be dependent on the services of the other. Investor and KPMG will mutually agree on KPMG's fee, which shall reflect the complexity of KPMG's role and value of KPMG's services. Such fee will not be dependent on the amount invested in, investments results of, nor on tax savings projected or achieved from, the Strategy.

For the purposes of this Agreement, the transaction shall be defined as all aspects of the engagement through the conclusion of KPMG's delivery of services. KPMG shall not receive a fee from Presidio for any Strategy Transaction, either directly or indirectly.

Proprietary Material
Confidentiality Requested

KPMG 0026290

Permanent Subcommittee on Investigations
EXHIBIT #991

II. Derivatives of the Strategy

- A. Presidio hereby grants KPMG a right of first refusal to exploit any products that are derived from the Strategy on a basis comparable to this Agreement.
- B. KPMG shall review Strategy derivative(s) in a timely manner.

III. Presidio's Commitments

- A. Presidio hereby grants KPMG a right of first refusal for all other tax-based products Presidio develops.
- B. Presidio shall use reasonable efforts to refer opportunities for accounting, tax, and consulting services to KPMG.
- C. In each Strategy Transaction, Presidio shall ensure that the Investor implementing the Strategy is offered an opportunity to acquire a position in the shares of multiple alternative foreign entities, which shall include a balance among foreign entities that are clients of KPMG for which independence is required and non-clients of KPMG for which independence is not required.
- D. Presidio's development costs shall be borne by Presidio.

IV. KPMG's Commitments

- A. KPMG may from time to time introduce Presidio to its clients who are considering the implementation of the Strategy.
- B. KPMG shall maintain the confidentiality of tax products developed by Presidio, subject to legal and regulatory disclosure requirements.
- C. KPMG's development costs shall be borne by KPMG.

**Proprietary Material
Confidentiality Requested**

KPMG 0026291

Mr. John Larson
August 19, 1998
Page 3

Deleted: September 10, 1997

V. Term of the Operating Agreement

This Agreement shall have a term of twelve (12) months, running from the date of Presidio's counter-signature below, and the term may be extended by mutual written agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days prior written notice thereof.

VI. No Creation of a Joint Venture

By execution of this agreement, KPMG and Presidio agree that they are not engaged in any actual or implied form of joint venture.

Please indicate your agreement to the foregoing by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

KPMG PEAT MARWICK LLP

Jeffrey A. Eischeid
Partner

JAE:tst
JAEALTA.DOC

ACCEPTED:

Presidio Advisors, LLC

Name:
Title:

Date

**Proprietary Material
Confidentiality Requested**

KPMG 0026292



Peat Marwick LLP

303 Peachtree Street, N.E.
Suite 2000
Atlanta, GA 30308

Telephone 404 222 3000

Telefax 404 222 3050

August 19, 1998

PERSONAL & CONFIDENTIAL

Mr. John Larson
Presidio Advisors, LLC
470 Third Street, Suite 210
San Francisco, California 94107

Dear John:

This letter amends and restates the Operating Agreement, dated September 10, 1997 as amended July 2, 1998 setting forth the terms of KPMG Peat Marwick LLP's ("KPMG") agreement with Presidio Advisors, LLC ("Presidio") regarding a foreign leveraged investment strategy (the "Strategy") and certain other tax advantaged strategies.

I. Commercial Exploitation of the Strategy

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For the purposes of this Agreement, the transaction shall be defined as all aspects of the engagement through the conclusion of KPMG's delivery of services.

KPMG shall not receive a fee from Presidio for any Strategy Transaction, either ~~directly or indirectly.~~



Member firm of KPMG

Permanent Subcommittee on Investigations

EXHIBIT #99m

CONFIDENTIAL
P41916

Peat Marwick LLP

Mr. John Larson
August 19, 1998
Page 2

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- B. Presidio shall use reasonable efforts to refer opportunities for accounting, tax, and consulting services to KPMG.
- C. In each Strategy Transaction, Presidio shall ensure that the Investor implementing the Strategy is offered an opportunity to acquire a position in the shares of multiple alternative foreign entities, which shall include a balance among foreign entities that are clients of KPMG for which independence is required and non-clients of KPMG for which independence is not required.
- D. Presidio's development costs shall be borne by Presidio.

amongst the Big 5

IV. KPMG's Commitments

- A. KPMG may from time to time introduce Presidio to its clients who are considering the implementation of the Strategy.
- B. KPMG shall maintain the confidentiality of tax products developed by Presidio, subject to legal and regulatory disclosure requirements.
- C. KPMG's development costs shall be borne by KPMG.

D. If KPMG Presidio has a product, KPMG will use best efforts to introduce reasonable

Peat Marwick LLP

Mr. John Larson
August 19, 1998
Page 3

V. Term of the Operating Agreement

This Agreement shall have a term of twelve (12) months, running from the date of Presidio's counter-signature below, and the term may be extended by mutual written agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days prior written notice thereof.

VI. No Creation of a Joint Venture

By execution of this agreement, KPMG and Presidio agree that they are not engaged in any actual or implied form of joint venture.

Please indicate your agreement to the foregoing by signing the enclosed copy of this letter and returning it to us.

Very truly yours,

KPMG PEAT MARWICK LLP



Jeffrey A. Eischeid
Partner

JAE:tst
JAEALTA.DOC

ACCEPTED:

Presidio Advisors, LLC

Name:
Title:

Date

CONFIDENTIAL
P41918

2515

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=17627
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=17627
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Presidio Relationship
Sent: 1998-10-01 10:07:50.945
Date: 1998-10-01 10:07:53.753
X-Folder: Presidio

This message summarizes major points discussed and action steps from our discussion regarding current state of the Presidio/Bob Pfaff relationship and ways to leverage its success.

* Need to link Bob up with FCS. Bill Beakley will contact Walter Duer to make this happen. Beakley will continue, for now, to be the "point person" in the firm to ensure that Presidio is linked to the right people in the firm outside of the PFP network. Jeff Eischeid will continue to drive the relationship from a PFP standpoint.

* Presidio has been active in "Midco" transactions, and has expressed interest in becoming more active with us. Larry, is there a professional practice reason we have avoided these?

* Our collective sense was that Pfaff/Larson have a number of good ideas that could/should be developed further with our resources. They seem to have been more inclined to have attorneys do this development/prove-out work than us. Is this because we haven't aggressively gotten ourselves involved? Beakley/Duer/Eischeid should explore ways to broaden this relationship. Need to be sensitive to this function not developing to the point where Presidio becomes a "captive" of KPMG, thus causing independence problems.

* Greg Ritchie, Jeff Eischeid and PFP have done a great job of maximizing PFP revenue from OPIS and other transactions. If we are to expand this success, the relationship must be actively "managed". Walter, the sense is that this should possibly transition to FCS over time given the mandate we've given FCS.

* Next discussion should be to what extent we need to more aggressively try to replicate the Presidio success with other third party vendors. A number of issues/questions should be addressed: professional practice issues, additional in-house investment industry resources needed, structure, etc. Walter, this seems to most appropriately be an FCS responsibility.

John

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #99n

KPMG 0024455

Formatted

kpmg

Prospective Alliance Form FOR KPMG
INTERNAL USE ONLY

To be completed by KPMG sponsoring partner. Wherever possible attach appropriate documentation and supporting details to this form. Please complete all information requested. Failure to do so may delay the approval process. Direct questions concerning the Alliance process to James D. Carney, Principal in Charge, DPF—Consulting (212-909-5838).

Original Renewal

Deleted:

Prospective Alliance Background Information	
Prospective Alliance Entity Prestidio Advisors, LLC	Contact Name Robert Pfaff
Entity's Audit Firm None	Contact Telephone (303) 295-1314
Address of Organization (include all divisions/departments of the organization relevant to this proposed alliance)	
1735 19th Street, Suite 300 Denver, Colorado 80202	
333 Hayes Street, Suite 200 San Francisco, California 94102	
Products and services intended to be offered by the alliance (be specific and elaborate as necessary)	
The alliance would expand to include marketing of certain tax strategies where KPMG will not provide a more-likely-than-not opinion to the client, but will advise the client to seek such an opinion from a reputable law firm. KPMG will market such strategies only if Washington National Tax determines there is a realistic possibility of success that the tax benefits of the strategy will be upheld if challenged. The first such strategy involves a structured financial product, FX Investment Strategy (aka COINS). COINS is primarily a foreign currency option strategy. Anticipated tax benefits include capital gain mitigation or ordinary loss generation.	
Market for products and services offered through the alliance	
High net worth individuals and closely held corporate taxpayers.	
KPMG markets that alliance products and services will benefit	
High net worth individuals and closely held corporate taxpayers.	

Proprietary Material
Confidentiality Requested

KPMG 0026274

Permanent Subcommittee on Investigations
EXHIBIT #99o

2517

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**Proprietary Material
Confidentiality Requested**

KPMG 0026275

Prospective Alliance Information
Lead generation support offered by prospective alliance organization Presidio will bring opportunities to KPMG for our possible participation. Typically, the opportunities will result in value added fees in excess of \$250,000.
Sales/Marketing support offered by prospective alliance organization Presidio would meet directly with our clients where their strategies are offered. They would be joined by members of the PFP Innovative Strategies team in their presentations so that KPMG's interests are properly represented.
Technical support offered by prospective alliance organization including demonstration products available Technical support with respect to financial instruments.
Training support offered by prospective alliance organization None.
Other support offered by the prospective alliance organization

Prospective Alliance Form 399 FOR KPMG INTERNAL USE ONLY

Proprietary Material
Confidentiality Requested

KPMG 0026277

KPMG Information	
Sponsoring Partner – Jeffrey A. Eischeid	Function <input type="checkbox"/> Assurance <input checked="" type="checkbox"/> Tax Consulting
Telephone (404) 222-3180	Industry – Personal Financial Planning
KPMG Industries/Practices That Will Deliver Related Services	
Innovative Strategies team of the Personal Financial Planning practice.	
Benefits to KPMG of entering into this agreement (e.g. revenue or market share growth, cross selling opportunities for other service offerings, etc.)	
Significant revenue potential. In addition, there may be the opportunity to sell KPMG service offerings to individuals and corporations introduced by Presidio.	
Describe how this alliance fits into KPMG's end to end solution framework	
The alliance will enable KPMG to introduce our clients to a solution-provider who may be able to assist our clients in those situations where KPMG does not offer a comparable strategy.	

Proprietary Material
Confidentiality Requested

KPMG 0026278

Agreement Information			
REQUIRED: Level of Agreement Level I - <input type="checkbox"/> Non-exclusive teaming <input type="checkbox"/> Simple value added reseller <input type="checkbox"/> Systems integrator <input checked="" type="checkbox"/> Tax Product Teaming		Level II - <input type="checkbox"/> New product <input type="checkbox"/> Exclusive teaming <input type="checkbox"/> Cooperative marketing	
		Terms of the Agreement: Please attach the draft agreement <input type="checkbox"/> Attached <input checked="" type="checkbox"/> Unknown at Present	
Training KPMG will need to undertake: 1. To sell/represent offerings - Innovative Strategies team will need to be trained regarding the economic and tax attributes of the strategy. Will also need training on regulatory issues. 2. To install/integrate/deliver services - None		Number of KPMG staff already trained/experienced in the offering(s) - Approximately 3. Geographic Area covered by the Alliance - United States	
Does this alliance propose that KPMG make an equity investment in the alliance firm? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Discuss for all areas that apply Estimated Dollar Amount of Investment and Justification			
Training: Training would be part of the routine Innovative Strategies team ongoing training program. Meeting with core Innovative Strategies partner group tentatively scheduled for May 31, 2000. Would likely add to a distance learning video conference agenda.			
Sales and Marketing: Marketing would be in conjunction with routine client Innovative Strategies presentations.			
Equipment (hardware):			
Hardware purchase at a later date:			
Other: WNT research and development time.			
Financial Projections			
Year	Revenue	# of Deals	AI
2001	\$10 million	25	\$10 million
2002	\$15 million	40	\$15 million
2003	\$20 million	50	\$20 million
Sources of Revenue - Clearly identify and explain the source(s) of revenue that KPMG will receive from this alliance by component e.g. professional fees, commissions, product mark-ups, etc. Value-added, fixed, professional fees received from clients with respect to the tax planning services we provide them.			
Competitive Offerings Strategy is currently marketed by Jenkins & Gilchrist.		Competitive Alliances None. However, we intend to continue to form alliances	

2522

Diversified Group; Scotinel; BDO Seidman and E&Y (we believe).	with others including Presidio Financial, Quadra Assoc., and other boutique investment banking firms.
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Proprietary Material
Confidentiality Requested

KPMG 0026280

Risk Management Considerations
<p>Describe any independence issues (e.g. they are an audit client or are owned in whole or part by an audit client) or other professional practice problems (e.g. contingent fees or commissions) presented by the alliance</p> <p>Presidio is not currently (nor is it expected to become) an assurance client of KPMG.</p>
<p>Describe any potential Independence issues and the methods by which KPMG will deal with them, such as contingent fee arrangements or commissions</p> <p>Where the strategy is offered to an audit client or to a person in a position of significant influence over an audit client, we will make certain that the fee arrangement (if not on an hourly basis) will be stated as a fixed fee that is not dependent on the amount of the investment, the investment results, nor the projected or actual savings achieved by the client. We will use only engagement letters that have been approved by DPP-Tax.</p>
<p>Are there any conflicts of interest? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe how it was determined that there were/were not conflicts of interest</p> <p>We will provide tax consulting services to Presidio regarding the structure of the COINS strategy, but will disclose that involvement to clients introduced to Presidio and their strategy.</p> <p>The Innovative Strategies team may forge other alliances with boutique tax advantaged investment advisory firms in furtherance of specific solution offerings. We will enter into a specific business agreement with each firm to set forth the guidelines and role of each firm with respect to the solution. These types of agreements will require the approval of DPP-Tax (at a minimum).</p>
<p>Discuss any other risk management issues (e.g., product maturity, reputation of alliance firm, Year 2000 readiness) and what will be done to mitigate them</p> <p>a. There is a risk that the tax benefits sought by the investors will be disallowed and a risk the IRS will assert penalties against them. To mitigate risks to KPMG arising from any such disallowance or assertion, we will require written engagement letters with the investors that clearly state the underlying strategies involve both investment and tax risks and the engagement letters will expressly limit KPMG's liability. We also will have pre-engagement letters with the investors that state that, prior to deciding whether to invest in the strategy, the investors should obtain independent investment and tax advice relative to the strategy and should determine that a reputable law firm would be willing to issue a more-likely-than-not opinion on the strategy.</p> <p>b. There is a risk of legislative/regulatory change that would eliminate the opportunity to achieve the anticipated underlying tax benefit. This risk will be disclosed to the client.</p> <p>c. It is possible that the strategy offered under the proposed alliance should be registered with the IRS as a "tax shelter". The agreement with Presidio will state that Presidio has primary responsibility for registration, if registration is required, and that Presidio will not offer the strategy under conditions of confidentiality.</p> <p>d. If the IRS disallows the tax benefits to one of our clients, and that client litigates the issue in court, there is the possibility of negative publicity for the Firm relative to the alleged promotion of "abusive" tax shelters. Tax leadership is aware of this risk and has decided to proceed cognizant of the risk.</p>

2524

Renewals Section			
Revenue Projections for prior three years			
Year	Projected Revenue	Actual Revenue	Variance
'98	\$ N/A	\$	\$
'99	\$ \$10M	\$ \$28M	\$ +\$18M
'00	\$ \$12M	\$ \$45M	\$ +\$33M
Explanation of Variances (for each of the prior three years)			
Larger average transaction size and somewhat higher transaction volume.			
Describe any significant changes that have occurred in the prospective Alliance partner's leadership or circumstances over the course of the Alliance that have not already been specified in the PAF			
During 1999 Presidio added a third principal, Amir Makov, to bring additional expertise in the equity and fixed income derivatives investment markets.			
Describe the value of the alliance to the firm and why it should be renewed			
The alliance provides significant gross revenue and very high operating margins from the valued added fees KPMG charges in connection with the strategies.			

2526

Approvals*	
Function Business Leader (Assurance, Consulting, or Tax)	Date
Department of Professional Practice	Date
<input type="checkbox"/> Consulting <input type="checkbox"/> Assurance <input checked="" type="checkbox"/> Tax	
Office of the Chairman and Management Committee (if required)	Date

* For cross-discipline alliances, all appropriate DPP approvals are required.

Proprietary Material
Confidentiality Requested

KPMG 0026284

November XX, 1999

Presidio Growth, LLC
 333 Hayes Street
 San Francisco, CA 94102

REDACTED

Gentlemen:

We are presently considering making an investment in excess of \$300 million, and have explored a number of different investment strategies. The fundamentals of our investment objectives are to deploy our investment in a relatively aggressive, highly-leveraged strategy to achieve a high rate of return. In determining an acceptable rate of return, we consider not only the economic benefits in the form of profit potential, but also other economic benefits, such as any favorable tax treatment potential. We understand that your firm has developed a high-risk, high reward program, using significant leverage. We have done considerable research and analysis of your firm's program, and have researched the relevant markets in which your program will invest. As to the potential tax treatment of your firm's program, we have received advice from KPMG Peat Marwick. Based on our research and analysis and KPMG's advice, it appears to us that your firm's program may satisfy our investment objectives.

As a material inducement for us to select your firm's program over the programs of the other firms we have reviewed, you have agreed with us to condition the payment of a portion of your firm's management fee on the occurrence of certain events. Each of these events (collectively, "Triggering Events") is set forth below: (a) performance of investment management services to the Fund (as defined below) for our benefit, in accordance with that certain Investment Management Agreement, dated [as of *insert date*] between [Presidio] and ("Fund"), including without limitation delivery to us of market research and analysts' reports and access to your investment advisors and strategists by telephone and e-mail to monitor the progress of the program and the markets in which it is invested; (b) delivery to us of an opinion from KPMG in substantially the same form and substance as the draft opinion previously delivered to us, and such opinion is not subsequently withdrawn; (c) delivery to us of an opinion from Brown & Wood LLP concurring with the opinion delivered pursuant to clause (b) above, and such opinion is not subsequently withdrawn; and (d) [*anything else*].

Subject to the terms and conditions of this letter, upon satisfaction of all of the Triggering Events, we agree to pay you the sum of \$[*insert*] as the balance of your firm's management fee ("Balance") for administering its program. If any of the Triggering Events shall not have occurred on [May 1], 1999, then our obligation to pay your firm the Balance shall lapse, and we shall be under no further obligation to your firm in respect of the investment program.

Proprietary Material
 Confidentiality Requested

KPMG 0026396

Permanent Subcommittee on Investigations EXHIBIT #99p

Each of us agrees that until we have paid your firm the Balance or until our obligation therefor has lapsed, each of us will refrain from taking any of the following actions: (a) make any distribution or declare or pay any dividend in an amount that would reduce our combined net worth to below the Balance; (b) pledge or otherwise encumber any of our assets required to satisfy our payment obligation under the preceding paragraph; or (c) borrow any money or suffer any indebtedness which would reduce our net worth, considering our payment obligation under the preceding paragraph as a liability, below the Balance.

[This letter shall constitute an amendment to the Investment Management Agreement.]

We understand that the agreements contained in this letter reflect a special accommodation on your part. Therefore, you have asked us to keep the terms of this letter confidential. Also, we have asked you to keep our participation in your program and the terms thereof confidential, and you have agreed to do so. Notwithstanding the foregoing, if any party is requested by any third party or becomes obligated to disclose the terms of this letter or our participation in your program, such party shall give prior written notice to the other parties hereto to permit such other parties to quash any such request or obligation or to obtain an appropriate protective order.

Except as expressly provided herein, there are no third party beneficiaries, intended or implied. This letter shall be governed by the internal laws of the State of New York, without regard to conflicts of law. The parties hereto agree that all actions arising under this letter shall be litigated only in the Supreme Court of New York or the Federal District Court for the Eastern District of New York.

If this letter accurately reflects our agreement with you, please countersign and return an original of this letter to us.

Very truly yours,

[EACH SINGLE MEMBER LLC]

Agreed to and accepted this _
day of November, 1999

Presidio Growth, LLC

By: _____
Name: _____
Its: Managing Member

Proprietary Material
Confidentiality Requested

KPMG 0026397

2529

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=64160
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=64160
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: BLIPS Billing
Sent: 1999-12-17 18:03:55.179
Date: 1999-12-17 18:03:56.385
X-Folder: Sales Assistance

Jeff:

Robin's letters cannot be retrieved.

My experience has been that if you hit "reply" to Robin's message and included IS Team members from an address book, any attachments (Word or otherwise) are erased.

If you still have Robin's original e-mail, with Word documents attached, could you please "forward" them to the rest of the team?

This should preserve the original attachments.

Thanks.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, December 17, 1999 11:48 AM
To: Paule, Robin M; Warley, Carol G; Watson, Mark T; Schrier, John V; Baumann, Dale R; Belcher, Gregory P; Bickham, Randall S; Bloom, Richard J; Carbo, Deke G; Desany, Edmond H; Fergus, Terrence P; Gardner, John H; Gray, Mike - RALEIGH; Hastings, Carl D; Henderson, Tracie K; Jandl, George P; Jordan, Robert M; Lees, Robert; Lipschultz, Brent S; Liston, Shannon L; Mccrimlisk, George H; McGrath, Kevin J; Nuckolls, John M; Ohle, John B; Pace, Katherine A; Pedersen, Robert A; Perez, Robert L; Pike, Ralph; Poreba, Edward W; Pye, Nicholas I; Ransome, Justin P; Remo, Dee Ann; Rivkin, David; Sanders, Russell T; Shatzman, Janice B; Slattey, Daniel M; Smolin, Jay M; Speiss, Timothy P; Spitz, William L; Staebler, Victoria A; Tendler, Neil J; Vail, Daniel T; Watkins, B M; Weems, Pamela D; Zaudtke, David P; Ziegelheim, Carol; Zysik, Jeffrey C; Schrier, John V; Stone, Tracy T
Subject: RE: Invoices for BLIPS

Don't forget to change the wire transfer instructions to those provided by your EMC.

-----Original Message-----

From: Paule, Robin M
Sent: Friday, December 17, 1999 12:43 PM
To: Warley, Carol G; Watson, Mark T; Schrier, John V; Baumann, Dale R; Belcher, Gregory P; Bickham, Randall S; Bloom, Richard J; Carbo, Deke G; Desany, Edmond H; Eischeid, Jeffrey A; Fergus, Terrence P; Gardner, John H; Gray, Mike - RALEIGH; Hastings, Carl D; Henderson, Tracie K; Jandl, George P; Jordan, Robert M; Lees, Robert; Lipschultz, Brent S; Liston, Shannon L; Mccrimlisk, George H; McGrath, Kevin J; Nuckolls, John M; Ohle, John B; Pace, Katherine A; Pedersen, Robert A; Perez, Robert L; Pike, Ralph; Poreba, Edward W; Pye, Nicholas I; Ransome, Justin P; Remo, Dee Ann; Rivkin, David; Sanders, Russell T; Shatzman, Janice B; Slattey, Daniel M; Smolin, Jay M; Speiss, Timothy P; Spitz, William L; Staebler, Victoria A; Tendler, Neil J; Vail, Daniel T; Watkins, B M; Weems,

Proprietary Material
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Permanent Subcommittee on Investigations
EXHIBIT #99g

KPMG 0025876

2530

Pamela D; Zaudtke, David P; Ziegelheim, Carol; Zysik, Jeffrey C; Schrier, John
V; Stone, Tracy T
Subject: Invoices for BLIPS

As it now appears that Presidio will be facilitating the payment of our
invoices, it would save them (and our clients) a lot of time and effort if we
standardized our wire instructions to them. I have prepared a cover letter and
wire instructions which I sent out with my invoices. All the client has to do
is sign the bottom of the wire instructions and fax to Kerry. You should, of
course, fill in the blanks with their LLC name and the amount to be wired.

Attached are the letters.

<< File: invoice cover letter >> << File: WIRELETTER21.DOC >>

Robin Paule
KPMG Warner Center
(818)227-6934 PHONE
(818)227-6964 FAX
rpaule@kpmg.com

2531

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18293
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18293
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: COINS
Sent: 2000-05-19 19:57:19.508
Date: 2000-05-19 19:57:20.701
X-Folder: Presidio alliance
X-Attachments: Attachments\ALTA[5].DOC

Jeff -

I believe we definitely need a new agreement with Presidio, as the contemplated approach is considerably different than the prior approach. (Among other things, it's not our intention to participate in implementation of the strategies, it's not our intention to "exploit" derivatives of the strategy, and we would no longer agree to maintain the confidentiality of tax products developed by Presidio.) Also, I think we should have a more robust agreement that would cover such things as Presidio's primary responsibility to register the strategy if registerable and Presidio's commitment not to offer the strategy under conditions of confidentiality. I'll defer to the judgement of OGC on this, but I think it might be a good idea to include a mandatory arbitration provision in the event of disputes concerning the agreement or legal claims arising from the services contemplated by the agreement. Steve generally doesn't get involved in contractual matters, but perhaps he could help in getting a new agreement drafted or reviewed by OGC on an expedited basis. Presumably, the new agreement with Presidio would be substantially the same as the agreement we will need with Helios.

Also, it probably would be appropriate to submit a "renewal" of the Presidio alliance form, given that what we are proposing to do is quite a bit different than what was described on the original alliance form.

Larry

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Friday, May 19, 2000 9:22 AM
To: DeLap, Larry
Subject: RE: COINS & Presidio

Attached is the Presidio operating agreement. It has now expired and is "extendable".

I don't have an electronic copy of the COINS opinion but will see if I can get one and, if not, will scan a hard copy.

Jeff

-----Original Message-----

From: DeLap, Larry
Sent: Friday, May 19, 2000 10:51 AM
To: Eischeid, Jeffrey A
Cc: Brockway, David H; Smith, Richard H (WNT)
Subject: COINS

Jeff -

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Permanent Subcommittee on Investigations
EXHIBIT #99r

KPMG 0027464

2532

Can you get to me an electronic white paper or generic opinion on COINS. If all we have is a hard copy of a generic opinion, can you have that scanned into an electronic copy.

Larry

**Proprietary Material
Confidentiality Requested**

KPMG 0027465

[DRAFT 5/31/00]

June __, 2000] ~~{August 19, 1998}~~

PERSONAL & CONFIDENTIAL
~~{Mr. John Larson}~~ Presidio Advisors, LLC
 470 Third Street, Suite 210
 San Francisco, California 94107
[Attention: Mr. John Larson

Ladies and Gentlemen:] ~~{Dear John:}~~

This letter [agreement (the "Agreement")] amends and restates the Operating Agreement, dated ~~{September 10, 1997 as amended July 2, 1998}~~ **[August 19, 1998,** setting forth the terms of KPMG ~~{Peat Marwick}~~ LLP's ("KPMG") agreement with Presidio Advisors, LLC ("Presidio") regarding a ~~[short option investment strategy, therein referred to as a]~~ foreign leveraged investment strategy (the "Strategy") ~~{and certain other tax advantaged strategies-}~~. **[Note: Is this correct or is the short option investment strategy a new strategy for which we are creating a new agreement?]**

I. ~~{I. Commercial Exploitation of the Strategy}~~ [Cooperation Agreement]

- A. KPMG and Presidio shall work together ~~{from time to time in connection with}~~ **[to provide certain services relating to the]** implementation of the Strategy ~~{and certain other tax advantaged strategies (each collectively defined herein as a "Strategy Transaction") for}~~ **[by]** individual investors, which ~~[investors]~~ may include limited liability companies, family limited partnerships ~~{, or}~~ **[and]** trusts established by such investors (each referred to herein as ~~{an "Investor"}~~) **[an "Investor"]** and the implementation of such other tax advantaged strategies by Investors as may be mutually agreed upon by the parties from time to time. For purposes of this agreement, a "Strategy Transaction" is defined as **[a transaction with an Investor which encompasses all aspects of the engagement of KPMG and Presidio by such Investor through the conclusion of [such parties'] delivery of services relating to the implementation of the Strategy].** **[**

]Any Investor for whom GAAP basis financial statements are prepared shall be advised to discuss accounting for the Strategy with their independent accountants.

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Permanent Subcommittee on Investigations EXHIBIT #99s

KPMG 0029801

Presidio Advisors, LLC
Page 2

†

B. KPMG's Compensation:

~~)(B.)~~ KPMG and Presidio shall ~~[separately]~~ enter into ~~{separate}~~ contracts with each Investor ~~{and}~~ ~~[providing for, among other things, the]~~ fees payable to KPMG or Presidio ~~{will}~~, as the case may be. ~~The fees payable to KPMG and Presidio shall~~ not be dependent on the services ~~{of}~~ ~~[provided by]~~ the other. ~~[KPMG and each]~~ Investor ~~{and KPMG will}~~ ~~[shall]~~ mutually agree on KPMG's fee, which shall reflect the complexity of KPMG's role and value of KPMG's services. Such fee ~~{will}~~ ~~[shall]~~ not be dependent on the amount invested in, ~~{investments}~~ ~~[investment]~~ results of, ~~{nor on}~~ ~~[or]~~ tax savings projected or achieved from, the Strategy. †

~~For the purposes of this Agreement, the transaction shall be defined as all aspects of the engagement through the conclusion of KPMG's delivery of services.)~~ KPMG shall not receive a fee from Presidio for any Strategy Transaction, either directly or indirectly.

II. ~~{Derivatives of the Strategy}~~ [Presidio's Commitments]

A. Presidio hereby grants KPMG a right of first refusal ~~[with respect to the use of the Strategy and]~~ ~~{to exploit any products that are derived from the Strategy on a basis comparable to this Agreement}~~.

~~B. KPMG shall review Strategy derivative(s) in a timely manner.~~

III. Presidio's Commitments

A. Presidio hereby grants KPMG a right of first refusal ~~for~~ all other tax-based products ~~[developed or to be developed by]~~ Presidio ~~{develops}~~.

B. Presidio shall use reasonable efforts to refer opportunities for accounting~~{, tax,}~~ and ~~{consulting}~~ ~~[tax]~~ services to KPMG.

C. In each Strategy Transaction, Presidio shall ensure that the Investor implementing the Strategy is offered an opportunity to acquire a position in the shares of multiple alternative foreign entities, which shall include a balance among foreign entities that are clients of KPMG for which independence is

Presidio Advisors, LLC
Page 3

required and non-clients of KPMG for which independence is not required.

D. ~~{D.}~~ Presidio's development costs shall be borne by Presidio.

E. **[[To the extent required by law (as reasonably determined by KPMG),] Presidio shall (i) register the Strategy with the Internal Revenue Service in accordance with Section 6111 of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) maintain a list of Investors in the Strategy under Section 6112 of the Code.**

III] ~~{IV}~~. KPMG's Commitments

A. ~~{A.}~~ KPMG may from time to time introduce Presidio to its clients who are considering the implementation of the Strategy.

A. ~~{B. KPMG shall maintain the confidentiality of tax products developed by Presidio, subject to legal and regulatory disclosure requirements. C.}~~ KPMG's development costs shall be borne by KPMG.

IV. [Arbitration and Governing Law

A. Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration administered by the [American Arbitration Association][CPR Institute] in accordance with its Commercial Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration proceeding shall be conducted in New York City, New York. The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, the issuance of an injunction. However, either party may, without inconsistency with this arbitration provision, apply to any court having jurisdiction hereof and seek interim provisional injunctive or other equitable relief until the arbitration award is rendered or the controversy is otherwise resolved. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, or to obtain interim relief, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding any choice of law provision included in this Agreement, the United States Federal

Presidio Advisors, LLC
Page 4

Arbitration Act shall govern the interpretation and enforcement of this arbitration provision.

B. This Agreement shall be governed by the laws of the state of New York.

V. Indemnification

Presidio shall defend, indemnify and hold harmless KPMG and its affiliates and their respective officers, directors, partners, principals, employees and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from the acts or omissions of Presidio or its subcontractors, or any of their respective officers, directors, partners, principals, employees, agents, successors or assigns, except and only to the extent that any such claims, losses, liabilities, damages and expenses arise solely as a result of the willful misconduct of KPMG or its authorized representatives.

VI] {V}. Term of the Operating Agreement

This Agreement shall have a term of twelve (12) months, running from the date of Presidio's counter-signature below, and the term may be extended by mutual written agreement. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days prior written notice thereof.

[VII. Assignment

Neither party may assign its right or delegate its obligations under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other party. The rights and liabilities of the parties under this Agreement shall bind and inure to the benefit of the parties' respective successors and permitted assigns.

VIII] {VI}. No Creation of a Joint Venture

By execution of this agreement, KPMG and Presidio agree that they are not engaged in any actual or implied form of joint venture.

Please indicate your agreement ~~{to}~~ [with] the foregoing by signing the enclosed copy of this ~~{letter}~~ [Agreement] and returning it to us.

Proprietary Material
Confidentiality Requested

KPMG 0029804

2537

Presidio Advisors, LLC
Page 5

Very truly yours,

KPMG ~~{PEAT-MARWICK-LLP~~

}[LLP

Name:] Jeffrey A. Eischeid
[Title:] Partner
{
JAE:tst
JAE\ALTA.DOC}

ACCEPTED:

Presidio Advisors, LLC

Name:
Title:

Date

Proprietary Material
Confidentiality Requested

CHICAGO 1135942v2 May 31, 2000 (05:02pm)

KPMG 0029805

Q2. There could be another bank but not Citibank. Citibank will not do these kind of trades. We could use DB AIG NatWest and BOA if necessary.

Q3. Yes. We are already doing it by providing clients with all investment banking research. I gave Matt access to the bank's web sites but I'm happy to do it again.

Amir.

----- Original Message -----

From: Kerry Bratton

To: Amir Makov ; Debra Fagan ; Eric Long ; Isabel Perez ; John Larson ; Renee Marchese ; Bob Pfaff ; Steven Buss

Sent: Sunday, July 23, 2000 12:32 PM

Subject: KPMG Meeting

The meeting with the KPMG sales team was a success. I have listed the participants at the end of the message.

I discussed the structure outline, binary trades, timeline, process and documents. Each participant received a package that included all of the template transaction documents which will be executed by the Investor.

They understand that we are ready to do transactions and they know what we need from KPMG/Investor to start the process.

Thanks for everyone's hard work in getting the materials ready to distribute. KPMG was very impressed with the package.

There are a few follow up items resulting from the meeting.

1. KPMG (Carl, Dale & Deke) needs clarification on the law firms that are issuing opinions. Their understanding is that they can give each investor a choice between a Brown & Wood or Holland & Hart opinion.
2. Shannon Liston inquired as to the possibility of adding another bank. She wanted to see if the Citibank option could be pursued. There is a private banking person at Citibank that is opposed to his clients doing these deals if it means they must open an account at another bank. Just wanted to make you aware of her comment/question.
3. Matt Heil (David Rivkin's manager), wanted to know if there will be investment materials such as a package of articles.

Participants:
Dale Baumann
Deke Carbo
Carl Hasting
Jack Nuckolls
Erika Quock
Shannon Liston
Matt Heil

CONFIDENTIAL
P41919

Permanent Subcommittee on Investigations

EXHIBIT #99t

9/16/2003

2539

Page 2 of 2

(4 other managers - don't know names)

Missing: Robin and Dave Rivkin

Kerry Bratton
Presidio Advisory Services, LLC
Phone: (415) 284-7282
Fax: (415) 284-7284

CONFIDENTIAL
P41920

file://C:\C%20Drive%20Case%20Data\Presidio\Pfaff%20Docs\PAR5111.htm

9/16/2003

August 28, 1998

KPMG Fee Schedule (revision)

<u>Deal size</u>	<u>Std Fee</u>	<u>B&W adj.</u>	<u>As adjusted</u>
\$20 - \$25	110 bps	3.9	106.1 bps
\$25 - \$30	115 bps	5.9	109.1 bps
\$30 - \$35	120 bps	7.3	112.7 bps
\$35 - \$40	125 bps	8.3	116.7 bps
\$40 - \$45	130 bps	9.1	120.9 bps
\$45 - \$50	135 bps	9.7	125.3 bps
\$50 - \$60	135 bps	10.5	124.5
\$60 - \$70	135	11.2	123.8
\$70 - \$80	135	11.7	123.3
\$80 - \$90	135	12.1	122.9
\$90 - \$100	135	12.4	122.6
\$100 - \$125	135	12.8	122.2
\$125 - \$150	135	13.2	121.8

Note - B&W adjustment based on 30 bps std fee

Permanent Subcommittee on Investigations
EXHIBIT #100a

CONFIDENTIAL
P41291

2541

From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: FLIP opinions for
Sent: 1998-11-05 18:48:14.510
Date: 1998-11-09 18:48:14.662
X-Folder: FLIP Opinions

Jeff,

This message is a status update on George McCrimlisk's FLIP opinions. I have requested a copy of these opinions from George for the profitability calculations. In addition, Brown & Wood requested a copy of the opinions to issue their opinion. I left George a voice mail to let him know that Brown & Wood needed a copy of the finalized opinions.

Angie

REDACTED

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100b

KPMG 0033447

2542

MEMORANDUM TO RANDY BICKHAM
GEORGE THEOFEL

R.J. Ruble

December 3, 1998

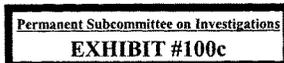
Re: BLIPS

In looking at the bond premium rules in another context (i.e. a legitimate deal), I found an issue that we need to address for BLIPS. As I read it, the treatment of bond premium received by an issuer is governed by Treas. Reg. 1.61-12(c) and Treas. Reg. 1.163-13. The latter treats the premium as an offset to the issuer's interest deduction. The former provides that it is not included in income when received and by reference to the latter (see, Treas. Reg. 1.163-13(f), Example) but rather becomes part of the bond's issue price. Treas. Reg. 1.61-12(c)(2) also addresses what happens when a bond is repurchased at a premium or discount, computed by reference to its issue price. If there is a premium paid it is deductible, but if there is a discount it is income. The regulation then cross references to section 108.

If we hypothesize a loan to Investor of 100 principal amount, and the investor is paid 50 of bond premium, the investor's adjusted issue price is 150. When the investor transfers the assets subject to the loan to the partnership, I have always assumed that the partnership's acquisition of the property subject to the loan is governed solely by section 721 etc. Is this true. Could 1.61-12 over ride. Even if it did could we also say that the drop down of he amount equal to the premium would create an offsetting deduction. Am I worrying too much?

Lastly, on the fixed versus floating rate issue, treas. Reg. 1.1275-6(c)(2) gives the IRS the power to integrate interest hedges and debt, even if they are not otherwise a perfect 1275-6 hedge. I am concerned that if we set up a fixed rate premium loan and hedge it into floating, the IRS can arbitrarily integrate it under this regulation and cause it to be treated as a floating rate loan. Consequently, I think we have to get to the stage where we're happy with BLIPS using a floating rate loan.

//Document2:3/ -



M0208673
SIDL-SCGA083244

2543

From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: FLIP Transaction Documentation
Sent: 1998-12-04 15:39:33.628
Date: 1998-12-04 15:39:33.785
X-Folder: FLIP Opinions

Jeff,

I spoke to Kevin Pace regarding these two transactions. These transactions occurred in Feb. 1998. Evidently, we were out of the FLIP business at this time. The clients persisted on doing a FLIP. The clients were told we would not write a FLIP opinion for them. Richie coordinated with R.J. for B&W to write the sole opinion and B&W was paid double (100k per opinion). KPMG was also paid a fee (less the extra 50 that went to B&W). We do the individual tax work for these clients and Kevin will rely solely on the B&W opinion.

Kevin was left out of the loop when Richie left and was not sure of the status of these opinions. He is missing documentation from Kerry. I told him that I would check with R.J. on the status of the B&W opinion and would help him get documentation from Kerry.

Please advise.

Angie

-----Original Message-----
From: Eischeid, Jeffrey A
Sent: Thursday, December 03, 1998 2:41 PM
To: Napier, Angie
Subject: RE: FLIP Transaction Documentation

First I've heard as well. I wonder why (ask Kevin) we're not writing the opinion and why they don't have opinions for tax returns already prepared.

-----Original Message-----
From: Napier, Angie
Sent: Thursday, December 03, 1998 9:25 AM
To: Eischeid, Jeffrey A
Subject: FW: FLIP Transaction Documentation
Importance: High

Jeff,

I have not heard of these two deals- they are not on the FLIP master list. Can B&W be the sole issuer of a FLIP opinion? I have not heard of a situation where we did not write the opinion first.

I will call Kevin after I hear back from you. I can help him with getting documentation, coordination with B&W, etc.

Angie

-----Original Message-----
From: Pace, Kevin A
Sent: Wednesday, December 02, 1998 7:21 PM

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100d

KPMG 0028337

2544

To: Napier, Angie
Subject: FW: FLIP Transaction Documentation

Angie:

Would you please call me. KPMG is not issuing the opinion letter on my FLIPs. Brown and Wood is the sole issuer and R.J. Rubel is supposed to be working on the opinion letters according to Kerry at Presidio. However, I have not verified this with R.J. Do you have the documents for my FLIPs, ? Will B&W attach them to its opinions?

Please let me know what you think.

Thanks.

-----Original Message-----

From: Paule, Robin M
Sent: Wednesday, December 02, 1998 6:06 PM
To: Pace, Kevin A
Subject: RE: FLIP Transaction Documentation

REDACTED

Kevin:

I apologize for the delay in getting back to you. Presidio should provide you with all the documents for all trades, including those engaged in by the Foreign LP. You might want to talk to Angie Napier in the Atlanta office to see if she has copies of the documents. Kerry was giving them all to her since she was coordinating the issuance of opinion letters for all FLIP deals.

I would, at a minimum, keep copies of all the documents we are attaching to the KPMG opinion letters. I have attached a sample of the exhibits we are attaching.

The Brown and Wood opinion is generally being issued based on (and subsequent to) the KPMG opinion. Since KPMG is not issuing an opinion, I would check with Angie Napier and she can call RJ Ruble to make sure he has all the info.

My guess is that B&W is not working on your opinion since they may be waiting for a KPMG opinion. I would again remind Angie of this and have her contact B&W.

Hope you had a nice Thanksgiving.

Robin Paule

-----Original Message-----

From: Pace, Kevin A
Sent: Tuesday, November 24, 1998 6:07 AM
To: Paule, Robin M
Cc: Hartley, Richard S
Subject: FLIP Transaction Documentation

Robin:

One quick question. Kerry at Presidio has given me the basis shift number being equal to the amount of purchase price of DB stock by the Cayman company. I

Proprietary Material
Confidentiality Requested

KPMG 0028338

2545

understand that the number is the correct amount. However, Presidio has not provided any of the supporting documentation, i.e., the redemption documents between the Cayman company and DB. I have the document evidencing the purchase of the DB stock by the Cayman companies.

What information did you and must I receive and keep in the tax file to support the section 302 basis shift? I am presuming that we need all the underlying documents between the Cayman companies and DB to support the tax opinion letter and the basis shift.

Kerry told me that R.J. Rubel is currently working on my tax opinion letters. Will the supporting documentation come from R.J. Rubel or do I need to ask Kerry to send my the complete investment file? FYI, KPMG is not issuing the opinion letters on my FLIPs, only Brown and Wood.

Thanks.

Proprietary Material
Confidentiality Requested

KPMG 0028339

2546

From rrruble@brownwoodlaw.com
Received: from kpmg.com (p0016c22.kweb.us.kpmg.com [10.1.206.4]) by
meomexc09.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id TPC78ZYS; Fri, 24 Sep 1999 19:27:48 -0400
Received: from pa0016cl.kpmg.com by kpmg.com(Pro-8.9.2/Pro-8.9.2) with ESMTP id
TAA24046; Fri, 24 Sep 1999 19:27:47 -0400 (EDT)
Received: by pa0016cl.kpmg.com; id TAA23831; Fri, 24 Sep 1999 19:27:45 -0400
(EDT)
Received: from nyfwl.brownwoodlaw.com(208.140.184.10) by pa0016cl.kpmg.com via
smap (3.2)
id xma023768; Fri, 24 Sep 99 19:27:25 -0400
Received: by nynotes2.brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852567F6.0080E045 ; Fri, 24 Sep 1999 19:27:40 -0400
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: eischeid@kpmg.com, rbickham@kpmg.com
Message-ID: <852567F6.0080DDEE.00@nynotes2.brownwoodlaw.com>
Date: Fri, 24 Sep 1999 19:27:27 -0400
Subject: B&W Draft Opinion
X-Folder: BLIPS
X-Attachments: "Attachments\B&W Draft BLIPS opinion letter.doc"

Here's our opinion. In going through it I noticed some minor changes
that need to be made to both. I have put in an assumption about functional
currency, I don't think yours has it and we probably both want it as a rep.
There are a number of investor reps in the text that aren't in the Reps
section. I think that they should go in there. I also think we should
figure out whether we want more in the way of representations from the
Investor's single owner. We both need to get our aggregation opinions
ready. Lastly, we probably both need a set of fresh eyes to go over the
opinions one last time. At this point I'm not sure that I have anyone. Do
you and if so could I prevail on him/her to look at mine as well? A
side-by-side is also a good idea to make sure we each cover everything the
other has.

----- Forwarded by R. J. Ruble/NY/BWLLP on 09/24/99 07:20
PM -----

R. J. Ruble
09/24/99 07:20 PM

To: drivkin@kpmg.com
cc:
Subject: B&W Draft Opinion

Attached is a draft of our BLIPS opinion as you requested. I apologize
about the delay. It will probably go through another round of clean up, but
it is substantially completed.
(See attached file: B&W Draft BLIPS opinion letter.doc)

(UUEncoded file named: B&W Draft BLIPS opinion letter.doc follows)
(Its format is: Lotus Manuscript 1.0)

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100c

KPMG 0033493

BROWN & WOOD LLP
NEW MATTER MEMORANDUM

MANAGEMENT COMM. 1/14/99
BILLING PARTNER/RECORDS 1/14/99
LAWYERS & OTHERS 1/19/99

Matter No.: 70160.00024 Blue Sky No.: _____

Office: New York New Client Existing Client Client No: 70160

Full Client Name: KPMG Peat Marwick LLP

Short Client Name: KPMG Matter Description: BLIPS
(15 characters)

Address: 3 Embarcadero Center Client Contact: Randy Bickham
Suite 2000 Title: _____
San Francisco, CA 94111

Telephone: 415-955-5132 Fax: 415-397-1128

Billing Partner(s): 1595 R.J. RUBLE Referred by: _____

Other Lawyers: _____

STATEMENT OF MATTER (Please include legal issues, alleged violations and relief sought): Tax Advice.

LINE OF BUSINESS CODE & DESCRIPTION 150

GEOGRAPHIC CODE 100 UNITED STATES

STATUTE OF LIMITATIONS: Applicable Not Applicable Expiration Date: _____

BILLING INSTRUCTIONS, REMARKS & COMMENTS:

At time of billing, the Firm itemizes the disbursements separately unless there is an agreement with the client that our fee includes disbursements. If there is such an agreement, the fee charged should be sufficient to cover the fees and disbursements. Is there an agreement with the client that our fee includes disbursements? Yes No

Approved: _____ (Billing Partner) R.J. Ruble (Member of Management Committee for New Clients Only)
January 6, 1999 (Date) (Date)

Completion of Side 2 is required for all litigation matters and when conflict-of-interest check is requested. BW-116.1 (9/94)

Permanent Subcommittee on Investigations
EXHIBIT #100f

M0206471
SIDL-SCGA082444

2548

Unknown

From: Bickham, Randall S
Sent: Sunday, February 07, 1999 3:31 PM
To: Lakin, Shannon L; Elacheid, Jeffrey A; 'truble@brownwoodlaw.com'; 'jtheotele@ics-ipc.com'; 'moskalko@presidoadv.com'; 'jpfaff@presidoadv.com'; 'jerson@presidoadv.com'
Subject: BUPS Final Draft
Importance: High

Attached is the final version of the opinion that will be submitted to DPP, subject to last minute editing with respect to OIDS Section 1001 issues by Shannon on Monday. Please review the opinion on Monday and give me a call with any changes. Finally, I would like to thank the working group for everyone's collective efforts in getting the opinion to this stage.



M:\ipn App 3.1.1.doc



M:\ipn 01.doc

Randy

Proprietary Material
Confidentiality Requested

KPMG 0037793

Permanent Subcommittee on Investigations

EXHIBIT #100g

2549

From rruble@brownwoodlaw.com
Received: from usnssexcl8.kweb.us.kpmg.com (localhost [127.0.0.1]) by
usnssexcl8.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id QGPHDWVF; Wed, 4 Aug 1999 10:37:01 -0400
Received: from kpmg.com (unverified) by usnssexcl8.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0000189574@usnssexcl8.kweb.us.kpmg.com>;
Wed, 04 Aug 1999 10:36:53 -0400
Received: from p0015c01.kpmg.com by kpmg.com (Pro-8.9.2/Pro-8.9.2) with ESMTP id
KAA12501; Wed, 4 Aug 1999 10:36:53 -0400 (EDT)
Received: by p0015c01.kpmg.com; id KAA14124; Wed, 4 Aug 1999 10:36:49 -0400
(EDT)
Received: from nyfwl.brownwoodlaw.com (208.140.184.10) by p0015c01.kpmg.com via
smap (3.2)
id xma011937; Wed, 4 Aug 99 10:33:22 -0400
Received: by nynotes2.brownwoodlaw.com (Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852567C3.004FB35F ; Wed, 4 Aug 1999 10:30:32 -0400
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: rbickham@kpmg.com
Cc: eischeid@kpmg.com
Message-Id: <852567C3.004D8426.00@nynotes2.brownwoodlaw.com>
Date: Wed, 4 Aug 1999 10:31:48 -0400
Subject: BLIPS - Guaranteed Payments
X-Folder: BLIPS

I've given further thought to our conversation last night and spent
some time talking to a couple of my partners. Where we are coming out is
as follows:

Class A Partner: A guaranteed payment would give the IRS an
extremely good shot at taking the position that he is not a partner. In
large part this is due to the economics as I understand them. The B
partners get a guaranteed return of 12% of their investment, regardless of
how long they are in the deal. This would give them an entrepreneurs type
of return and would put a significant crimp in the ability of the A partner
to get such a return. The A's guaranteed payment, which is likely to be
the only or the significant piece of the A's return could then be merely as
a contractual arrangement in which the A puts up \$X on day one with an
assured \$Y return and a possibility of some upside. The downside risk of A
has been fixed and the upside is remote. It is hard to say what it is , but
all the IRS has to do is to demonstrate that it is not a partnership
arrangement under Culbertson, etc. With limited downside and limited
upside this may not be hard to do. We would consequently be very
uncomfortable having to give an opinion in such circumstances.

Class B Partner: Notwithstanding what I said above regarding
the B's entrepreneurial return, the fact that the return seems to arise
primarily from the guaranteed payment could give the IRS the opportunity to
attack the partner status of the Bs. (Consistency has never been the IRS'
strong pointy in litigation.) This is particularly true after the IRS
success in ASA Investertlings. I have heard that agents are now raising this
issue wherever it can be advantageous to the IRS. The downside is that if
the Bs are not partners, then the redemption of the A is a partnership
termination and the A's basis would get reduced under Section 705(a)(2)(B)
as we have discussed. The seemingly simple solution is to have Presidio
use two partners. (Their aggregate investment could be the same, just
split.) I had suggested this earlier, but now I find that it was rejected.

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations

EXHIBIT #100h

KPMG 0025817

2550

My guess is that Hale & Dorr found some regulatory issue, but I don't know for sure and I'd like to explore it. The second partner does not have to be a manger and I am aware of a number of investment partnerships in which the manager invests as a limited through a separate entity. Although we don't feel quite as strongly about this as the first situation, it is troublesome that we haven't explored in depth a seemingly easy fix to an issue that could cause the investor to lose his tax benefits.

**Proprietary Material
Confidentiality Requested**

KPMG 0025818

2551

From rruble@brownwoodlaw.com
Received: from usnssexcl6.kweb.us.kpmg.com (localhost [127.0.0.1]) by
usnssexcl6.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id RH923GVR; Fri, 3 Sep 1999 10:24:20 -0400
Received: from kpmg.com (unverified) by usnssexcl6.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0001813938@usnssexcl6.kweb.us.kpmg.com>;
Fri, 03 Sep 1999 10:03:15 -0400
Received: from pa0016cl.kpmg.com by kpmg.com(Pro-8.9.2/Pro-8.9.2) with ESMTMP id
KAR20651; Fri, 3 Sep 1999 10:10:11 -0400 (EDT)
Received: by pa0016cl.kpmg.com; id KAA13223; Fri, 3 Sep 1999 10:10:10 -0400
(EDT)
Received: from nyfw1.brownwoodlaw.com(208.140.184.10) by pa0016cl.kpmg.com via
smap (3.2)
id xma012664; Fri, 3 Sep 99 10:09:03 -0400
Received: by nynotes2.brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852567E1.004DBE73 ; Fri, 3 Sep 1999 10:09:10 -0400
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: rpederse@kpmg.com
Cc: elscheid@kpmg.com
Message-Id: <852567E1.004DBCB9.00@nynotes2.brownwoodlaw.com>
Date: Fri, 3 Sep 1999 10:09:02 -0400
Subject: Preliminary BLIPS Draft
X-Folder: BLIPS
X-Attachments: "Attachments\KPMG BLIPS Preliminary Draft.doc"

Attached is our preliminary draft to meet your "read at the office only"
needs. It will be cleaned and tightened up. It is also our policy to work
with KPMG to develop a common factual statement, which has yet to be done.
You'll notice our approach in laying out the opinions is different from
KPMG's but that everything is there.

(See attached file: KPMG BLIPS Preliminary Draft.doc)

(UUEncoded file named: KPMG BLIPS Preliminary Draft.doc follows)
(Its format is: Lotus Manuscript 1.0)

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100i

KPMG 0033905

2552

From: Susan L. Sodano [ssodano@brownwoodlaw.com]
Sent: Monday, October 11, 1999 1:46 PM
To: rbickham@kpmg.com
Subject: Demands for Release



RIP.doc

Dear Mr. Bickham,

I have spoken with Angie last week regarding OPIS and BLIPs and we have come to two conclusions:

1. Angie will have to come to S.F. to go over the remaining 1999 OPIS deals with you so we can release them; and
2. We are going to hold all BLIPs opinions hostage until all OPIS (both 1998 AND 1999) are finished).

The only way to secure release of your beloved BLIPs opinions will be to fork over the remaining OPIS opinions. We may be willing to negotiate an early release of the hostages, but this depends upon you.

We will only speak to you! Do not contact the police! Do not delay! Your opinions' lives may depend on it! Should you doubt our intentions, see the below attachment.

Signed,

The OPIS Slasher

(See attached file: RIP.doc)

(UUEncoded file named: RIP.doc follows)
(Its format is: Lotus Manuscript 1.0)

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100j

KPMG 0036664

CASH RECEIPTS
FOR DECEMBER 10, 1999

<u>PARTNER</u>	<u>DATE</u>	<u>CLIENT - MATTER - DESCRIPTION</u>	<u>FEE\$</u>	<u>DISBS.</u>	<u>TOTAL</u>
RUBLE	12/10/99	PEAT MARMICK - BLIPS -	300,000.00		300,000.00
	12/10/99	PEAT MARMICK - BLIPS -	240,000.00		240,000.00
	12/10/99	PEAT MARMICK - BLIPS -	198,000.00		198,000.00
	12/10/99	PEAT MARMICK - BLIPS -	195,000.00		195,000.00
	12/10/99	PEAT MARMICK - BLIPS -	180,823.61	2,176.39	183,000.00
	12/10/99	PEAT MARMICK - BLIPS -	150,000.00		150,000.00
	12/10/99	PEAT MARMICK - BLIPS -	120,000.00		120,000.00
	12/10/99	PEAT MARMICK - BLIPS -	90,000.00		90,000.00
	12/10/99	PEAT MARMICK - BLIPS -	90,000.00		90,000.00
	12/10/99	PEAT MARMICK - BLIPS -	60,000.00		60,000.00
	12/10/99	PEAT MARMICK - BLIPS -	60,000.00		60,000.00
	12/10/99	PEAT MARMICK - BLIPS -	11,700.00		11,700.00
			Sum		
			1,695,523.61	2,176.39	1,697,700.00

Redacted by
Permanent Subcommittee
on Investigations

Redacted

Permanent Subcommittee on Investigations
EXHIBIT #100k

M0137897
SIDL-SCGA039315

CASH RECEIPTS
FOR DECEMBER 27, 1999

<u>PARTNER</u>	<u>DATE</u>	<u>CLIENT - MATTER - DESCRIPTION</u>	<u>FEES</u>	<u>DISBS.</u>	<u>TOTAL</u>	
RUBLE	12/27/99	PEAT HARMICK - SLIPS	564,000.00		564,000.00	
	12/27/99	PEAT HARMICK - SLIPS	225,000.00		225,000.00	
	12/27/99	PEAT HARMICK - SLIPS	183,000.00		183,000.00	
	12/27/99	PEAT HARMICK - SLIPS	180,000.00		180,000.00	
	12/27/99	PEAT HARMICK - SLIPS	150,000.00		150,000.00	
	12/27/99	PEAT HARMICK - SLIPS	129,000.00		129,000.00	
	12/27/99	PEAT HARMICK - SLIPS	120,000.00		120,000.00	
	12/27/99	PEAT HARMICK - SLIPS	120,000.00		120,000.00	
	12/27/99	PEAT HARMICK - SLIPS	106,500.00		106,500.00	
	12/27/99	PEAT HARMICK - SLIPS	93,000.00		93,000.00	
	12/27/99	PEAT HARMICK - SLIPS	91,500.00		91,500.00	
	12/27/99	PEAT HARMICK - SLIPS	90,000.00		90,000.00	
	12/27/99	PEAT HARMICK - SLIPS	90,000.00		90,000.00	
	12/27/99	PEAT HARMICK - SLIPS	84,000.00		84,000.00	
	12/27/99	PEAT HARMICK - SLIPS	66,000.00		66,000.00	
	12/27/99	PEAT HARMICK - SLIPS	66,000.00		66,000.00	
	12/27/99	PEAT HARMICK - SLIPS	60,000.00		60,000.00	
	12/27/99	PEAT HARMICK - SLIPS	60,000.00		60,000.00	
	12/27/99	PEAT HARMICK - SLIPS	60,000.00		60,000.00	
	12/27/99	PEAT HARMICK - SLIPS	60,000.00		60,000.00	
12/27/99	PEAT HARMICK - SLIPS	30,000.00		30,000.00		
			Sum	2,688,000.00	0.00	2,688,000.00

Redacted

Redacted by
Permanent Subcommittee
on Investigations

Redacted

Redacted

CASH RECEIPTS
FOR DECEMBER 30, 1999

<u>PARTNER</u>	<u>DATE</u>	<u>CLIENT - MATTER - DESCRIPTION</u>	<u>FESS</u>	<u>DISBS.</u>	<u>TOTAL</u>
RUBLE	12/30/99	PEAT MARWICK - BLIPS	525,000.00		525,000.00
	12/30/99	PEAT MARWICK - BLIPS	426,000.00		426,000.00
	12/30/99	PEAT MARWICK - BLIPS	316,600.00		316,600.00
	12/30/99	PEAT MARWICK - BLIPS	237,000.00		237,000.00
	12/30/99	PEAT MARWICK - BLIPS	180,000.00		180,000.00
	12/30/99	PEAT MARWICK - BLIPS	171,000.00		171,000.00
	12/30/99	PEAT MARWICK - BLIPS	150,000.00		150,000.00
	12/30/99	PEAT MARWICK - BLIPS	138,000.00		138,000.00
	12/30/99	PEAT MARWICK - BLIPS	123,000.00		123,000.00
	12/30/99	PEAT MARWICK - BLIPS	120,000.00		120,000.00
	12/30/99	PEAT MARWICK - BLIPS	106,500.00		106,500.00
	12/30/99	PEAT MARWICK - BLIPS	105,000.00		105,000.00
	12/30/99	PEAT MARWICK - BLIPS	105,000.00		105,000.00
	12/30/99	PEAT MARWICK - BLIPS	103,500.00		103,500.00
	12/30/99	PEAT MARWICK - BLIPS	102,000.00		102,000.00
	12/30/99	PEAT MARWICK - BLIPS	87,000.00		87,000.00
	12/30/99	PEAT MARWICK - OPIS	74,852.24	15,147.76	90,000.00
	12/30/99	PEAT MARWICK - BLIPS	67,500.00		67,500.00
	12/30/99	PEAT MARWICK - BLIPS	60,000.00		60,000.00
	12/30/99	PEAT MARWICK - BLIPS	60,000.00		60,000.00
	12/30/99	PEAT MARWICK - BLIPS	51,000.00		51,000.00
	12/30/99	PEAT MARWICK - BLIPS	30,000.00		30,000.00
			<u>Sum</u>	<u>15,147.76</u>	<u>3,340,952.24</u>
					<u>3,356,100.00</u>

Reduced by Permanent Subcommittee on Investigations

2557

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=22637
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=22637
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Brown & Wood opinion letter - BLIPS
Sent: 2000-02-09 23:47:19.620
Date: 2000-02-09 23:47:20.224
X-Folder: BLIPS

Not a big deal, but contract nos. are always good. Total time is about 12 hours. Let me know if there is anything else I can help with.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, February 07, 2000 6:27 PM
To: Liston, Shannon L
Subject: RE: Brown & Wood opinion letter - BLIPS

Shannon - Thanks for your help!!! Let me know if you can use a contract number for this project (including prior hours).

Jeff

-----Original Message-----

From: Napier, Angie
Sent: Monday, February 07, 2000 5:34 PM
To: Liston, Shannon L
Cc: Mangieri, Jeffrey; Eischeid, Jeffrey A
Subject: FW: Brown & Wood opinion letter - BLIPS

Shannon,

Thanks for your voice mail regarding the opinion letter template. Attached is the most updated template which has been approved by Mark Watson. It would be helpful if you reviewed your analysis and brought it up to date using the latest version of the opinion letter.

Thanks for your help in this matter,
Angie

<< File: BLIPS_OPI FINALIZED 1-30-00.DOC >>

-----Original Message-----

From: Napier, Angie
Sent: Monday, February 07, 2000 9:06 AM
To: Liston, Shannon L
Subject: FW: Brown & Wood opinion letter - BLIPS

Shannon,

When would be a good time for us to discuss? Jeff Eischeid has promised the Brown & Wood opinion template ready in two weeks and we need your analysis. Please call me at (404) 614-8602.

Angie

-----Original Message-----

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #1001

KPMG 0025810

2558

From: Napier, Angie
Sent: Thursday, February 03, 2000 2:26 PM
To: Liston, Shannon L
Subject: Brown & Wood opinion letter - BLIPS

Shannon,

Will you please call me regarding the Brown & Wood BLIPS opinion letter. It is my understanding that you compared the KPMG opinion letter with the Brown & Wood opinion letter. I need to find out the results of your analysis.

Thanks,

Angie Napier
Personal Financial Planning
Kpmg LLP
Phone: (404) 614-8602
Fax: (404) 222-3435
tanapier@kpmg.com

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

Proprietary Material
Confidentiality Requested

KPMG 0025811

2559

Opinion

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: OPIS opinions
Sent: 2000-02-23 17:39:06.588
Date: 2000-02-23 17:39:07.940
X-Folder: OPIS

And our opinions are estimated to be completed . . .? Is it 3/31, same as the BLIPS opinions?

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: February 23, 2000 6:25 AM
To: Monahan, Jean C
Cc: Rivkin, David; Napier, Angie; Mangieri, Jeffrey
Subject: RE: OPIS opinions

Should be out approx. 2 weeks after completion of our opinions.

-----Original Message-----

From: Monahan, Jean C
Sent: Tuesday, February 22, 2000 7:24 PM
To: Eischeid, Jeffrey A
Cc: Rivkin, David
Subject: OPIS opinions

Client just called, do we have an ETA on when we should be seeing the Brown & Wood OPIS opinions? It is my understanding the for both BLIPS and OPIS, B&W is using our opinion as the starting point for their opinion? Does this mean that we are looking at the end of March?

Thank you.

Jean Monahan
KPMG LLP
Phone: 619-525-3227
Fax: 619-525-3395

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100m

KPMG 0033585

2560

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Redlined Brown & Wood opinion
Sent: 2000-03-07 19:46:51.066
Date: 2000-03-07 19:46:53.062
X-Folder: Opinions - BLIPS

Hi Jeff,

We were wondering if you have heard from RJ and whether we can get a redlined version (comparing their current opinion template with the original one back in September). Last time we communicated, it was determined that we should refrain from contacting RJ directly and to route all inquiries through you.

Thank you.

Jean Monahan
kpmg LLP
Phone: 619-525-3227
Fax: 619-525-3395

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100n

KPMG 0033471

2561

From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18774
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Redlined Brown & Wood opinion
Sent: 2000-03-11 18:16:25.108
Date: 2000-03-11 18:16:28.417
X-Folder: Opinions - BLIPS

Does this mean that he does not intend on providing a CompareRite version of his most recent opinion letter template with the one from September?

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: March 11, 2000 10:11 AM
To: Monahan, Jean C
Subject: RE: Redlined Brown & Wood opinion

I'll discuss with RJ. He is likely to take the same position that KPMG has taken.

Jeff

-----Original Message-----

From: Monahan, Jean C
Sent: Tuesday, March 07, 2000 2:47 PM
To: Eischeid, Jeffrey A
Cc: Rivkin, David; Heil, Matthew C
Subject: Redlined Brown & Wood opinion

Hi Jeff,

We were wondering if you have heard from RJ and whether we can get a redlined version (comparing their current opinion template with the original one back in September). Last time we communicated, it was determined that we should refrain from contacting RJ directly and to route all inquiries through you.

Thank you.

Jean Monahan
kpmg LLP
Phone: 619-525-3227
Fax: 619-525-3395

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #1000

KPMG 0033588

2562

From rrruble@brownwoodlaw.com
Received: from usnssex09.kweb.us.kpmg.com ([10.1.201.9]) by
usnssex08.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2650.21)
id CYDGKTL3; Thu, 3 Feb 2000 10:13:15 -0500
Received: from kpmg.com (unverified) by usnssex09.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0001200004@usnssex09.kweb.us.kpmg.com> for <eischeid@kpmg.com>;
Thu, 03 Feb 2000 10:13:06 -0500
Received: from p0016c50.kweb.us.kpmg.com by kpmg.com(Pro-8.9.2/Pro-8.9.2) with
SMTP id KAA06718 for <eischeid@kpmg.com>; Thu, 3 Feb 2000 10:12:37 -0500 (EST)
Received: from p0016c23.us.kpmg.com ([199.207.255.23]) by
p0016c50.kweb.us.kpmg.com
via smtpd (for p0016c22.kweb.us.kpmg.com [10.1.206.4]) with SMTP; 3
Feb 2000 15:12:20 UT
Received: from Nynotes3.Brownwoodlaw.com by p0016c23.us.kpmg.com(Pro-8.9.3/Pro-
8.9.3) with SMTP id KAA02028 for <eischeid@kpmg.com>; Thu, 3 Feb 2000 10:12:22 -
0500 (EST)
Received: by Nynotes3.Brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 8525687A.00539A3F ; Thu, 3 Feb 2000 10:13:09 -0500
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: "Eischeid, Jeffrey A" <eischeid@kpmg.com>
Message-Id: <8525687A.0053439E.00@Nynotes3.Brownwoodlaw.com>
Date: Thu, 3 Feb 2000 10:12:37 -0500
Subject: RE: RJ Ruble's email
X-Folder: Opinions - BLIPS

Thanks. I'm happy to make substantive improvements to mine, but given the
effort to get it through here, I do not want to make chances merely to
satisfy someone drafting preferences. In addition, Gibson Dunn had our
model before their clients entered the deal. Now that we're speaking about
the opinions, did Shannon ever do the side by side comparison to make sure
our legal analysis were compatible? Any changes she might suggest would be
important .

Proprietary Material
Confidentiality Requested

KPMG 0033591

2563

From rrruble@brownwoodlaw.com
Received: from usnssexcl8.kweb.us.kpmg.com (localhost [127.0.0.1]) by
usnssexcl8.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2650.21)
id KLFZPRBS; Thu, 18 May 2000 10:08:51 -0400
Received: from kpmg.com (unverified) by usnssexcl8.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0013933420@usnssexcl8.kweb.us.kpmg.com> for <eischeid@kpmg.com>;
Thu, 18 May 2000 10:08:43 -0400
Received: from p0016c50.kweb.us.kpmg.com by kpmg.com (Pro-8.9.2/Pro-8.9.2) with
SMTP id KAA13696 for <eischeid@kpmg.com>; Thu, 18 May 2000 10:08:42 -0400 (EDT)
Received: from p0016c23.us.kpmg.com ([199.207.255.23]) by
p0016c50.kweb.us.kpmg.com
via smtpd (for p0016c22.kweb.us.kpmg.com [10.1.206.4]) with SMTP; 18
May 2000 14:08:40 UT
Received: from Nynotes3.Brownwoodlaw.com by p0016c23.us.kpmg.com (Pro-8.9.3/Pro-
8.9.3) with SMTP id KAA14118 for <eischeid@kpmg.com>; Thu, 18 May 2000 10:08:40
-0400 (EDT)
Received: by Nynotes3.Brownwoodlaw.com (Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852568E3.004DEAF6 ; Thu, 18 May 2000 10:11:04 -0400
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: "Eischeid, Jeffrey A" <eischeid@kpmg.com>
Message-Id: <852568E3.004D8802.00@Nynotes3.Brownwoodlaw.com>
Date: Thu, 18 May 2000 10:10:54 -0400
Subject: Re: FW: Brown & Wood BLIPS Opinion letters
X-Folder: Opinions - BLIPS

Thanks. It would have been of more help had they thought about this
when KPMG had our drafts and before we put them into final. Were truth be
known, there are points in the KPMG opinion that we weren't overwhelmed with
or scratched our heads over, but our view was that it was your opinion and
we both reached the same conclusions on the same set of facts, so that in
the end it didn't matter to us. Under the circumstances I would say my
partners are loathe to make any changes.

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KPMG 0033593

2564

From lotemp7@brownwoodlaw.com
Received: from usnssexcl6.kweb.us.kpmg.com (localhost [127.0.0.1]) by
usnssexcl6.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id S98519X1; Fri, 17 Sep 1999 04:56:54 -0400
Received: from kpmg.com (unverified) by usnssexcl6.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0002341281@usnssexcl6.kweb.us.kpmg.com>;
Fri, 17 Sep 1999 04:56:47 -0400
Received: from pa0016cl.kpmg.com by kpmg.com(Pro-8.9.2/Pro-8.9.2) with ESMTD id
FAA27726; Fri, 17 Sep 1999 05:03:52 -0400 (EDT)
Received: by pa0016cl.kpmg.com; id FAA24833; Fri, 17 Sep 1999 05:03:51 -0400
(EDT)
Received: from nyfw1.brownwoodlaw.com(208.140.184.10) by pa0016cl.kpmg.com via
smtp (3.2)
id xma024789; Fri, 17 Sep 99 05:03:43 -0400
Received: by nynotes2.brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852567EF.0031CD73 ; Fri, 17 Sep 1999 05:03:58 -0400
X-Lotus-FromDomain: BWLLP
From: "Lotemp7" <lotemp7@brownwoodlaw.com>
To: "Amir Makov (Presidio)" <amakov@presidioadv.com>
Cc: jlarson@presidioadv.com, eischeid@kpmg.com, rbickham@kpmg.com
Message-Id: <852567EF.00316754.00@nynotes2.brownwoodlaw.com>
Date: Fri, 17 Sep 1999 10:01:34 +0100
Subject: Re: B&W opinion fee -- BLIPS
X-Folder: BLIPS

I understand that the only way Gibson Dunn's investors will do the deal is
if B&W is separately engaged by them and directly paid by them. I f we
want this trade we will have to figure out how to handle this. I am
guessing that may ask for the same
thing if decides to go forward. As we start dealing with mre
sophisticated counsel, they may feel that such an approach gives their
client's better penalty protection.

REDACTED

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KPMG 0033594

2565

From rruble@brownwoodlaw.com
Received: from usnssexcl8.kweb.us.kpmg.com (localhost [127.0.0.1]) by
usnssexcl8.kweb.us.kpmg.com with SMTP (Microsoft Exchange Internet Mail Service
Version 5.5.2448.0)
id P7YRVTHY; Tue, 3 Aug 1999 09:37:00 -0400
Received: from kpmg.com (unverified) by usnssexcl8.kweb.us.kpmg.com
(Content Technologies SMTPRS 2.0.15) with SMTP id
<B0000138001@usnssexcl8.kweb.us.kpmg.com>;
Tue, 03 Aug 1999 09:36:43 -0400
Received: from pa0016cl.kpmg.com by kpmg.com(Pro-8.9.2/Pro-8.9.2) with ESMTP id
JAA16677; Tue, 3 Aug 1999 09:36:44 -0400 (EDT)
Received: by pa0016cl.kpmg.com; id JAA19937; Tue, 3 Aug 1999 09:36:43 -0400
(EDT)
Received: from nyfwl.brownwoodlaw.com(208.140.184.10) by pa0016cl.kpmg.com via
smap (3.2)
id xma019047; Tue, 3 Aug 99 09:35:23 -0400
Received: by nynotes2.brownwoodlaw.com(Lotus SMTP MTA v1.2 (600.1 3-26-1998))
id 852567C2.004A73E6 ; Tue, 3 Aug 1999 09:33:13 -0400
X-Lotus-FromDomain: BWLLP
From: "R. J. Ruble" <rruble@brownwoodlaw.com>
To: eischeid@kpmg.com, rbickham@kpmg.com
Message-Id: <852567C2.004A50EB.00@nynotes2.brownwoodlaw.com>
Date: Tue, 3 Aug 1999 09:34:28 -0400
Subject: BLIPS Representations
X-Folder: Opinions - BLIPS

Since it is almost that time, unlike OFIS we need to have a role in
generating the representations made by investors in the BLIPS transactions.
In addition, the representations addressed to KPMG should have a reliance
clause that permits other tax advisers providing tax opinions to rely on
the representations. Let's talk when you have a chance.

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Confidentiality Requested

KPMG 0033596

2566

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=18499
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=18499
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Redlined Brown & Wood opinion
Sent: 2000-03-13 06:40:47.108
Date: 2000-03-13 06:40:51.650
X-Folder: Opinions - BLIPS

Jeff, I would like to be responsive to . Please contact RJ early this coming week. If you are too busy I can call RJ. I have spoken with him before. Also, I hope comments have been forwarded on to RJ. I really need to avoid having a fight with come to a head in early April.

-----Original Message-----
From: Monahan, Jean C
Sent: Saturday, March 11, 2000 11:10 AM
To: Heil, Matthew C; Rivkin, David
Subject: FW: Redlined Brown & Wood opinion

-----Original Message-----
From: Eischeid, Jeffrey A
Sent: March 11, 2000 10:27 AM
To: Monahan, Jean C
Subject: RE: Redlined Brown & Wood opinion

REDACTED

I'll let you know when RJ makes a decision.

-----Original Message-----
From: Monahan, Jean C
Sent: Saturday, March 11, 2000 1:16 PM
To: Eischeid, Jeffrey A
Cc: Rivkin, David; Heil, Matthew C
Subject: RE: Redlined Brown & Wood opinion

Does this mean that he does not intend on providing a CompareRite version of his most recent opinion letter template with the one from September?

-----Original Message-----
From: Eischeid, Jeffrey A
Sent: March 11, 2000 10:11 AM
To: Monahan, Jean C
Subject: RE: Redlined Brown & Wood opinion

I'll discuss with RJ. He is likely to take the same position that KPMG has taken.

Jeff

-----Original Message-----
From: Monahan, Jean C
Sent: Tuesday, March 07, 2000 2:47 PM
To: Eischeid, Jeffrey A
Cc: Rivkin, David; Heil, Matthew C
Subject: Redlined Brown & Wood opinion

Proprietary Material
Confidentiality Requested

KPMG 0033586

Permanent Subcommittee on Investigations
EXHIBIT #100p

2567

Hi Jeff,

We were wondering if you have heard from RJ and whether we can get a redlined version (comparing their current opinion template with the original one back in September). Last time we communicated, it was determined that we should refrain from contacting RJ directly and to route all inquiries through you.

Thank you.

Jean Monahan
kpmg LLP
Phone: 619-525-3227
Fax: 619-525-3395

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KPMG 0033587

2568

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Opinion letter templates
Sent: 2000-03-31 19:47:44.640
Date: 2000-03-31 19:47:45.015
X-Folder: Opinions - BLIPS
X-Attachments: "Attachments\BLIPS_OP1_FINALIZED_2-21-00_CASH[1].DOC";
"Attachments\BLIPS_OP1_FINALIZED_2-21-00_FC.DOC"; "Attachments\BLIPS_OP1_FINALIZED_2-21-00_MIXTURE.DOC"; "Attachments\BLIPS_OP1_FINALIZED_2-21-00_STOCK.DOC"; "Attachments\BLIPS_OP1_FINALIZED_2-21-00_AGGREGATION_CASH.DOC";
"Attachments\BLIPS_OP1_FINALIZED_2-21-00_AGGREGATION_FC.DOC";
"Attachments\BLIPS_OP1_FINALIZED_2-21-00_AGGREGATION_MIXTURE[1].DOC";
"Attachments\BLIPS_OP1_FINALIZED_2-21-00_AGGREGATION_STOCK.DOC"

R.J.,

Attached are the 8 templates we used for the KPMG BLIPS opinion letters. We first distinguished between the type of liquidating distribution received by the Investor (1. cash-only; 2. stock and cash; 3. foreign currency and cash; 4. stock, foreign currency and cash). This allowed us to tailor the language to a particular transaction. We also made a second set of templates depending on if the transaction was an aggregation deal (more than one Class A member) or a solo. In particular, we changed the reduction in liabilities language in the aggregate templates. The original opinions discussed the reduction in liability of 90 percent for the Investor. This was not the case in the aggregation deals because it was a reduction of 90% as a whole (for all Class A members). So, we made the language generic in the aggregation templates. Call me if you have any questions.

Angie Napier
Personal Financial Planning
kpmg LLP
Phone: (404) 614-8602
Fax: (404) 222-3435
tanapier@kpmg.com

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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Permanent Subcommittee on Investigations
EXHIBIT #100q

KPMG 0025709

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If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

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KPMG 0025710

2570

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=41900
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Instructions & Attachments for Abrams opinion letters
Sent: 2000-03-31 01:38:47.043
Date: 2000-03-31 01:38:47.105
X-Folder: Opinions - BLIPS
X-Attachments: "Attachments\1 CONFIDENTIAL MEMO.DOC"; "Attachments\BLIPS LOAN DISCUSSION 7[1].DOC"; "Attachments\3 TYPE OF LOAN COMPARISON[5].XLS"

Rich,

Attached are the BLIPS opinion letter attachments. The confidential memo file is one attachment. The other attachment is comprised of both the blips loan discussion and the 3 types of loan comparison. This second attachment is called the "analysis of financing alternatives" in the opinion letter. Attach these documents to the opinion letter before sending to your client. Also, do not change the date on these opinion letters.

Please make a copy of the final signed opinion letter and send it to me for the files. Also, send a copy of the final signed opinion letter to:

Mr. R.J. Ruble
Brown & Wood, LLP
One World Trade Center
New York, NY 10048-0557

Sending the final opinion letter to R.J. will start the process of issuing the opinion letter from Brown & Wood.

If you have any questions, please call me at 404-614-8602.

Thanks,
Angie Napier
Personal Financial Planning
kpmg LLP
Phone: (404) 614-8602
Fax: (404) 222-3435
tanapier@kpmg.com

Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.

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Permanent Subcommittee on Investigations
EXHIBIT #100r

KPMG 0033459

2571

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2572

From: Baumann, Dale R
Sent: Monday, May 01, 2000 10:29 AM
To: Napier, Angie
Subject: RE: Brown & Wood opinions

Thanks

-----Original Message-----

From: Napier, Angie
Sent: Monday, May 01, 2000 6:51 AM
To: Baumann, Dale R
Subject: FW: Brown & Wood opinions

Dale,

Sorry, I meant to e-mail you before you received it to let you know it was on the way. It is the original. I made a copy of it for our files in Atlanta. You should make a copy of it for your files and send the original to the client. All Brown & Wood opinions will be distributed in this manner.

Angie

-----Original Message-----

From: Baumann, Dale R
Sent: Friday, April 28, 2000 2:24 PM
To: Napier, Angie
Cc: Escheid, Jeffrey A
Subject:

Angie,

With the Brown and Wood opinion letters - are they sending them directly to the clients (and we just get a copy)? I just received an opinion letter for from Theresa Taylor and it has an original signature on it, so I am trying to determine if this needs to get forwarded to by me or is it my copy.

Thanks

Dale Baumann

Kpmg Silicon Valley Office - Mountain View

☎ (650) 404-5307

☎ (650) 950-0952

✉ dbaumann@kpmg.com

REDACTED

Our advice in this email message is limited to the conclusions specifically set forth herein and is based on the completeness and accuracy of the stated facts, assumptions and/or representations included. In rendering our advice, we may consider tax authorities that are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our advice. We will not update our advice for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof.

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Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #100s

KPMG 0045465

2573

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=17484
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=17484
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Brown & Wood BLIPS Opinion letters
Sent: 2000-05-17 23:39:55.266
Date: 2000-05-17 23:39:56.362
X-Folder: Opinions - BLIPS

FYI

Please let Peter know if you have any objections to him discussing these items with R.J. These affect the other opinion letters as well (I assume).

-----Original Message-----
From: Warley, Carol G
Sent: Wednesday, May 17, 2000 6:30 PM
To: Prescott, Peter A
Subject: FW: Brown & Wood BLIPS Opinion letters

Peter, can you please discuss these items with R.J. at Brown & Wood. thanks

-----Original Message-----
From: Watson, Mark T
Sent: Tuesday, May 16, 2000 10:14 AM
To: Warley, Carol G
Subject: RE: Brown & Wood BLIPS Opinion letters

Carol, yes, I think you should ask Brown & Wood to make the changes indicated in Peter's message. Quality work by B&W, eh?

-----Original Message-----
From: Warley, Carol G
Sent: Monday, May 15, 2000 6:29 PM
To: Watson, Mark T
Subject: FW: Brown & Wood BLIPS Opinion letters

Mark, let me know after you have the chance to look at this. I would like to go back to RJ and get some changes made, agree?

-----Original Message-----
From: Prescott, Peter A
Sent: Tuesday, May 09, 2000 11:38 AM
To: Warley, Carol G
Subject: Brown & Wood BLIPS Opinion letters

Carol,

Here are the more significant errors that I found in the Brown & Wood BLIPS Opinion letters. Typos that are not critical (such as omission of the word "of" or "Court") are not listed. As you know, there are quite a few of these "non-critical" typos.

Financial Instrument Opinion Letter

* Opinion Summary 1 (page 12) attempts to put together two distinct ideas in one sentence and ends up saying something completely different. The two

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Permanent Subcommittee on Investigations
EXHIBIT #100t

KPMG 0033606

concepts are that the Investor will recognize no gain or loss upon receipt of the Loan proceeds (including the Premium) and that the Premium is an amount that should be amortized against the Investor's interest expense over the life of the Loan. The current sentence appears to state that the Loan proceeds are an amount that should be amortized against the Investor's interest expense. This statement is incorrect because the note is a balloon note.

* Page 21 contains the sentence "As stated in representation 3 above, Trust has represented that it has not and will not elect to integrate the Loan and the Swap under Treas. Reg. 1.1275-6." In the opinion letter I was reviewing, there was no trust involved in the transaction. Furthermore, the Investor did not make a representation similar to "representation 3" regarding the integration of the Loan and Swap.

* Page 36 contains footnote 38 discussing the tax treatment of a modification to a debt instrument that triggers an exchange under IRC 1001. Despite the fact that this footnote contains amounts that relate to the "instant case," it was identical in all the opinion letters I reviewed. The \$100 million and \$150 million dollar amounts mentioned were not appropriate for any of them.

* Page 44 contains the statement that, under IRC 1222(1)-(4), gain or loss from the sale or exchange of a capital asset is a capital loss.

* Page 70 contains an internal reference to an earlier discussion of the Cottage Savings Association case. The case is not discussed anywhere in the Opinion.

* Page 74 contains a reference to "foreign currency" distributed to the Investor. The Investor did not receive any foreign currency. Note that the sentence containing this reference is hopelessly garbled and is missing critical words like "distributed."

* The Opinions that I received did not contain either the Presidio Confidential Memorandum or their Analysis of Financing Alternatives. Both of these attachments are referenced in the Opinion.

Foreign Currency Opinion Letter

* All of the above errors are also contained in the Foreign Currency Opinion Letter (except for the errors on pages 44 & 74). Some of the page numbers may have changed.

* On Page 30, Revenue Rulings are "interrupted" instead of "interpreted." (This one isn't that serious, but it is pretty funny.)

* Pages 43-44 contain a citation from IRC 988. This is the citation B&W used in their Short Option opinion letter and is not really appropriate for our clients. In particular, the last line "(iii) Entering into or acquiring any...option..." does not fit. Furthermore, the citation in the first sentence after the citation should be "Section 988(c)(1)(C)(i)".

As we discussed, the B&W opinion letters touch all the necessary bases. The fact and representation sections are almost identical to the ones in our Opinion and many analysis sections are exact copies of our Opinion. Please let me know if you want further details about the "non-critical" typos.

Peter Prescott
 Personal Financial Planning
 KPMG LLP
 Phone: 713-319-3212
 Fax: 713-319-2040
 email: pprescott@kpmg.com

B-6

Unknown

From:
Sent: Wednesday, March 21, 2001 1:46 PM
To: Eischeid, Jeffrey A
Subject: Re:

Yes, via e-mail. R.J. has been inundated with meetings and conference calls for months now which has not helped things here at the front line. I put in on the top of his pile for his attention tomorrow/Friday. I hope this helps.

Regards - Susan

REDACTED

"Eischeid, Jeffrey A" <eischeid@kpmg.com> on 03/21/2001 04:22:01 PM
To: R. J. Ruble/NY/BWLLP@BWLLP
cc:
Subject:

Did Mike Gray contact you about "updating" our 1999 ELIPS opinions?

Jeff

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized.

If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

KPMG 0034056

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Permanent Subcommittee on Investigations
EXHIBIT #100u

2576

CLIENT/MATTER INFORMATION MEMORANDUM (CIM)

I. BUSINESS SUMMARY

THE INFORMATION PROVIDED IS IN REGARD TO:

A New Client

A New Matter for an Existing Client

CLIENT NAME: 38

CLIENT #: 17643-0001

MATTER NAME: Tax Advice

DATE: January 5, 2001

SUPERVISING PARTNER/PRACTICE GROUP: COHEN, NJ 1132/51

OFFICE: AO

BILLING ATTORNEY/PRACTICE GROUP: COHEN, NJ 1132/51

OTHER ATTORNEYS WHO WILL WORK ON THIS MATTER: MJ Gries, TW Roseborough

INCLUDE IN VARIOUS FIRM REPORTS/NEWSLETTERS? YES NO (Confidential)

ESTIMATED HOURS:

ESTIMATED FEES:

II. MATTER INFORMATION

Redacted

B. HOW WAS THIS REPRESENTATION OBTAINED?

Referred by Shelly Kay, former District Counsel in Atlanta and now with KPMG.

Redacted

H:\CIM\DAILY\CIM\coggin

Permanent Subcommittee on Investigations
EXHIBIT #100v

SAB0261

2577

Tax Corr

TC w/ *lla*, Advisors

6/4/02 3:00 PM

Redacted

They also asked about suits against promoters. I told them that "I need to duck my head in the sand on these." I purposefully try not to know anything.

Redacted

Error! Unknown document property name.

Permanent Subcommittee on Investigations
EXHIBIT #100w

SAB0052

2578

TC w/ lia

4/19/02 10:45 AM

Tax Cor

Redacted

He asked again about suing KPMG.

Redacted

To find out, he needs to talk to a lawyer who specializes in this area and is familiar with NC law.

Redacted

SAB0053

2579

TC w/ lb

11/18/02 2:11 PM

Redacted

KPMG may have this, but they will ask for a workpaper waiver agreement. We will not sign; if he has any thoughts about bringing an action a/g KPMg se should talk to another attorney before he does.

Redacted

Error! Unknown document property name.

Permanent Subcommittee on Investigations
EXHIBIT #100x

SAB0008

2580

Sutherland
■ Asbill & ■
Brennan LLP
ATTORNEYS AT LAW

N. JEROLD COHEN
DIRECT LINE: 404.853.8038
Internet: njcohen@sablaw.com

999 Peachtree Street, NE
Atlanta, GA 30309-3996
404.853.8000
fax 404.853.8806
www.sablaw.com

February 8, 2002

VIA FACSIMILE

Client 7a

Dear 7a

I enjoyed speaking with you and ~~Advisor~~ today, and I hope that we can help you reach a satisfactory resolution of your matter. The following terms and conditions would apply to our representation of you and are for your review and acceptance.

Our fees will be based upon the time we spend on your matter and our then prevailing hourly charges. We will do our best to keep our time to the minimum. My current billing rate is \$485 per hour and Tom Cullinan, who I expect to carry the laboring oar, has a current rate of \$210 per hour. Since we are representing a number of others with respect to similar transactions, we are apportioning time spent among all participants so that there is no duplication of hourly charges. Our fees and out-of-pocket expenses (long-distance telephone, photocopying, messenger and delivery service, travel when necessary, telecopying, filing fees, etc.) will be billed monthly. If any travel is necessary, such as travel to attempt to settle this matter in Washington, D.C., it will be at the lowest practical airfare.

In the event you desire to pursue claims against the parties who advised you to enter into the transaction, we would not be able to represent you because of the broad malpractice defense practice of our litigation team (representing all of the Big Five accounting firms, for example).

You have the right to terminate our services and representation at any time upon written notice. We reserve the right to withdraw from our representation if, among other things, irreconcilable conflicts arise with another existing client, if any fact or circumstance arises that would, in our view, render our continuing representation unlawful, unethical or inconsistent with the terms of this engagement letter, or if you fail to pay our fees and expenses. We would, of course, honor instructions to take reasonable measures under the circumstances to facilitate the orderly transfer of responsibility to other counsel of your choice.

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

Permanent Subcommittee on Investigations
EXHIBIT #100y

SAB0033

2581

^{7a}
February 8, 2002
Page 2 of 2

If this letter is an acceptable summary of the terms and conditions of our representation, please indicate your acceptance by signing this letter in the space provided below and returning it to us via facsimile (404.853.8806). Two hard copies of this letter will be sent to you by regular mail for your signature. Please return one signed copy to us in the self-addressed envelope, which will be provided, and retain the other copy for your records.

Once we have received the necessary information to prepare a Power of Attorney, we will forward it to you for signature and return to our office for filing with the IRS, as required.

Best regards.

Sincerely,



N. Jerold Cohen

NJC/mjr

AGREED AND ACCEPTED:

DATE:

7a

2/18/02

NJC/mjr

SAB0034

2582

Sutherland
■ Asbill & ■
Brennan LLP
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fax 404.853.8806
www.sablaw.com

N. JEROLD COHEN
DIRECT LINE: 404.853.8038
Internet: njcohen@sablaw.com

February 13, 2002

VIA FACSIMILE

7a

Dear 7a

In the third paragraph of my engagement letter to you, I stated as follows:

In the event you desire to pursue claims against the parties who advised you to enter into the transaction, we would not be able to represent you because of the broad malpractice defense practice of our litigation team (representing all of the Big Five accounting firms, for example).

All this paragraph is meant to tell you is that because of a conflict, we could not represent you in the pursuit of any claim against the parties who advised you in connection with the transaction. It was meant to alert you to this in case you wanted to retain someone who was not conflicted to advise you of your rights in that respect.

This paragraph clearly was not meant to waive any rights that you might have against any of the parties who advised you to enter into the transaction, but, in fact, some of the advisers have read it to alert taxpayers that they might want to retain someone else to advise them with respect to their rights. Furthermore, regardless of whether you do or do not pursue any such rights, it will not affect our pursuit of your interests *vis a vis* the Internal Revenue Service. We would still continue to attempt to resolve your matter on the best possible terms, provided you continue to want us to do so.

SAB0035

AO 685013.1

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

2583

7a
February 13, 2002
Page 2 of 2

I hope this clarifies the intent of the third paragraph of my letter.

Best regards.

Sincerely,


N. Ferold Cohen

NJC/mjr

From: Mary Jo Rogers
To: Cohen, Jerry
Date: 2/8/02 12:34PM
Caller: J.C.
Phone:

Telephoned
 Will call again
 Wants to see you
 Urgent

Please call
 Returned your call
 Came to see you

Re: Flip Transaction

Referred by KPMG. He and his brother are the investors. Your name has been given to him by several parties, one of which was an IRS agent, who said you held very high office in the IRS. He wants to discuss what he has heard about a coalition being formed and all the details. Because of his exposure, he would like to have all this information first hand rather than through other parties. He was working with First Union and KPMG. KPMG notified him that they were going to have to recuse themselves from representation because of a conflict, etc.

He is trying to set something up for Monday or Tuesday, February 11 or 12 around 9:30 am. Included on the call would be himself, his brother, and his accountant. He will call back with a time when all three are available.

Permanent Subcommittee on Investigations

EXHIBIT #100z

SAB0109

2585

Hyp

TC: 34a February 08, 2002, 2:36:53 PM

Larry Sheinfeld at Quellos...and Tim Spies and Sharon and Aaron Cohen all at KPMG referred him..

Redacted

Permanent Subcommittee on Investigations
EXHIBIT #100aa

SAB0198

2586

TC w/ 14c

1/10/02 4:52 PM

Redacted

He has a conference call scheduled with the LLC members (Him, 14b i, and Advisors) and Jim McMahon at KPMG to discuss. Jim said he knew us, and recommended that they do engage us. They will call us soon.

Permanent Subcommittee on Investigations
EXHIBIT #100bb

SAB0074

2587

TC w/ i He

1/2/02 3:00 PM

Redacted

He got our name from McAllister.

Redacted

I tell him that we can't represent him in an action against First Union or KPMG. I tell him about the statute of limitations.

Redacted

SAB0075

2588

TC: Advisor March 11, 2002, 3:15:17 PM

Advisor

He has a client who invested in tax shelter that First Union sponsored. Talking to John Martin he said they were referring them to me.

Redacted

March 11, 2002, 3:35:34 PM

Permanent Subcommittee on Investigations
EXHIBIT #100cc

SAB0082

Unknown

From: Eischeid, Jeffrey A
Sent: Thursday, July 11, 2002 2:14 PM
To: Carl Hasting; Carol Warley; Carolyn Branan; Dale Baumann; Daniel Slattery; David Rivkin; Deke Carbo; Dennis Ito; Douglas Ammerman; Eugene Schorr; George Jandl; George Mccrimlisk; Glen Wright; J Cohen; Jackson, William M; Janice Friedlander; Jay Smolin; Jeffrey Eischeid; John Maughan; Katherine Pace; Neil Tendler; Randall Hamilton; Remo, Dee Ann; Richard Wise; Robert Gibson; Robert Hottle; Robert Jordan; Robert Perez; Robin Paule; Thomas Maguire; Timothy Speiss; Tracie Henderson; Weld, Gary E; William Goldberg; Wolfson, Neil E
Subject: FW: FYI

-----Original Message-----

From: Jones, Ken-WASH-DC
Sent: Thursday, July 11, 2002 8:58 AM
To: Eischeid, Jeffrey A
Subject: FYI

Notes from Jerry Cohen's meeting w/IRS on the 9th. You may distribute this. Please not the comments on Flip/Opis.

KEN JONES
Tax Controversy Services
kjones@kpmg.com

tel 202-
fax 202-
cell 703-
kpmg

Redacted by Permanent Subcommittee on Investigations

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations EXHIBIT #100dd

KPMG 0027990

2590

*2/16/02
Blip*

TC: Advisor August 14, 2002 5:37 PM

Redacted

TC Advisor August 14, 2002 5:39 PM

Redacted

Redacted

TC Advisor August 14, 2002 6:10 PM

I advise him that I cannot advise 31 a about any rights he has vis a vis KPMG.

Redacted

August 14, 2002 6:12 PM

07/25/02 THU 11:05 FAX

07/24/02 WED 10:28 FAX

000
000

**Sutherland
Asbill &
Brennan LLP**
ATTORNEYS AT LAW

898 Peachtree Street, NE
Atlanta, GA 30308-3898
404.852.2200
Fax 404.852.2506
www.asblaw.com

K. HEROLD CONEY
DIRECT LINE 404.852.2521
kconey@sutherlandasbill.com

July 23, 2002

VIA FEDERAL EXPRESS

Advisor

Dear Advisor

I enjoyed speaking with you today regarding the tax issues of *31a*, and I hope that we can help him reach a satisfactory resolution of his matter. The following terms and conditions would apply to our representation of *31a* and are for his review and acceptance.

An initial \$5,000 retainer is required. Our monthly fees will be based upon the time we spend on your matter and our then prevailing hourly charges. We will do our best to keep our time to the minimum. My current billing rate is \$485 per hour. Other lawyers who are working with me on this matter are Tom Cullinan, who has a current rate of \$210, Mike Wilson, whose current rate is \$185, and Jennifer Ide, whose current rate is \$175. Since we are representing a number of other clients with respect to similar transactions, time spent that benefits all such clients (e.g., global settlement negotiations) will be apportioned so that there is no duplication of hourly charges. Our fees and out-of-pocket expenses (long-distance telephone, photocopying, messenger and delivery service, travel when necessary, telecopying, filing fees, etc.) will be billed monthly. If any travel is necessary, such as travel to attempt to settle this matter in Washington, D.C., it will be at the lowest practical airfare.

In the event you desire to pursue claims against the parties who advised you to enter into the transaction, we would not be able to represent you in any such claims because of the broad malpractice defense practice of our litigation team (representing all of the Big Five accounting firms, for example).

You have the right to terminate our services and representation at any time upon written notice. We reserve the right to withdraw from our representation if, among other things, irreconcilable conflicts arise with another existing client, if any fact or circumstance arises that

AG 012643

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC
Received Time 24 Jul 21:21

SAB0175

07/23/02 THU 11:05 FAX
07/24/02 WED 16:30 FAX

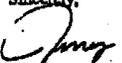
Advisor
July 23, 2002
Page 2 of 2

would, in our view, render our continuing representation unlawful, unethical or inconsistent with the terms of this engagement letter, or if you fail to pay our fees and expenses. We would, of course, honor instructions to take reasonable measures under the circumstances to facilitate the orderly transfer of responsibility to other counsel of your choice.

If this letter is an acceptable summary of the terms and conditions of our representation, please indicate acceptance by having the enclosed copy of this letter signed in the space provided below. A self-addressed envelope is enclosed for the return of a signed copy.

Once we have received the necessary information to prepare a Power of Attorney, we will forward it to you for signature and return to our office for filing with the IRS, as required. I am also enclosing one of our firm's brochures, which will give you some information about our tax and tax litigation practices.

Best regards.

Sincerely,

N. Jerold Cohen

NJC/mjr
Enclosure

AGREED AND ACCEPTED:

31 a

DATE:

24 July 2002

AO#12943

Received Time 24 Jul. 21:21

SAB0176

Sutherland
Asbill &
Brennan LLP
ATTORNEYS AT LAW

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fax 404.853.8806
www.sablaw.com

N. JEROLD COHEN
DIRECT LINE: 404.853.8038
Internet: njcohen@sablaw.com

July 22, 2002

[Handwritten signature]

Advisor

Dear Advisor

I enjoyed speaking with you today regarding the tax issues of *31a* and I hope that we can help him reach a satisfactory resolution of his matter. The following terms and conditions would apply to our representation of *31a* and are for his review and acceptance.

An initial \$5,000 retainer is required. Our monthly fees will be based upon the time we spend on your matter and our then prevailing hourly charges. We will do our best to keep our time to the minimum. My current billing rate is \$485 per hour. Other lawyers who are working with me on this matter are Tom Cullinan, who has a current rate of \$210, Mike Wilson, whose current rate is \$185, and Jennifer Ide, whose current rate is \$175. Since we are representing a number of other clients with respect to similar transactions, time spent that benefits all such clients (e.g., global settlement negotiations) will be apportioned so that there is no duplication of hourly charges. Our fees and out-of-pocket expenses (long-distance telephone, photocopying, messenger and delivery service, travel when necessary, telecopying, filing fees, etc.) will be billed monthly. If any travel is necessary, such as travel to attempt to settle this matter in Washington, D.C., it will be at the lowest practical airfare.

In the event you desire to pursue claims against the parties who advised you to enter into the transaction, we would not be able to represent you in any such claims because of the broad malpractice defense practice of our litigation team (representing all of the Big Five accounting firms, for example).

You have the right to terminate our services and representation at any time upon written notice. We reserve the right to withdraw from our representation if, among other things, irreconcilable conflicts arise with another existing client, if any fact or circumstance arises that would, in our view, render our continuing representation unlawful, unethical or inconsistent with the terms of this engagement letter, or if you fail to pay our fees and expenses. We would, of

AO 691394.2

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

SAB0177

2594

Advisor
July 22, 2002
Page 2 of 2

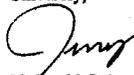
course, honor instructions to take reasonable measures under the circumstances to facilitate the orderly transfer of responsibility to other counsel of your choice.

If this letter is an acceptable summary of the terms and conditions of our representation, please indicate acceptance by having the enclosed copy of this letter signed in the space provided below. A self-addressed envelope is enclosed for the return of a signed copy.

Once we have received the necessary information to prepare a Power of Attorney, we will forward it to you for signature and return to our office for filing with the IRS, as required. I am also enclosing one of our firm's brochures, which will give you some information about our tax and tax litigation practices.

Best regards.

Sincerely,



N. Jerold Cohen

NJC/mjr
Enclosure

AGREED AND ACCEPTED:

DATE:

2595

- Client 312
19410001 BLIP ARMY -

.....
SAB0179



500 E. Middlefield Road
Mountain View, CA 94043

Telephone 650 404 5000
Fax 650 960 0566

September 3, 2002

PRIVILEGED & CONFIDENTIAL

N. Jerold Cohen
Sutherland, Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

Dear Mr. Cohen:

We are pleased you have engaged KPMG LLP ("KPMG") to assist Sutherland, Asbill & Brennan LLP ("Counsel") in Counsel's representation of: 31 a ("Client"), including investigation of facts, review of tax issues, and other such matters as Counsel may direct. This letter confirms the scope and related terms of our engagement. Counsel will specify the nature and limitations of the services that we will provide as a consultant to Counsel as Counsel's agent in its representation of 31 a.

We will prepare work papers and other papers and writings as Counsel may request. We understand that our preparation of such writings will be solely for the benefit of Counsel and is intended by Counsel to be a part of Counsel's privileged attorney work product. All information that KPMG, its partners or employees may acquire solely from this engagement will be part of privileged attorney-client communications and will not be disclosed by KPMG to third parties except as required by law.

In connection with Counsel's work, you have advised that Counsel may disclose to us certain information, data, and documents ("Confidential Materials"). We understand that the sole purpose of our receipt of Confidential Materials is to assist Counsel. We agree to keep confidential all Confidential Materials and not to make any use thereof except as requested by Counsel or as required by law. We further agree to return to Counsel at Counsel's written request all Confidential Materials.

If, as a result of any work that we perform pursuant to this engagement, access to work papers and files that we supply to counsel is necessary in order for us to defend and protect ourselves or any of our partners or employees, or to assert any of our or their claims, rights, interests or privileges, we understand that we will be given reasonable access to and the right to copy the work papers and files.

We will refer all inquiries from Federal and state authorities with respect to this engagement to Counsel. Our obligation in this regard is subject to all requirements of law, and in the event that any information or testimony is sought from us pursuant to a summons or subpoena, services relating to compliance with such summons or subpoena shall be within the scope of this engagement.



KPMG LLP, KPMG LLP, a U.S. limited liability partnership, is a member of KPMG International, a Swiss association.

Mark L. P. P. O.

SAB0180



N. Jerold Cohen
Sutherland, Asbill & Brennan LLP
September 3, 2002
Page 2

Our engagement cannot be relied on to uncover errors in the underlying information or irregularities, should any exist. However, we will inform you of any such matters that come to our attention.

Fees

Our fees for this engagement will be based on the complexity of the issues and the time required of individuals who will be performing the services. We will perform the work at 60% of our standard billing rates plus an administrative surcharge which will approximate 11% of the hourly fee. Circumstances encountered during the performance of these services that warrant additional time or expense could cause us to be unable to deliver them within the above estimates. We will endeavor to notify you of any such circumstances as they are assessed.

We will render progress billings to Counsel as work is performed and you will remit payments to us after you have been reimbursed for such amounts by client.

The attached Standard Terms and Conditions are made a part of this engagement letter with the following modifications:

1. Scope

The second and third sentences in the first paragraph are modified to read: Should KPMG encounter issues or circumstances that are beyond the scope of this engagement, we will notify Counsel of such circumstances as they arise and will not incur additional expenses without Counsel's prior consent. Unless expressly provided for, KPMG's services do not include assisting Counsel in the event of a challenge by the IRS or other tax or revenue authorities.

2. Term

The last two sentences of the second paragraph are modified to read: If at any time during this engagement, Client and Counsel decide for any other reason it is not in the best interest of Client to continue with this engagement, Counsel may notify KPMG to that effect. In the event of such notification, Counsel agrees to pay KPMG for time and expenses incurred to the date of notification in accordance with the engagement letter.

3. Payment of Invoices

The first sentence is modified to read: Counsel agrees, by accepting the terms of the engagement letter, to pay all invoices to KPMG in accordance with the engagement letter to which these Standard Terms and Conditions are attached.

SAB0181



N. Jerold Cohen
Sutherland, Asbill & Brennan LLP
September 3, 2002
Page 3

4. Cooperation

The first sentence is modified to read: Counsel and Client shall cooperate with KPMG in the performance by KPMG of its services hereunder, including, without limitation, providing KPMG with timely access to data, information and personnel of Client.

12. Entire Agreement

The entire paragraph is replaced with the following: These terms and the engagement letter to which these terms are appended, including any Exhibits, constitute the entire agreement between KPMG and Counsel with respect to the subject engagement and supersede all other oral and written representation, understandings or agreements relating to the subject engagement.

Please sign the enclosed copy of this letter to confirm our agreement and return it to us within 30 days. If you have any questions, please call me.

Very truly yours,

KPMG LLP

Dale R. Baumann
Partner

ACCEPTED:

Sutherland, Asbill & Brennan LLP

Authorized Signature
Title

9/8/02
Date

SAB0182

KPMG LLP
Standard Terms and Conditions
Tax Engagements

1. Scope. KPMG shall be obligated only for services specified in the engagement letter to which these terms and conditions are attached. Should KPMG encounter issues or circumstances that are beyond the scope of this engagement, we will notify Client of such circumstances as they arise and will not incur additional expenses without Client's prior consent. Unless expressly provided for, KPMG's services do not include representing Client in the event of a challenge by the IRS or other tax or revenue authorities.

2. Term. This engagement will come into full force and effect upon receipt by KPMG of the signed engagement letter. Unless terminated sooner in accordance with its terms, this engagement shall terminate on completion of KPMG's services hereunder. This engagement may be terminated by either party at any time by giving written notice to the other party.

If the engagement involves tax planning matters, the potential anticipated benefits of which are no longer possible to achieve because of legislative, regulatory, or other administrative change or judicial decision, or any combination thereof, Client's sole remedy against KPMG under this engagement is limited to a release of Client's obligation to KPMG of any fees not yet due as of the date of the enactment of the legislation, promulgation of the regulation or other administrative guidance, or date of judicial decision. If at any time during this engagement, Client decides for any other reason it is not in the best interest of Client to continue with the engagement, Client may notify KPMG to that effect. In the event of such notification, Client agrees to pay KPMG for time charges at standard hourly rates and expenses incurred to the date of notification to the extent the amount so computed exceeds payments previously made by Client for the engagement.

3. Payment of Invoices. Client agrees, by accepting the terms of the engagement letter, to pay all invoices to KPMG within thirty (30) days of the invoice date or such other date as may be indicated in the engagement letter to which these Standard Terms and Conditions are attached. Without limiting its rights or remedies, KPMG shall have the right to halt or terminate entirely its services until payment is received on past due invoices.

4. Cooperation. Client shall cooperate with KPMG in the performance by KPMG of its services hereunder, including, without limitation, providing KPMG with timely access to data, information and personnel of Client. Client shall be responsible for

the performance of its employees and agents and for the accuracy and completeness of all data and information provided to KPMG for purposes of the performance by KPMG of its services.

5. Reliance on Information/Authorities. KPMG will base its conclusions on the facts and assumptions that Client submits and will not independently verify this information. Inaccuracy or incompleteness of the information Client provides could have a material effect on KPMG's conclusions. In rendering its advice, KPMG may consider, for example, the applicable provisions of the Internal Revenue Code of 1986, and ERISA as amended, and the relevant state and foreign statutes, the regulations thereunder, income tax treaties, and judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of KPMG's advice. KPMG will not update its advice for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof, unless Client separately engages KPMG to do so after such changes or modifications.

6. Federal Confidential Communications Privilege. A confidentiality privilege under Internal Revenue Code Section 7525 may pertain to certain communications between KPMG personnel and Client regarding federal tax advice provided pursuant to this engagement. By retaining KPMG, Client agrees that KPMG is instructed to claim the privilege on Client's behalf, with respect to any applicable communications, up to and until such time as Client may waive any such privilege in writing. As disclosure of any such confidential communications to the Internal Revenue Service or other third party may cause any confidentiality privilege to be waived, Client should notify KPMG if the Internal Revenue Service or other third party requests information about any tax advice or tax advice documents provided by KPMG.

Privileged information may be used by an audit client in preparing its financial statements and, subsequently by KPMG, as its auditors, in auditing those financial statements. Professional standards require members of the audit team to discuss matters that may affect the audit with firm personnel responsible for nonaudit services, which includes tax services. The Internal Revenue Service may take the position that such use or communications results in waiver of the privilege. By executing this agreement, Client, if an audit client of KPMG, acknowledges this

Revised March 31, 2002

SAB0183

KPMG LLP
Standard Terms and Conditions
Tax Engagements

possibility and authorizes KPMG's use of such information in its audit work when required by applicable professional standards.

Client understands that KPMG makes no representation, warranty, or promise, and offers no opinion with respect to the applicability of such confidentiality privilege to any communication and agrees to hold KPMG harmless should the privilege be determined not to apply to particular communications. Client agrees to indemnify KPMG for any attorney's fees and other costs and expenses incurred by KPMG in defending the confidential privilege on Client's behalf.

7. Management Responsibility

KPMG will not, pursuant to this engagement, perform any management functions for Client nor make any management decisions. Client understands and agrees that pursuant to this engagement, Client's responsibilities include the following:

1. Designating a management level individual or individuals to be responsible for overseeing the services being provided;
2. Evaluating the adequacy of the services performed and any findings that result;
3. Making management decisions, including accepting responsibility for the results of the services; and
4. Establishing and maintaining internal controls, including monitoring ongoing activities.

To the extent that KPMG's relationship with Client requires auditor independence, KPMG shall not be required to, and shall not, undertake any task or function which KPMG in its sole judgment determines would impair its independence under the applicable auditor independence rules. Such rules are as defined or interpreted by the American Institute of Certified Public Accountants, the Securities and Exchange Commission, the Independence Standards Board, the state boards of accountancy, any other regulatory authority exercising competent jurisdiction over KPMG, and KPMG's professional practice policies, as the same may be amended from time to time.

8. Disclosure and Restriction on Use If this engagement relates to a strategy offered by KPMG to Client that is designed to reduce or defer federal income tax for a direct or indirect corporate participant, pursuant to Temporary Treasury Regulation section 301.6111-2T(c) Client (and each employee, representative, or other agent of Client) is expressly authorized to disclose the structure and tax

aspects of the strategy to any and all persons, without limitation of any kind.

Written advice provided by KPMG to Client is for the information and use of Client only and may not be relied upon by any third party without the express written permission of KPMG.

9. Limitation of Liability and Indemnity KPMG's maximum liability to Client arising for any reason relating to services rendered under this engagement shall be limited to the fees paid for these services. In the event of a claim by a third party relating to services under this engagement, Client will indemnify KPMG and its personnel from all such claims, liabilities, costs and expenses, except to the extent determined to have resulted from the intentional or deliberate misconduct of KPMG personnel.

10. Legal Counsel Client should consult with and/or engage legal counsel for the purpose of advising on non-tax legal aspects of matters on which KPMG provides tax advice and drafting any legal documents and/or agreements that may be required in connection therewith. KPMG will provide Client's legal counsel with tax-related advice that is deemed necessary by Client's legal counsel to draft such documents and/or agreements. To the extent services of legal counsel or other professional service providers are required, Client is responsible for engaging and paying such service providers.

11. Independent Contractor It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, partner or joint venturer of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

12. Entire Agreement These terms and the engagement letter to which these terms are appended, including any Exhibits, constitute the entire agreement between KPMG and Client with respect to the subject engagement and supersede all other oral and written representation, understandings or agreements relating to the subject engagement.

13. Governing Law These terms and the engagement letter to which these terms are appended shall be governed by and construed in accordance with the laws of the State of New York.

Revised March 31, 2002

SAB0184

Sutherland
▪ Asbill & ▪
Brennan LLP
ATTORNEYS AT LAW

N. JEROLD COHEN
DIRECT LINE: 404.853.8038
Internet: njcohen@sablaw.com

999 Peachtree Street, NE
Atlanta, GA 30309-3996
404.853.8000
fax 404.853.8806
www.sablaw.com

November 18, 2003

VIA FEDERAL EXPRESS

The Honorable Norm Coleman, Chairman
The Honorable Carl Levin, Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Messrs. Coleman and Levin:

The following responds to the three questions raised in your letter to me of November 6, 2003 concerning the hearings you are holding on the development, marketing, and implementation of tax products designed to be sold to multiple clients. You indicated that you intend to focus in particular on the Bond Linked Issue Premium Structure (BLIPS), the Offshore Portfolio Investment Strategy (OPIS), and the Foreign Leveraged Investment Program (FLIP), as well as the S-Corporation Charitable Contribution Strategy (SC2). I have no knowledge of the latter transaction. However, you asked me three questions concerning the other three transactions. I cannot, of course, ethically disclose confidential information acquired in connection with representation of clients. I can, however, respond to your questions without disclosing client confidences, and my responses are as follows:

1. Sutherland Asbill & Brennan LLP ("SAB") has had no involvement in the development, marketing or implementation of the transactions that your letter of November 6, 2003, refers to as FLIP, OPIS and BLIPS. Nor did SAB prepare, comment on, or have anything to do with any legal or tax opinions that may have issued in connection with these transactions. SAB does represent individual taxpayers in controversies arising out of audits by the Internal Revenue Service (the "IRS") with respect to transactions that the IRS has characterized as within that described grouping.

These taxpayers engaged SAB long after they had entered into these transactions.

AO 1019309.1

Atlanta ▪ Austin ▪ New York ▪ Tallahassee ▪ Washington, DC

XX-002185

Permanent Subcommittee on Investigations
EXHIBIT #100ff

2602

The Honorable Norm Coleman, Chairman
The Honorable Carl Levin, Ranking Minority Member
November 18, 2003
Page 2 of 2

2. SAB has represented the major accounting firms in connection with lawsuits filed against those firms, none involving any of the transactions described above. SAB has never represented any accounting firm in any litigation or other controversy involving any such transaction. Our representation of accounting firms in matters unrelated to these transactions and of individual clients in tax controversies concerning these transactions thus would not give rise to any conflict of interest.

Whenever SAB and a prospective client discuss representation in a matter that could involve an accounting firm whom we represent in unrelated matters, it is the firm's policy to inform the prospective client that we represent the accounting firm and that we could not accept a representation related to any claim against the accounting firm.

3. In representing clients, SAB acts in conformity with all professional and legal requirements. SAB does not "negotiate" mass settlements with the IRS. The IRS will not negotiate global resolutions. It will, however, listen to arguments made on behalf of clients. The IRS then makes its own decision as to whether it will offer a global settlement and, if so, what it will be.

Very truly yours,



N. Jerold Cohen

NJC/mjr

AO 1019309.1

XX-002186

2603

Sutherland
Asbill &
Brennan LLP
ATTORNEYS AT LAW

999 Peachtree Street, NE
Atlanta, GA 30309-3996
404.853.8000
fax 404.853.8808
www.sablaw.com

N. JEROLD COHEN
DIRECT LINE: 404.853.8038
Internet: njcohen@sablaw.com

January 21, 2003

VIA E-MAIL AND FEDERAL EXPRESS

Client 4a
Client 4b

Dear 4a and 4b

Advisor and Advisor have spoken with me about the audit of your 1998 Federal income tax return and have asked that I assist KPMG in representing you in that matter. I hope that we can help you reach a satisfactory resolution of the audit, and we look forward to working with Advisor and KPMG in achieving that result. The terms of our representation are set forth below.

Our fees will be based upon the time we spend on your matter and our then prevailing hourly charges. We will do our best to keep our time to the minimum. My current billing rate is \$550 per hour. Another lawyer who will be working with me on this matter is Tom Cullinan, who has a current rate of \$315. Since we are representing other clients with respect to similar transactions, time spent that benefits all such clients (e.g., global settlement negotiations) will be apportioned so that there is no duplication of hourly charges. Our fees and out-of-pocket expenses (long-distance telephone, photocopying, messenger and delivery service, travel when necessary, telecopying, filing fees, etc.) will be billed monthly. If any travel is necessary, such as travel to attempt to settle a matter in Washington, D.C., it will be at the lowest practical airfare.

In the event you desire to pursue claims against the parties who advised you to enter into the BLIP or OPIS transactions, or who implemented the transactions, we would not be able to represent you in any such claims because of existing conflicts. Our representation of you will be limited to resolving your tax issues with the Internal Revenue Service, either administratively or, if necessary, through litigation. Thus, we disclaim any responsibility to advise you with respect to potential claims against your advisers on any transaction, or on the time in which such claims must be filed.

AO 853920.1

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

SAB0021

Permanent Subcommittee on Investigations

EXHIBIT #100gg

4a and 4b
January 21, 2003
Page 2 of 2

You have the right to terminate our services and representation at any time upon written notice. We reserve the right to withdraw from our representation if, among other things, irreconcilable conflicts arise with another existing client, if any fact or circumstance arises that would, in our view, render our continuing representation unlawful, unethical or inconsistent with the terms of this engagement letter, or if you fail to pay our fees and expenses. We would, of course, honor instructions to take reasonable measures under the circumstances to facilitate the orderly transfer of responsibility to other counsel of your choice.

If this letter is an acceptable summary of the terms and conditions of our representation, please indicate your acceptance by signing the enclosed copy of this letter in the space provided below. A self-addressed envelope is enclosed for the return of a signed copy.

Once we have received the necessary information to prepare Powers of Attorney, we will forward them to you for signature and return to our office for filing with the IRS, when (or if) required. We will also need a copy of any other outstanding Powers of Attorney so as to avoid revoking them.

I am enclosing a brochure that describes our tax and tax litigation practices and includes biographies of myself and some other lawyers working with me on similar cases.

Best regards.

Sincerely,



N. Jerold Cohen

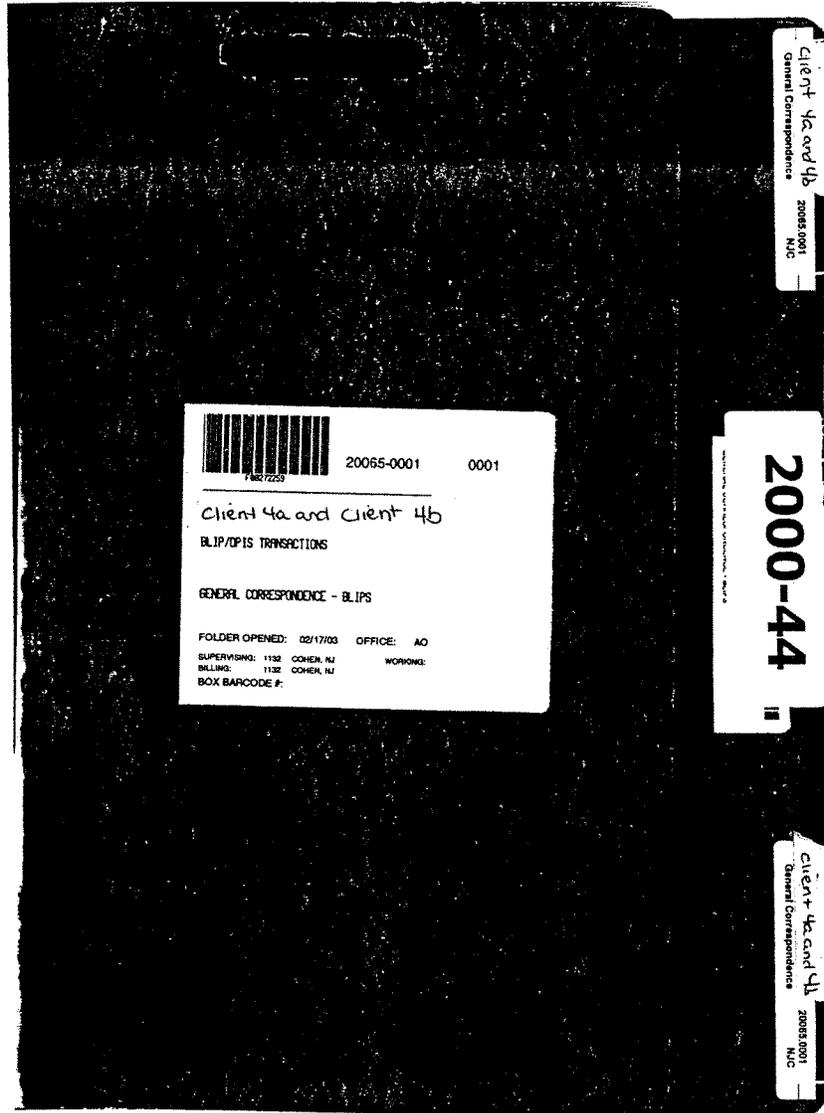
NJC/mjr
Enclosures

AGREED AND ACCEPTED:

DATE:

4a

1/27/03



2606

2000-44
Tax Corr

TC w/ Advisor

11/24/2003 5:36 PM

Redacted

The only reason I see to cut
KPMG out completely is if they want to sue. And we cannot advise on that.

Redacted

SAB0024

AEF 16/297
-1-76

Q QUADRA CAPITAL MANAGEMENT, L.P.
200 First Avenue, Suite 1100, Dallas, TX 75201 | (214) 402-6262 | Fax: (214) 442-8281

FAX COVER SHEET

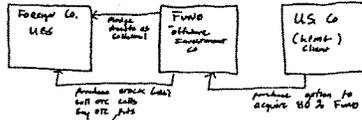
DATE: August 12, 1994 TIME: 8:34 AM
TO: Wolfgang Seitz PHONE:
FAX: 409-460-1110
FROM: Jeff Grossman PAGES: 3

Wolfgang -

Attached is a brief summary of the transaction we discussed Friday. As I mentioned, EPAC approached us to see whether we could assist the security broker necessary to achieve the desired tax results. I indicated that I felt we could and they are currently not looking elsewhere for assistance in executing the transaction.

The tax opportunity created is extremely complex, and is really based more on the structure of the entities involved in the securities transactions rather than the securities transactions themselves. EPAC has covered us that prior to spending much time, beyond just conceptually seeing if we can do it, they would provide Charles and my contemporary (TNC) with the necessary legal opinions and representations letters as to why they are recommending this transaction to their clients. Assuming that we could do so completely, our challenge is to design a series of securities/divestiture trades that meet the required objectives.

In summary, this tax motivated transaction is designed for U.S. companies requiring a tax loss. The way this loss is generated is through the U.S. company exercising a series of options to acquire majority ownership in a Foreign Investment Fund. The tax benefits are created for U.S. Co. based on the type of acquisition transactions done at the Foreign Investment Fund and shifting the cost basis to the parent U.S. Company.



different state firms

note

100 sell - 20% (70%)
1000 etc
100 buy JTS (100%)

If a U.S. company/individual has a \$100 million dollar capital gain they were taxed, depending on their tax position, ranging from \$20 million to \$30 million. As a result, they are more than willing to pay \$2 to \$4 million to generate a tax loss to offset the capital gain and corresponding taxes. This tax loss is achieved because the cost basis of the shares of Foreign Co. held in the Fund level are transferred to the US Co. as a result of US Co. exercising its option to acquire the Fund. The loss transfer is irrespective of the amount of surplus or capital at the Fund level. For example, if Fund starts with \$100 million stock/option positions on Foreign Co. then when US Co. exercises its option to buy the Fund it will receive a net loss on \$100 million on Foreign Co. stock, even though the Fund may only have around \$10 million which has been leveraged to purchase the Foreign Co. shares. Since US Co. also had simultaneously purchased \$1 million worth of stock in Foreign Co. in the open market, when they sell the \$1 million they will be able to take the tax filing position that its cost basis is the total cost basis for the combination of the \$100 million in the newly acquired Fund and the \$1 million owned at the U.S. Co. level. Thus, they are able to create a large loss by utilizing this higher cost basis on Foreign Company's shares.

Wolfgang, I would like to spend a few minutes with you and get your thoughts on what type of option transactions might be done at the Fund level. However, beyond the brief discussion I don't want either of us to waste any time analyzing the details of this transaction until EPAC has a firm client commitment. Instead, I have told EPAC that we should be able to execute the transaction since they have a commitment from a potential client. EPAC has already had a number of preliminary meetings with potential clients and one of their challenges was to identify a party that can manage the Fund level and facilitate the transactions with Foreign Co. Given your ability to act as Foreign Co. and facilitate the securities trades, I have told them to very likely. Once they have a firm client, then we can step and the various details to execute the transaction.

Look forward to speaking with you soon and answering any questions you might have.

MM

1) type option to buy client fund (70%)
2) type by transaction to acquire fund
3) financing / structure

UBS000002

Permanent Subcommittee on Investigations
EXHIBIT #101

AEF16/297
-1-1-96-76

Q QUADRA CAPITAL MANAGEMENT, LP
800 Third Avenue, Suite 4150 | Austin, TX 78704 | (202) 442-8262 | Fax (202) 442-8291

FAX COVER SHEET

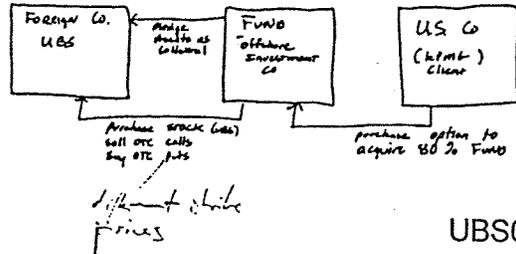
DATE: August 12, 1996 TIME: 8:34 AM
TO: Wolfgang Stolz PHONE:
FAX: 407-92-4716
FROM: Jeff Greenstein PAGES: 3

Wolfgang -

Attached is a brief summary of the transaction we discussed Friday. As I mentioned, KPMG approached us as to whether we could affect the security trades necessary to achieve the desired tax results. I indicated that I felt we could and they are currently not looking elsewhere for assistance in executing the transaction.

The tax opportunity created is extremely complex, and is really based more on the structuring of the entities involved in the securities transactions rather than the security transactions themselves. KPMG has assured me that prior to spending much time, beyond just conceptually seeing if we can do it, they would provide Quadra and any counterparty (UBS) with the necessary legal opinions and representative letters as to why they are recommending this transaction to their clients. Assuring their tax analysts is complex, our challenge is to design a series of securities/derivatives trades that meet the required objectives.

In summary, this tax motivated transaction is designed for U.S. companies requiring a tax loss. The way this loss is generated is through the U.S. company exercising a series of options to acquire majority ownership in a Foreign Investment (Fund). The tax benefits are created for U.S. Co. based on the types of securities transactions done in the foreign investment Fund and shifting the cost base to the parent U.S. Company.



UBS000002

Permanent Subcommittee on Investigations
Enlargement of UBS000002

matic

20 sell calls (70%)
20 ok
10 buy puts (100%)

If a U.S. company/individual has a \$100 million dollar capital gain they owe taxes, depending on their tax position, ranging from \$28 million to \$35 million. As a result, they are more than willing to pay \$2 to \$4 million to generate a tax loss to offset the capital gain and corresponding taxes. This tax loss is achieved because the cost basis of the shares of Foreign Co. held at the Fund level are transferred to the US Co. as a result of US Co. exercising its options to acquire the Fund. The basis transfer is irrespective of the amount of margin or capital at the Fund level. For example, if Fund enters into \$100 million stock/option position on Foreign Co. then when US Co. exercises its options to buy the Fund it will receive a cost basis on \$100 million on Foreign Co. stock, even though the Fund may only have several million which has been leveraged to purchase the Foreign Co. shares. Since US Co. also had simultaneously purchased \$1 million worth of stock in Foreign Co. in the open market, when they sell the \$1 million they will be able to take the tax filing position that its cost basis is the total cost basis for the combination of the \$100 million in the newly acquired Fund and the \$1 million owned at the U.S. Co. level. Thus, they are able to create a large loss by utilizing this higher cost basis on Foreign Company's shares.

Wolfgang, I would like to spend a few minutes with you and get your thoughts on what type of option transactions might be done at the Fund level. However, beyond this brief discussion I don't want either of us to waste any time analyzing the details of this transaction until KPMG has a firm client commitment. Instead, I have told KPMG that we should be able to execute the transaction once they have a commitment from a potential client. KPMG has already had a number of preliminary meetings with potential clients and one of their challenges was to identify a party that can manage the Fund level and facilitate the transactions with Foreign Co. Given your ability to act as Foreign Co. and facilitate the securities trades, I have told them to stop looking. Once they have a firm client, then we can map out the various details to execute the transaction.

Look forward to speaking with you soon and answering any questions you might have.

M

1) type option to buy offshore fund (70%)
2) type option to sell offshore fund
3) financing / interest

UBS000002

Permanent Subcommittee on Investigations
Enlargement of UBS000002

Memorandum on UBS' involvement in
U.S. Capital Loss Generation Scheme (the "CLG Scheme")

1. The CLG Scheme

1.1 In October 1996, GED was approached by Quadra Capital Management ("Quadra") and KPMG Peat Marwick LLP ("KPMG") with a view to seeking GED's participation in a U.S. tax structure that had been developed on a proprietary basis by KPMG. The principal design of this scheme is to generate significant capital losses for U.S. tax payers which can then be used to offset capital gains which would otherwise be subject to tax. The analysis by which this is achieved is complex and is the subject of a tax opinion that was prepared by KPMG for marketing purposes. In very broad terms, the scheme exploits an apparent loophole in the U.S. legislative provisions governing the treatment of shareholdings in a foreign person and certain attribution rules relating to the redemption of the shares comprised in that shareholding. The steps involved in the structure are described more fully below.

1.2 The CLG Scheme was developed and marketed solely by KPMG. UBS undertook no responsibility for the efficacy of the scheme and stressed both orally and in writing to both KPMG and Quadra that UBS made no endorsement or confirmation of the scheme on any ground whatsoever. KPMG and Quadra agreed to communicate this to their clients. Nevertheless, GED had an interest in ensuring that the putative rationale of the transactions in which it was invited to enter into stood up to proper and diligent scrutiny. The KPMG opinion was reviewed in detail and a partner of KPMG (David Lippmann-Smith) came to London to go through its finer points. Whilst it was not possible (nor, for that matter, necessary) to assess in any expert sense the legal accuracy of the analysis or the conclusions of the opinion, it was nonetheless evident that the scheme had a bona fide and commercially driven purpose in connection with which no ulterior or underhand design could be suspected.

2. The Role of Quadra

2.1 Quadra has an existing relationship with GED and had previously arranged a number of transactions on behalf of its clients. Its speciality is providing tax efficient investment schemes for high net worth U.S. individuals and their investment vehicles. Jeff Greenstein is the principal contact at Quadra who, following his initial introduction to GED, has visited UBS London on a number of occasions. Both Jeff and Quadra have been subject to on-going due diligence throughout this period and have received UBS compliance clearance.

2.2 Quadra was not directly involved in the marketing of the CLG Scheme. Its role is in arranging the involvement of a non-U.S. equity derivatives provider.

3. The Transactions

3.1 UBS' involvement in the CLG Scheme involved entry into the following transactions:

- (a) on day one, UBS Zurich sold UBS bearer shares (via UBS Securities Inc.) to a U.S. tax resident person ("X");

(b) UBS Zurich then sold UBS bearer shares to an off-shore entity ("Off-Co") established for that specific purpose by X. Settlement of these stock purchases is on a delayed basis (for which Zurich regulatory sign-off was obtained);

buys from
(c) at the same time as (b) UBS London ^{buys from} sold Off-Co an in-the-money call option, whilst Off-Co sold UBS an out-of-the-money put option, in each case over the same number of UBS London bearer shares as were the subject of the delayed settlement purchase. Both options are physically settled. The original strike of the call was set at 95 which reduces to 90 if the stock price hits a barrier of 95. The strike on the put is also subject to a similar barrier feature, the purpose of which was to cheapen the option cost;

(d) Off-Co deposits cash with UBS London as security for Off-Co's potential obligation under the put option;

(e) simultaneously with the expiration of the options referred to in (c), X purchase from UBS London an at-the-money call option over the same number of shares as it originally acquire under (a).

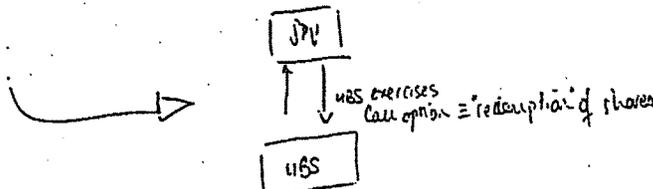
(The documents evidencing the above transactions are in safekeeping with DELG.)

3.2 X and Off-Co are connected for tax purposes by virtue of X's investment in a warrant issued by Off-Co in respect of its own shares. This link is important for the U.S. tax analysis, since it effectively attributes to X any losses Off-Co incurs as a result of its ownership of the UBS shares. The exercise of the call option or put option between UBS and Off-Co will be treated for U.S. tax purposes as a redemption of shares, notwithstanding the fact that, according to KPMG, such exercise will not be a share redemption for UBS purposes. The proceeds of this "redemption" is treated as the payment of a distributable reserve, the receipt of which by Off-Co is attributed to X as a deduction to X's base cost in its holding of UBS shares. This generates a sizeable capital loss for X.

4. Legal Due Diligence

5. Further Information

For matters pertaining to the legal structure, please contact John Staddon in DELG.



PRIVILEGED MATERIAL HAS BEEN REDACTED FROM THIS PAGE

UBS000007

Deutsche Bank @

MEMORANDUM

Structured Transactions Group

To Mick Wood

cc Ivor Dunbar, Stuart Bray, Paul Glover, Francesco Piovonetti

From William Boyle

Subject GCI Risk and Resources Committee - BLIPS Transaction

Date July 29, 1999

The GCI Structured Transactions Group has been approached by Presidio Advisors *Suggest a few lines somewhere on who Presidio are. with the opportunity to lend money to, and execute foreign currency and interest rate transactions on behalf of are you dealing "on behalf of", or "with", a U.S. limited liability company are the fx deals with the same LLC to whom we lend, or it is the sub LLC which is implementing the Bond Linked Indexed Premium Strategy (the "BLIPS Strategy").* The BLIPS Strategy will be marketed as a foreign exchange investment program to high net worth individual clients of KPMG by Presidio Advisors. The BLIPS Strategy involves taking short positions in certain foreign currencies pegged to the U.S. dollar (e.g. Hong Kong dollar and Argentina Peso) and a long position in U.S. dollars. *You should be ready to address the question as to how you deal with the negative carry that this strategy implies.* Deutsche Bank ("DB") will not market the transaction nor provide any tax or investment advice to the participants in the transaction. DB will obtain representation letters from Presidio Advisors, KPMG and the Individual Investor which document DB's role as a lender and market maker of foreign currency and interest rate transactions and not as a marketer of the BLIPS strategy or a provider of tax or investment advice regarding implementation of the BLIPS Strategy.

Transaction Structure - DB will have the opportunity to lend, on average, \$160 million to each of approximately 25 limited liability companies (the "Investor LLC's") on a non-recourse basis *I don't think you mean "non-recourse" I think you mean "limited recourse". (see below).* The loans will take the form of seven year fixed high coupon yielding \$100 million notes (the "Notes") *Do you mean that we don't actually make a loan, but buy notes at a premium? If so you need to be ready to address the accounting implications for us* The Investor LLCs will be owned by U.S. individuals *who presumably inject the capital of around US\$5mm see below.*

After a period of seven to ten days, the Investor LLCs are expected to contribute *what form does this contribution take? This is linked to how the benefits of the investment strategy get passed back upstream to the Investor LLC, and thus to the equity value of the Investor* approximately \$165 million, *(i.e. the proceeds of the [loan/note purchase] by DB and the capital injection) [subject to the Note], to a (single?) second LLC (the "Investment LLC") which will execute the BLIPS Strategy (for all Investor LLCs).* Presidio Advisors, who will manage and advise on the BLIPS Strategy, will contribute approximately \$500,000 to the Investment LLC in exchange for an equity interest in Investment LLC. DB will enter into a separate swap transaction *presumably with the Investor LLC which has the effect of converting the cash flow obligations of the Investor LLC under the Note into the cash flows equivalent of a \$160 million Libor based loan.* DB expects to *(why is there a question about this?)* enter into the swap with the Investor LLC. *Similar to the Note (First mention of this?), an assignment and assumption of the swap will be entered into by the Investment LLC (you need to clarify what this*

Permanent Subcommittee on Investigations

EXHIBIT #102

means; presumably that all obligations to DB of the various Investor LLCs including under each note and swap, will be assumed by the Investment LLC. Between the Note and the swap, DB will receive repayment of the \$160 million advanced to the LLC. Again you need to be ready to talk in terms of credit exposure and book value of the combination. The entire amounts contributed to the second LLC will overcollateralize the Note (first mention of collateral – you probably need to mention that all assets of the Investment LLC will be held by DB and pledged to DB to secure its obligations, also that the Investment LLC will incur no other obligations (except tax etc) other than to DB – this is relevant in view of the synthetic short strategy to be adopted).

Should the collateral value of the assets to the obligations due fall below 1.0125:1.0, DB may immediately liquidate the collateral and apply the proceeds to repay amounts due under the Note and the swap. Based upon the type of investments permitted under the credit agreement and the period the loan is expected to be outstanding, the LLC should meet the collateral value ratio test. Please, review attached RVG discussion regarding the adequacy of the collateral. *You should mention whether DB has any right to restrict/control investments (I would expect not if we are to distance ourselves from management). More important, you need to be ready to address how the "collateral" will be valued, and its liquidity, particularly bearing in mind the size of positions and the very slim threshold.*

Benefits of the Transaction - The Note has a seven year term. If the Note remains outstanding for the entire term, DB will earn Libor plus 75 bps annually on a fully collateralized basis. Should the Individual choose to exit the BLIPS Strategy at any time during the first six months, DB will earn Libor for the period the loan is outstanding plus an amount equal to 37.5 bps of loan proceeds advanced. In addition, DB will receive a custody fee equal to 9.375 bps (*per annum?*) of the loan proceeds advanced.

Review of BLIPS Transaction - In structuring DB's potential involvement in the BLIPS transactions, the Structured Transactions Group has worked very closely with the following groups: Relative Value, Private Banking, Tax, Legal, Credit, Compliance, and our outside legal advisor Shearman & Sterling.

Tax – The tax department has closely reviewed our anticipated involvement in the transactions and the tax opinions we **expect to receive** (*expect questions on why you say "expect to receive" – also be aware you will get no clean sign off from RRC without a clean opinion – expect us to define who has to satisfy themselves as to how clean is clean*) from Shearman & Sterling and believes that the tax reputational risk to DB should not preclude DB's involvement in the transactions. The tax department believes that DB should not experience any negative tax implications from our involvement in the transactions and that any tax reputational risk can be managed properly by the Structured Transactions Group. *This is woolly!* Their conclusion is supported by the limited number of transactions, the involvement of DB in the transaction in their ordinary role as a lender and market maker of foreign currency and interest rate transactions, the marketing role of Presidio and KPMG, and the tax advice provided by KPMG and Brown & Wood to the Individuals.

The tax reputation risk will be cleared with the Americas CEO *This is a strong plus point – (John Ross's views are certainly respected by me at least)* prior to execution of the first transaction.

Credit – The Structured Transactions Group has worked closely with the NY credit department and Shearman & Sterling to ensure that the payment of interest and principal to DB is secured. The LLC will be overcollateralized and should the value of the collateral drop below a 1.0125:1.0 ratio, DB may liquidate the collateral immediately and apply the proceeds to repay amounts due under the Note and swap agreements. The Structured Transactions Group and the Relative Value Group will work with Credit Risk Management to closely monitor the value of the collateral assets to ensure that DB's principal and accrued interest is protected. *In view of the thin cover, this should be shown to be full real time cover, including intraday and holiday cover. Presumably New York Exposure Management Team in CRM is closely involved.*

Legal – The Structured Transactions Group has worked very closely with Michelle Cenis of the Legal Department and Shearman & Sterling in structuring and drafting the Credit Agreement and related legal documents. Subject to reviewing the final documents, the legal department is expected to sign-off.

Risk Weighted Assets – Based upon discussions with David Hogarth, of Product Controllers, and David Thomas regarding the current structure, we expect to receive a zero risk weighted asset allocation to the transaction.

Compliance – Based upon discussions with Mary Owens and receiving the appropriate sign-offs from the tax, credit and legal departments, compliance will sign-off on the transaction.

Private Bank – The Private Bank will provide the white gloves review of the Individuals and open accounts on behalf of the LLC. Based upon the Structured Transactions Group receiving the appropriate sign-offs, the Private Bank is comfortable participating in the transaction. Who runs risk? Who gets profit

New Products Committee - Dr. Alfred (Ted) Dengler, Chair of the New York New Products Committee, has been consulted about the transaction. Consistent with the Vorstand product approval guidelines for Structured Transactions Group transactions, Dr. Dengler has concluded that it is not necessary for the BLIPS program to undergo New Products Committee review.

Risk and Resources Committee Sign-off - Based upon the potential number and size of lending transactions, we request the GCI Risk and Resources Committee to provide clear authorization to Harry Olsen that he may provide credit approval to the aforementioned LLC's owned by U.S. Individuals solely upon the credit quality of the transaction.

STG will notify the Tax department of each new transaction prior to execution and the Tax department, together with STG, will assume responsibility for monitoring material changes in the reputation risk associated with these deals and will bring such changes, if any, to the attention of senior management.

2615



francesco.piovanetti@db .com To: william.boyle@db.com
cc:
Subject: Re: Risk & Resources Committee Paper - BLIPS
Sent: 07/29/1999 08:07 PM

----- Forwarded by Francesco Piovanetti on 07/29/99 07:07 PM

From: Mick Wood on 07/29/99 09:28 PM GMT

To: Francesco Piovanetti
cc: William Boyle; Ivor Dunbar; Paul Glover; Stuart Bray; NANCY DONOHUE
Subject: Re: Risk & Resources Committee Paper - BLIPS (Document link not converted)

Francesco/Bill

I think the problem here is that the paper skirts round the basic issue rather than addressing it head on (the tax reputational risk) . I can understand why you have adopted that approach. I would have thought you could still ensure that the issues are highlighted by ensuring that the papers are prepared, and all discussion held, in a way which makes them legally privileged. (Francesco - you may remember that was one of my original suggestions).

I Have a number of queries on that front which it might be best to discuss this with the lawyers present, which might preclude it for tomorrow's RRC.

In any event, I have looked through the technical aspects of the trade and made a number of comments on the paper. I still don't think it sets out the structure clearly (although it is a lot better than it was). However, I don't think the structure itself is the basic issue.

Mick

(See attached file: r&paper.doc)

Francesco Piovanetti@DBNA
29/07/99 19:59

To: Mick Wood/DMGCM/DMG UK/DeuBa@DMG UK
cc: William Boyle; Ivor Dunbar/DMGSF/DMG UK/DeuBa@DMG UK; Paul Glover; Stuart Bray/DMGGM/DMG UK/DeuBa@DMG UK; NANCY DONOHUE
Subject: Risk & Resources Committee Paper - BLIPS

(Embedded
image moved (Embedded image moved to file: pic10939.pcx)
to file:
pic17950.pcx)

Permanent Subcommittee on Investigations
EXHIBIT #103

DB BLIPS 6556

2616

Dear Mick,

Attached please find the final version of the Risk & Resources Committee paper that reflects your suggested changes and additional comments. Please advise us if we are scheduled to meet with the Committee tomorrow.

Also, we have attached a copy of an email written by Nancy Donohue (RVG-New York) regarding the management of the transactions by RVG's desk.

If you have any comments please call us as 212-469-5773 (Bill) or 212-469-7318 (Francesco)

Regards,

Bill / Francesco

(See attached file: r&paper.doc)

From: Nancy.Donohue@db.com on 07/29/99 05:46 PM GMT

To: william.boyle@db.com; Francesco Piovonetti

cc:

Subject: Comments on Blips Collateral and Credit Terms

For Blips, the challenge at hand is to balance DB's high standards for Credit and Collateral with the unique requirements of a structured deal. DB's standard business in FX for leveraged accounts is to collect initial and variation margin, and to deal with recourse entities.

The Blips LLC entity will not be posting variation margin, nor will the entity provide DB with recourse. To compensate for that, a number of protective credit and collateral measures have been put in place including

-The ratio of Equity Capital to FX notional in the each deal will be between 8-9%. This equates to a pool of capital of that stands as a proxy for Initial and Variation margin. DB also has an ability to influence FX notional amounts and currency selection.

-The FX trades selected typically have assymmetric payouts, for example shorting pegged currencies like the HKD and Argentina Peso. A repeat of the emerging market / credit crisis of 1998 will actually lead to a situation where the LLC makes money, not loses money. And in the case of local currency rallies (where DB has credit exposure) the FX price levels in the market to hit our collateral value trigger and to deplete equity capital have never been seen in the history of the market in the past decade.

-The Credit Exposure Management Team in NY run by Steve Brawer has run VAR numbers on the selected currency trades and they are generated VAR numbers in the range of less than 1% or less in the Explicitly pegged (HKD, ARS) currencies, in the range of 1-2% for the implicitly pegged currencies (Saudi, Egypt etc), and in the range of 7-8% for the G3 currencies (in which case the client will likely be putting in stop loss orders and / or purchasing puts).

DB BLIPS 6557

2617

-Lastly, the Equity Capital for the Deal will be held in Cash.

 - r&paper.doc

 - pic17950.pcx

 - pic10939.pcx

 - r&paper.doc

DB BLIPS 6558

2618



Ivor Dunbar@DMG UK

Sent: 07/30/1999 05:43
AM

To: Mick Wood/DMGCM/DMG UK/DeuBa@DMG UK

cc: Francesco Piovonetti/NewYork/DBNA/DeuBa@DBNA, William Boyle,
Paul Glover, Stuart Bray/DMGGM/DMG UK/DeuBa@DMG UK,
NANCY DONOHUE, Arnd Sieling/DMGCON/DMG
UK/DeuBa@DMG UK, John T Wadsworth

Subject: Re: Risk & Resources Committee Paper - BLIPS

Our approach is as follows:

1. **STRUCTURE:** A diagramatic representation of the deal may help the Committee's understanding - we can prepare this.
2. **PRIVILEGE:** This is not easy to achieve and therefore a more detailed description of the tax issues is not advisable.
3. **REPUTATION RISK:** In this transaction, reputation risk is tax related and we have been asked by the Tax Department not to create an audit trail in respect of the Bank's tax affairs. The Tax department assumes prime responsibility for controlling tax related risks (including reputation risk) and will brief senior management accordingly. We are therefore not asking R&R Committee to approve reputation risk on BLIPS. This will be dealt with directly by the Tax Department and John Ross.

I hope this is helpful.

Permanent Subcommittee on Investigations

EXHIBIT #104

B BLIPS 6554

Ernest Leonardini
02/22/2002 01:33 PM

Sent by: Ernest Leonardini

To: Jules S Goodman/NewYork/DBNA/DeuBa@DBNA
cc:
Subject: Updated Presidio/KPMG trades

Jules,
FYI. Re. BLIPs.
Regards,
Ernie

----- Forwarded by Ernest Leonardini on 02/22/2002 01:32 PM -----

From: William Boyle on 06/20/2000 02:38 PM
To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust; Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

John,

During 1999, we executed \$2.8 b. of loan premium deals as part of the BLIP's approval process. At that time, NatWest and Hypovereinsbank had executed approximately \$ 0.5 b. of loan premium deals. I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. Since that time, Hypovereinsbank, and to a certain extent NatWest, have participated in approximately an additional \$1.0-1.5 b. of grandfathered BLIP's deals. Both Hypovereinsbank and NatWest have capacity issues in terms of their ability to execute a large number of transactions at any point in time. In addition, Hypovereinsbank has limited the amount of loans it is willing to have outstanding at any one point in time.

Presidio and KPMG are developing an expanded version of BLIP's which it will execute on a limited basis for its wealthy clientele. They anticipate executing approximately 10-15 deals of significant size (i.e. in the \$100-300m. range). The expanded version of the BLIP's deal will continue to employ the high coupon fixed rate loan, but will expand the investment menu to include a greater variety of investments which will be tied in more closely to the individual's other investments or business.

Currently, Hypovereinsbank is in the position of facing the client both in terms of making the high-coupon loan and executing the underlying trades. However, Hypovereinsbank has certain capacity issues during a period in terms of their ability to execute and monitor a large number of transactions and also the amount of loans which may be outstanding at any one point in time. However, Hypovereinsbank does not have the same sensitivity to and market exposure as DB does with respect to the reputational risk from making the high-coupon loan to the client. We are in the unique position where we can step in and execute the underlying transactions. As you are aware, the tax benefits from the transaction potentially arise from a contribution to the partnership subject to the high-coupon note and not from the execution of FX positions in the partnership, activities which we perform in the ordinary course of our business.

In addition to the execution of the underlying FX transactions, we would like to lend an amount of money to Hypovereinsbank equal to the amount of money Hypovereinsbank lends to the client. We could potentially make a market interest rate loan secured by Hypovereinsbank high-coupon loan to the client which would be secured by the underlying FX transactions. The loan we fund Hypovereinsbank with could be differentiated from the underlying loan to the client because of the market coupon vs high coupon, the date the loans are made and the fact that we do not face the client as Hypovereinsbank does.

Permanent Subcommittee on Investigations

EXHIBIT #105

DB BLIPS 03278

2620

We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 03279

2621

 William Boyle
06/20/00 02:38 PM

To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust, Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

John,

During 1999, we executed \$2.8 b. of loan premium deals as part of the BLIP's approval process. At that time, NatWest and Hypovereinsbank had executed approximately \$ 0.5 b. of loan premium deals. I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. Since that time, Hypovereinsbank, and to a certain extent NatWest, have participated in approximately an additional \$1.0-1.5 b. of grandfathered BLIP's deals. Both Hypovereinsbank and NatWest have capacity issues in terms of their ability to execute a large number of transactions at any point in time. In addition, Hypovereinsbank has limited the amount of loans it is willing to have outstanding at any one point in time.

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We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 03280

2622



Viktoria Antoniadou

To: Brian J McGuire/NewYork/DBNA/DeuBa@DBNA
cc: Doris Eagan/NewYork/DBNA/DeuBa@DBNA
Subject: US GROUP 1 Pres

Sent: 04/03/2002 04:49
PM

Brian,

I think this is the presentation we need. The biographies are in the back of the presentation.



Usgroup1.ppt

Vikki Antoniadou
Structured Capital Markets
Phone: 212 469 5771
Fax: 212 469 5630

Permanent Subcommittee on Investigations

EXHIBIT #106

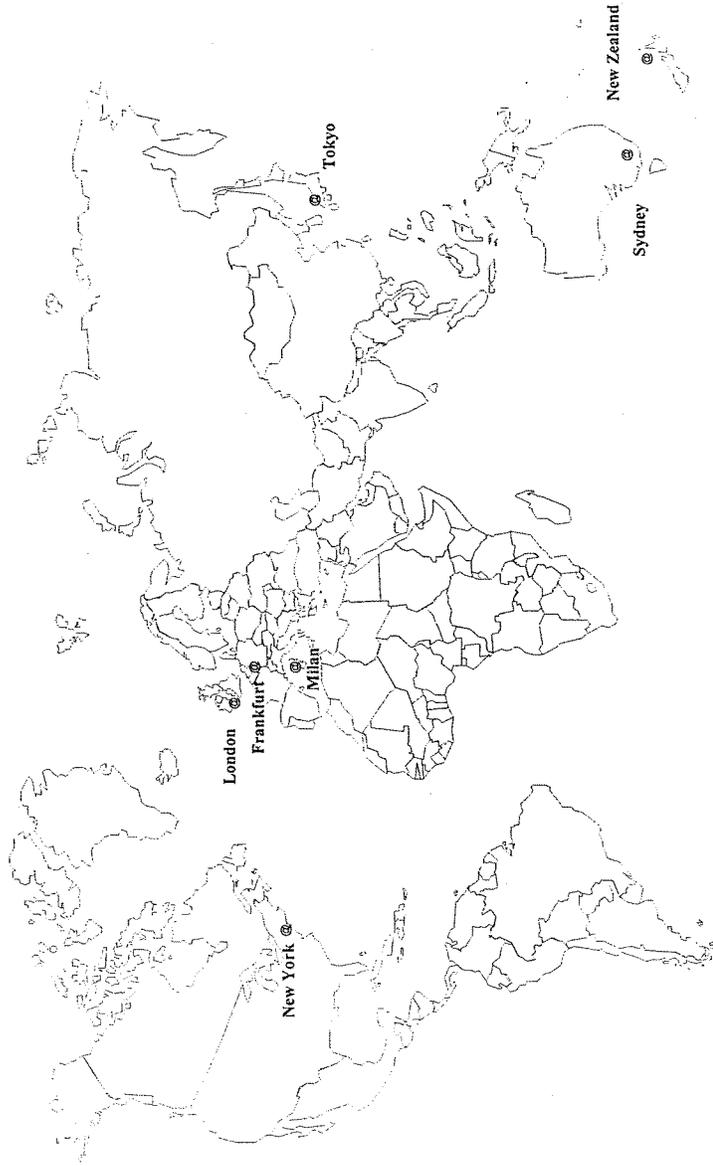
DB BLIPS 6329

Structured Transactions Group

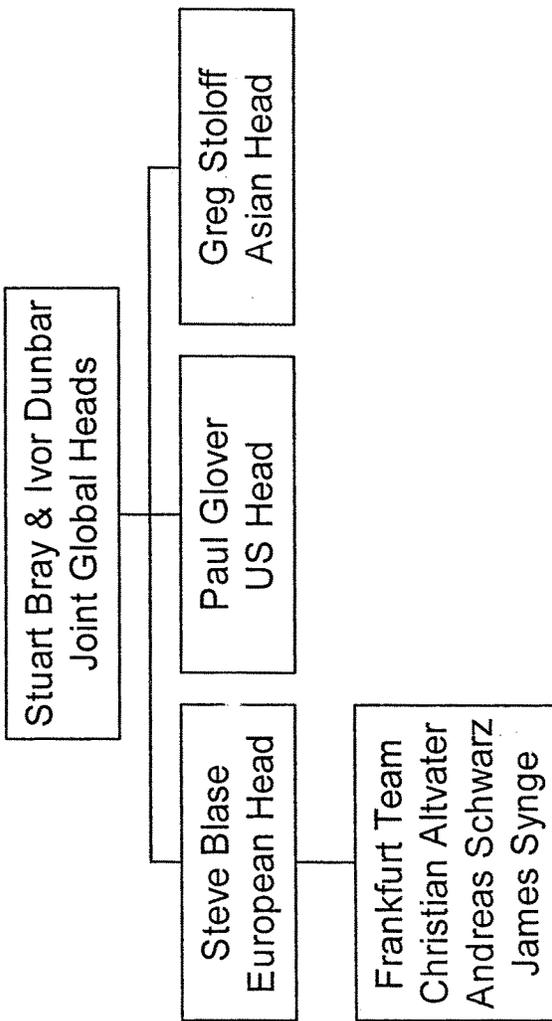
North America

November 15, 1999

Structured Transaction Group Sites



STG Global Responsibilities



Business Risk Management

6333

As part of the strategy of managing our business prudently, we have in place the following management tools:

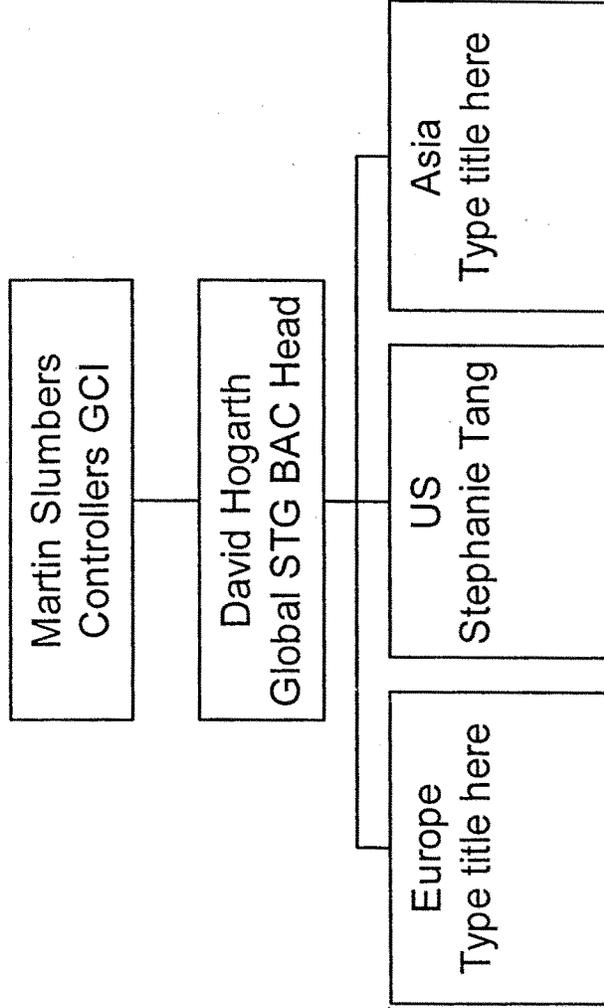
- Comprehensive Business Management and Business Area Controlling Teams
- Conservative Provisioning
 - Specific &
 - 25 % general provisioning
- Independent Name Risk Analysis
 - John Wadsworth and Edson Mitchell

BLIPS

DB

2626

STG Business Area Controlling Function



DB BLIPS 6334

Structured Transactions Group
Deal Sign-Off Process

6335

All transactions need the sign-off of:

- Central Tax
- Legal
- Controlling (BAC and Regional)
- Credit Risk Management
- Treasury
- AfK (to the extent that the department is affected by the transaction)
- Compliance
- Reputation Committee

Additional sign-off may be sought from:

- New Product Committee
- Market Risk Management
- GCI balance sheet manager
- Vorstand
- DB OFD Supervisory Board

BL1PS

DB

Client Environment

<p>'Typical' US & European Co. -above m arket investments -low risk</p>	<p>'Typical' US & European Co. -below m arket funding -low risk</p>
<p>Select Sophisticated Co. -execut e tax driven deals</p>	
<p>Private clients/Private Co. -gain m itigation</p>	
<p>DB larger loss in US Group -interna l/market transactions</p>	

6336 DB BLIPS

2629

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7

Post-Acquisition Strategy

Client	STG Strength	Product
'Typical' US Co. Excess Cash	<ul style="list-style-type: none"> act as principal relationship with tax dept. stronger client relationships 	PTI
'Typical' European Co. Excess Cash	<ul style="list-style-type: none"> act as principal relationship with tax dept. STG client relationships stronger client relationships 	European Pref Shares
'Typical' US Co. Requiring Funding	<ul style="list-style-type: none"> stronger client relationships tax capacity 	EKOI Prefs
Sophisticated US Clients	<ul style="list-style-type: none"> act as principal relationship with tax dept. STG client relationships stronger client relationships 	REITs/RICs/CFCs/REMICs
Private Clients/Private Co. Gain Mitigation	<ul style="list-style-type: none"> able to lend relationships with 'promoters' 	Blips
BT Internal/Market Transactions (US Loss Utilization)	<ul style="list-style-type: none"> act as principal relationship with tax dept. larger loss in US group 	RHP type structures REMIC Residuals, Fasits, Strips

I. Current Transactions

Client Structured Products

- 1.) FASIT Transaction
- 2.) REIT Transaction
- 3.) RIC Transaction
- 4.) CFC Transaction

Standardized Structured Products

- 1.) CARDS - Customized Adjustable Rate Debt Facility
- 2.) Cross Border Preference Shares
- 3.) Russian Distressed Debt
- 4.) German Preferred Shares Financing
- 5.) Bull/Bear Transaction
- 6.) RHP Type Transaction
- 7.) Blips - Bond Linked Indexed Premium Strategy
- 8.) PTI - Previously Taxed Income
- 9.) UK Credit Into U.S.
- 10.) Step Down Preferred

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DISCUSSION MATERIAL FOR

**Enron Corp.
Project Valhalla**

November 15, 1999

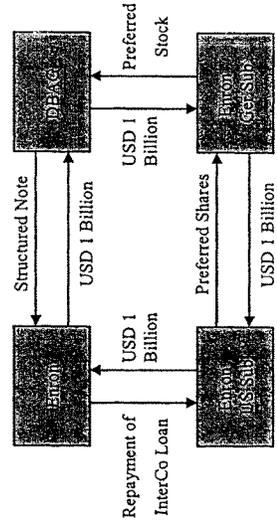
Project Valhalla

Client: Enron Corporation produces electricity and natural gas, develops, constructs and operates energy facilities worldwide and delivers both physical commodities and financial and risk management services to customers.

Project: Enron is interested in reducing the firms exposure to natural gas and electricity by purchasing a zero coupon note from DB where the return of this note is linked to changes in commodity prices. Enron is also interested in obtaining funding beyond which is required to fund the purchase of the note.

Funding: Enron will fund the purchase of this note through the issuance of a preference shares to DB in Frankfurt

Credit Exposure: Enron and DB will eliminate the credit exposure between the two firms by agreeing to and obtaining legal right of set-off between the Structured Note issued by DB to Enron and the Preference Shares Enron issues to DB.



Structured Note

Note Issuer: Deutsche Bank AG, New York

Note Purchaser: Enron Corporation

Notional: USD 1.9 billion

Settlement Date: December, 1999

Maturity Date: December, 2004

Repayment Amount: will be the product of Notional and the formula below,
 = (Commodity Future @ T^o less Commodity Future @ T^o / Commodity Future @ T^o)
 and the sum of the amount calculated above and the formula below,
 = Notional * Effective Rate * Days / Basis

Coupon: No periodic interest flows

Prepayment: The early repayment will be based on the formula above and will occur in the event of the exercise of the Put or Call over Preferred Shares.

Legal Right of Set-off: In the event of default by either Enron or DBAG regarding this transaction or the Preference Shares either party will have the right to set-off any claims under this transaction with obligations under the Preferred Shares transaction.

Preferred Shares

Issuer: Enron's Second Tier German Subsidiary
Investor: Deutsche Bank AG Frankfurt
Notional: USD 2 billion
Settlement Date: December, 1999
Maturity Date: December, 2004
Dividend: [6.09]%
Day Basis: Actual/360
Put Right: Investor can Put the Preferred Shares to Issuers German parent annually for five years and upon the occurrence of an exercise event (defined below) at a price of the initial investment plus accrued dividend.
Call Right: Issuers indirect US Parent can Call the Preferred Shares from Investor upon the occurrence of an exercise event or after five years and 90 days assuming a change in economic climate has occurred at a price of the initial investment plus accrued dividends.
Guarantee: Enron's indirect obligations under the Put and Call will be directly guaranteed by the parent company.
Legal Right of Set-off: In the event of default by either Enron or DBAG regarding this transaction or the Preference Shares either party will have the right to set-off any claims under this transaction with obligations under the Preferred Shares transaction.

Appendix I & II

- I Transaction Description
- II Members of STG New York

Appendix I

Client Structured Products

FASIT Transaction: Deutsche Bank ("DB") raises short-term funds at attractive rates through the issuance of an interest in a SPV (i.e. "FASIT") backed by a DB note. The transaction may result in an acceleration of taxable income and deferral of deductions for a client.

REIT Transaction: Joint investment in financial assets with clients in a SPV for a two-to-five year period. DB will retain the common stock investment in the SPV and will have the ability to exit the SPV after the two-to-five year period. DB expects the underlying assets to generate income in excess of the clients' preferred stock interest in the SPV.

RIC Transaction: Joint investment in financial assets with clients in a SPV for a period of 18 months or longer. There are two versions of this structure. In each, DB will retain the common stock investment in the SPV. In Version 1 (the Closed-End Version), the client holds preferred stock in the SPV. DB expects the underlying assets to generate income in excess of the Client's preferred stock interest in the SPV. In Version 2 (the Open-End Version), DB and the client hold common stock that is mandatorily redeemed by the shareholder. DB expects the underlying assets to generate income in excess of the clients' preferred stock interest in the SPV.

CFC Transaction: Joint investment in financial assets with clients in a SPV for over a five year period. DB will retain the common stock investment in the SPV and will have the ability to exit the SPV after the five year period. DB expects the underlying assets to generate income in excess of the clients' preferred stock interest in the SPV.

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Appendix I

Standardized Structured Products

CARDS: DB provides a loan to a client on a joint and several liability basis secured by high-quality collateral. DB may require repayment of the loan after a one-year period. DB will receive a fee for making the loan.

Cross Border Preference Shares: These Preference Shares are liabilities issued by DB that provide an investor with exempt income. The success of the transaction hinges on the ability to define the instrument as equity in the investor's jurisdiction but as debt for DB in the U.S. Jurisdictions include Netherlands, France, Italy, Spain and Portugal.

Russian Distressed Debt: DB acts as a placement agent on Russian debt to facilitate a 351 transaction.

German Financing Transaction: A funding transaction for U.S. corporate clients whereby DB purchases equity issued by a German subsidiary of the U.S. corporate client. The dividends received by DB are primarily exempt from tax and will constitute EKO1 income. This transaction will utilize DB's German EKO1 tax capacity. We are currently in discussions with Xerox, Gen Re, Pfizer, P&G, Coca-Cola, Boeing, Hewlett Packard, Enron, Ford, First Data Corp., and Walmart and anticipate being able to close \$5 billion of transactions with these clients alone.

Bull/Bear: The transaction was presented to DB by Rabobank International London. The structure effectively provides Rabobank Netherlands with a Dutch tax deduction while shifting a portion of DB's U.S. tax liabilities to the Netherlands. DB obtains a fee and receives state and local tax benefits for entering into the transaction.

RHP Type Transaction: DB buys a corporation that holds appreciated securities. The securities are sold which triggers the gain. The corporation would normally pay a 35-40% corporate tax rate, however, this can be reduced through this structure.

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Appendix I

Standardized Structured Products

Blips: DB receives a fee for extending credit. A portion of the loan will be secured with high quality collateral and the remaining with foreign currency contracts. The loan will be a 7 year note which might be paid off in two months. Current clients include Presidio Advisors and KPMG.

PTI: These are transactions in which a U.S. investor acquires a preferred membership interest in a Limited Liability Company incorporated in the U.S. The return paid to the U.S. investor is in the form of Previously Taxed Income "PTI" and is therefore not subject to further tax in the hands of the investor. The credit profile of the deal can be structured in various ways depending on the investor's requirements. We closed the first PTI deal in May 1999 with a U.S. insurance company and the structure is currently being pitched to other U.S. clients from corporates to insurance companies and banks. Subject to internal approvals, we have PTI capacity to execute several US\$ billions of this structure.

UK Credit Into U.S.: A DB U.S. entity issues auction market preference shares to U.S. investors with either 70%/80% DRD. DB U.S., in turn, invests in prefs of a Cayman SPV (tax resident in UK). Dividends received on Cayman prefs carry a UK WHT credit enabling DB U.S. to shelter its U.S. tax. DB earns a spread between its post-tax (sheltered) and the post-tax dividend paid to Investors.

Step Down Preferred: DBAG Frankfurt holds a subordinated interest in a US Partnership which will invest in fixed income securities within a defined criteria. For the first five years a third party investor of the senior interest in the US Partnership will receive 100% of distributions. At the end of five DBAG will purchase the senior interest for its fair market value. At the end of the six year DBAG will liquidate US Partnership and receive cash in excess of DBAG's investment in the US Partnership.

Appendix 2

Paul Glover
Managing Director

Michael G. Dougherty
Director

Michael joined Bankers Trust in September 1988 as a Product Controller in the Municipal Finance division. Michael has worked in various different control functions through out his career at Bankers Trust. His most recent role, prior to joining the Structured Transactions Group, involved setting up and managing the Middle Office for the Eastern Europe Middle East and Africa division. He received his B.A. from the University of Illinois, and an M.B.A. from Pace University

David Hugo
Director

David joined Bankers Trust in June 1995 and joined the Structured Transactions Group in January 1997. After spending 6 months with the Structured Transactions Group in London, David moved to New York. Prior to joining BT, David trained as a Chartered Accountant and worked for Deloitte & Touche in London and before this, with KPMG in South Africa.

Deals: Tax sparing transactions for Spanish clients. Total of 7 deals issuing preference shares to US clients from BT owned UK tax resident entities. Preference shares issued to USD investors from BT Holdings (Europe) Limited, a dual-resident (UK/US) tax entity in the BT group. Preference shares issued to French Bank (CCF) using the ULC structure. Member interest in a US LLC issued to a US insurance company (Mass Mutual, Northwestern Mutual) using the PTI structure.

Appendix

Manny Schnaidman

Director

Manny joined Bankers Trust in January 1994 in the Treasury/Funding Group working on global balance sheet, capital and liquidity management issues. Prior to that he worked for the New York Fed on policy development principally on risk-based capital issues. Manny joined the Structured Transaction Group in July 1997 covering emerging markets in the Middle East and Europe. Manny received his BA from Towson State University and his MBA from NYU.

Deals: Corpus Strip, Turned Leasing Transaction

William Boyle

Vice President

Bill joined Bankers Trust in January 1997 as a Vice President in the Structured Transactions Group. Bill has worked on developing, originating and executing various products for both clients and BT. Prior to joining BT Bill worked for the Arthur Anderson Financial Tax Consulting Practice. Bill has a J.D. and a B.A. and is a C.P.A.

Deals: BLIPS, RHP Disposition, ATLIC (RHP Type Corporate Acquisition), REMIC Subco with Emron, REMIC Subco with PCI, Internal Basis Deal (BT Ever), Internal FASIT transaction, REMIC REITs, CARDS.

Appendix 2

Gregg Grauer Vice President

Gregg joined Bankers Trust in July 1996 and joined the Structured Transaction Group in June 1999. His most recent role prior to joining the Structured Transaction Group was as a member of the Bankers Trust Corporate Tax Department where he focused on the research and development of domestic and international tax structures. Prior to joining BT, Gregg practiced tax law at two major New York City law firms and served as a judicial law clerk to a U.S. Tax Court judge in Washington, D.C. Gregg holds an LL.M. in taxation from New York University School of Law, a B.G.S. from the University of Michigan and is a member of the bars of New York, the District of Columbia and Colorado.

Deals: Enron REMIC Residual Investment - REIT, Enron Debt Securitization - FASIT, Enron Appreciated Leasing Portfolio Partnership, CCF French ULC Financing, Enron and BT Partnership Investment - Overstated Dividend, UK into US Financing for The Hartford, Mass Mutual, J.P. Morgan, Northwestern Mutual Life and Microsoft, REMIC Subco with PCI, Lifeco Holdings Inc., RHP Disposition.

Steven Herrup Vice President

Steve joined Bankers Trust in July 1993 as a trader's assistant for the fixed income arbitrage desk. He later joined the Treasury/Funding Group where he provided balance sheet analysis and developed regulatory arbitrage structures to reduce capital charges associated with certain asset classes. Steven joined the Structured Transactions Group in the spring of 1998. He received his B.S. from Northeastern University.

Deals: Dutch Financing

9/11/2003 9:01:30 PM

20

6350
BLIPS
DB

Appendix 2

Brian McGuire

Vice President

Brian joined Bankers Trust in March 1997. Prior to that time, Brian was a manager at Arthur Andersen working primarily in the Mergers & Acquisitions and Strategic Product Development areas. He received a Masters of Accounting and a Bachelor of Business Administration from the University of Michigan.

Deals: RHP Disposition, REMIC Subco with Enron, REMIC Subco with PCI, Internal Basis Deal (BT Ever), ATLIC (RHP Type Corporate Acquisition), Leasing Partnership with Enron, Internal FASIT transaction, REMIC REIT with Enron, CARDS (tentatively next week).

Francesco N. Piovanetti

Associate

Francesco has over five years of corporate finance experience in various areas of capital markets and investment banking. Prior to joining Deutsche Bank, Francesco was a Senior Analyst at Deloitte & Touche LLP's Corporate Finance Group where he worked in the areas of commercial lending, mergers and acquisitions, management buyouts, identifying sources of capital and valuation services. Francesco interned at Merrill Lynch Capital Markets International Fixed Income Group, and at Merrill Lynch International Private Client Group. He completed his undergraduate studies at Bryant College in three years; he holds a BS in Finance and a BA in Economics.

Deals: BLIPS, Cayman Trades, Restructuring of ECF Common.

2643

9/11/2003 9:01:30 PM

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Appendix 2

Nicholas Sopkin

Associate

Nicholas joined Bankers Trust in March 1998 as an associate. Prior to joining BT, Nicholas has worked in the U.S. Attorney's Office in the Civil and Criminal Tax Division as well as at Coopers & Lybrand, London, in their Value Added Tax division. Nicholas joined the Structured Transactions Group in the fall of 1998. He received his B.A. from the University of California at Berkeley, J.D. from the University of San Francisco School of Law and M.B.A. from the University of Oxford.

Deals: Mass Mutual, Northwestern Mutual PTI, Family Partnerships (FAC), Variable Delivery Forwards with various clients, CARDS.

Vikki Antoniaides

Analyst

Vikki joined the Structured Transactions Group at Bankers Trust in January of 1998 as an analyst. Prior to joining BT she studied finance and business management at Cornell University where she received her B.S.

Deals: Internal Basis Deal (BT Ever), Leasing Partnership with Enron, REMIC REIT with Enron, Internal FASIT transaction.

6352

DB BLIPS

2645

Appendix 2

Doris Eagan

Administrative Assistant

Doris joined Bankers Trust in November 1994 as an administrative assistant for the former Asset Finance Group headed by Barry O'Connor. In 1996, she began supporting the Structured Transactions Group. Prior to joining BT, she worked for Whitney Communications Corporation for 15 years as an assistant to William O'Shea, a partner of the firm. She received an Associate Degree in Secretarial Studies from Lehman College.

David Rodriguez

Administrative Assistant

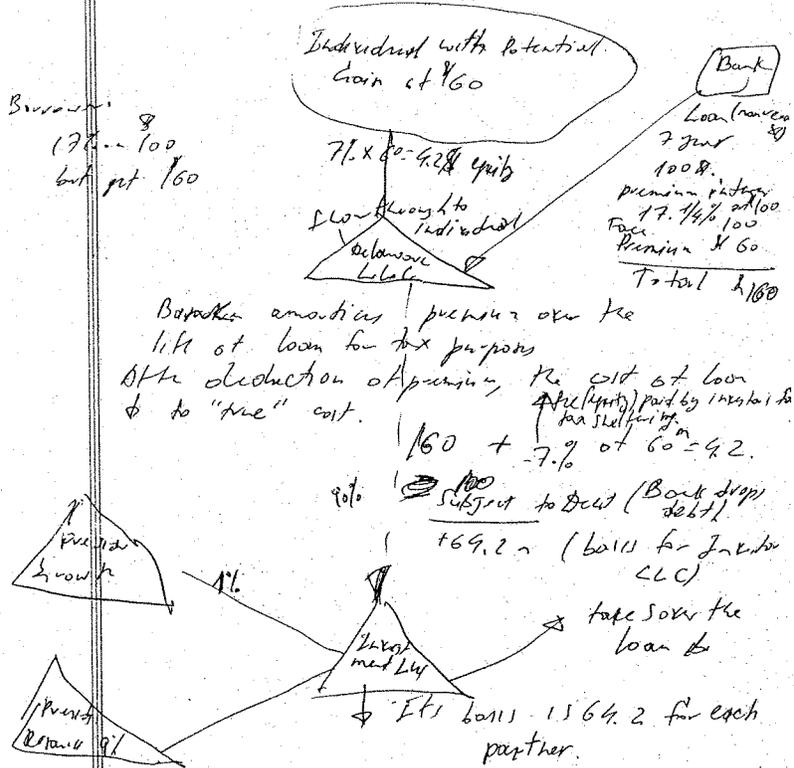
David joined Deutsche Bank in May 1998 as an administrative assistant for the Special Products Group. Prior to joining Deutsche Bank, David worked for DeBari Associates as an assistant supervisor in technical support of documents. David has an Associate Degree in Business Administration.

9/11/2003 9:01:30 PM

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Presidio

- Private Individuals - more receptive & easier
Distribute through KPMVCI



Cost basis: \$64.2 at start and per currency at (Enterprise LLC level)

2647

 Richard Pankuch
09/24/99 09:28 AM

To: Christopher Thorpe/London/Hypo/Vereinsbank@BV-EUROPE
cc: Patricia Tresnan/SRM/NY/NA/Vereinsbank@BV-NA, Ted Wolf/Credit/NY/NA/Vereinsbank@BV-NA,
Alexandre Nouvakhov/StruFin/NY/NA/Vereinsbank@BV-NA
Subject: Re: Presidio 

Thanks for looking at this so quickly.

1. It shouldn't be. We will change the application.
2. ROE is not infinite. You are correct in saying regulatory capital might be, assuming that we get "0" capital weighting for the structure through its actual life based upon a "0" weighting for the deposits. We must make certain assumptions here. Because I truly believe that the deals will unwind before year end so the individuals can claim the tax benefits, I think we should make it clear to everyone that we expect no regulatory capital cost. In any case the deals will not be on the books over year end if my guess is correct. We will talk to Hinze and make an appropriate change.
3. Alex is working on the details, which we will incorporate.
4. Yes. We will include another comment on usual boilerplate such as
5. It is done like this because there is little liquidity in the 2 month Euro LIBO market, thus it is difficult to hedge for two months. I
6. With only 3 months to maturity, it will behave similar to a three month obligation, i.e. its convexity decreases as maturity approaches.
7. We have had extensive conversations with INM and Stephan Bub on this structure. They see no problem with it. Re Y2K, I never asked. Re the swap premium, we will have to get paid the appropriate discounted amount.
8. No, however, your question is not completely clear to me. How could an investment in any Permitted Investment breach the ratio unless one paid more for it than its market value. And why would one do this? Excuse the Deutsch Bank reference. I asked someone to copy the Permitted Investments and she copied them verbatim.
9. Agreed.
10. We are now in the process of having discussions on this matter. Treasury is very proficient at its end of the spectrum. And we have a department that commonly manages borrowing base transactions. If, for any reason, however, the resources need enhancement, for the amount of money involved here we will dedicate one of our own personnel full time if necessary.
11. On the theory that a borrowing base transaction in which all collateral is in our own hands and subject to the Permitted Investment requirement cannot be of a lesser quality than this, especially given the fact the the borrower is a special purpose company with virtually no external obligations other than our loans.

I look forward to discussing this with you in an hour.

Dick

Permanent Subcommittee on Investigations

EXHIBIT #108

HVB 000682

2648

 Christopher Thorpe@BV-EUROPE
09/24/99 07:44 AM

To: Richard Pankuch/Hypo/NY/NA/Vereinsbank@BV-NA
cc: Patricia Tresnar/SRM/NY/NA/Vereinsbank@BV-NA, Edgar.Nubert@Vereinsbank.de, Ted
Wolf/Credit/NY/NA/Vereinsbank@BV-NA
Subject: Presidio

Dick,

I have read through your draft credit application of 23.09.99. as faxed.

Questions arising are:

1. Form (para 2). Why is HVB Group Plafond crossed?
2. Form (para 3). "ROE is infinite" is this correct?. The return on regulatory capital may be infinite.
3. Form (para 5). Under the heading "Interest rate risk associated with prepayment of the loan" you describe the hedge for the routine servicing (fixed/floating) risk. Please explain how this swap is broken if there is a prepayment and at what cost (if any).
4. Form (para 5). Events of default. Do we have the usual insolvency, non-payment events as well?
5. Request (page 3). You state that the USD 30mlo is hedged back to USD. Page 2 states that there is a mismatch in maturity between the interest and FX positions in the Euro. You have a risk on the Euro interest rate when you roll for the second month. Why is this done like this?
6. Request (page 4, para 1). How is this interest rate sensitivity different from any other fixed rate loan?
7. Request (page 4, para 2). Borrowers' options to prepay. Are INM certain that they can break this structure at any time and within the terms of the penalties/costs available to HVB? What happens to the premium (see q. 3 above)? What about thin markets as we approach Y2K?
8. Permitted Investments. Do we have a pre-emptive clause prohibiting an investment, which if executed, would breach our 1.0125 margin? I assume I read HVB for Deutsche Bank in attachment 2?
9. Permitted Investments. I have doubts regarding ability to achieve 0% capital weighting but I await the judgement of Dr. Hinze.
10. Permitted Investments. What internal controls will you have to ensure that the investments (and options to hedge the short positions) are correctly managed to maintain our collateral?
11. Are you proposing risk class 2? Please give the rationale.

Best regards

Christopher

HVB 000683

2649



Francesco Piovanetti To: NANCY DONOHUE
cc:
Subject: presidio - w. revisions, i will call u in 1 min.
Sent: 04/28/1999 12:58 PM

CLIENT

Presidio is the tax and capital markets marketing arm of KPMG. There are 3 main partners at Presidio

Bob Pfaff
John Larson
Amir Makov

Bob and John built their careers at KPMG as tax attorneys and members of the 6,000 person tax accounting group. Amir was recently at Sentinel, where he worked on the Dos Equis trades with DB. The Dos Equis trades, after all expenses, generated about \$10 - 15 mm usd in fees to DB in 1998.

Amir left Sentinel and Ari Bergman to join Presidio in early 1999. Amir's original connection to Presidio was made through David Kelley and Roberto Marsella.

Presidio is a well known client to DB in the Private Bank, Special Products Group and the Equity Derivatives Group (Frankfurt). Last year, through the OPIS program, which involved a large program of equity derivative trades, OPIS generated fees to DB in the excess of \$35 mm, and net of expenses the number was approx \$33 mm.

Presidio, in conjunction with ICA, have developed a new product called BLIPS. BLIPS will be marketed to client end users through KPMG mainly by John Larson. Amir Makov will take responsibility for executing and managing the capital market transactions for BLIPS.

BLIPS TRANSACTION

BLIPS will be marketed to High Net Worth Individual Clients of KPMG.

It is envisioned that BLIPS will be a large program, covering over a 6 month period of time over 40 separate accounts / counterparties.

Loan Balances over time could be as large as \$5 billion in par amounts + \$3 bn in premium. Fees to DB are estimated to be in the 1.25% of premium range (30+ mm usd).

The BLIPS program will involved the following:

- 1- HNW Individuals will be introduced to the DB Private Bank by Presidio for Know Your Client and Suitability Review.
- 2- The HNW Individual will receive a loan from the DB Private Bank. The Loan will be a high coupon loan (16%) and the loan amount will be delivered to the HNW Individual in the form of a par amount (100) and a premium amount (estimated at 60). The loan amount will be priced by Global Markets off the US Interest Rate Swap Curve.

For tax and accounting purposes the Loan Liability for the HNW Individual will be the par amount only (100), not the premium.

The Loan Proceeds (Par + Premium) will be held in custody in a DB Global Markets Margin Account.

Permanent Subcommittee on Investigations

EXHIBIT #109

DR RITPS 6011

3- After a 7 to 10 day holding period, the HNW Individual will transfer all Loan Proceeds to an LLC. The LLC will also have 3% of par amount Equity Capital contributed by the HNW Individual and an additional 10% of 3% Equity Capital contributed by the Manager of the LLC, Presidio. (so, in the example here the LLC will have 100 Par amount + 60 mm Premium + 3 mm HNW Equity Capital + .3 mm Presidio Equity Capital for a total of 163.3 mm usd). The entire amount of funds in the LLC will be held in custody at a DB Global Markets Margin Account.

4- The LLC will enter into an Interest Rate Swap to convert its Loan Liability from Fixed into Floating.

5- The LLC will enter into a series of FX transactions, all approved by DB and all executed by DB. Typical trades will be in the 2 month forward FX market, Long USD/Short HKD, Long Argy Peso / Short USD, Long Euro / Short DKK.

6- The LLC's trades will typically have negative carry and will be designed to make \$ for the LLC in the event of a global markets crisis. In addition there will be negative carry for the LLC on the Loan Interest that it owes vs the interest on the funds that it holds in the Global Markets Custody Account.

7- The appropriate amount of Equity Capital in the LLC will need to be determined by Global Markets Credit and it will have to cover the negative carry of the LLC and accommodate for any adverse market movements.

8- The holding period / life of the LLC will typically be 45 to 60 days. At the end of this time period, the LLC will unwind all transactions, repay the loan par amount and premium amount. For tax and accounting purposes, repaying the premium amount will "count" like a loss for tax and accounting purposes.

WHO IS INVOLVED SO FAR AT DB

The following people have been working on the transaction

Private Bank John Rolfe, Presidio Relationship Mgr
Doug Lemmonds, Credit

Global Markets Francesco Piovonetti, structured products
Nancy Donohue, global market sales
Steve Cohen, structured product credit

Tax Joe Cassidy, DB NA Tax

Legal Michelle Cenis, DB
Alvin Knott, Shearman & Sterling
Gerry Rokoff, Sherman & Sterling

nb: Shearman & Sterling worked with DB on OPIS and Dos Equis transactions.

PRESENT CONCERNS

The Regulatory and Bankruptcy implications of having a High Coupon / Off Market Loan

The Regulatory Implications of having what looks like an Equity Stake/ Control of the LLC b/c of the high coupon loan

Getting Top Level Global Markets Go Ahead to proceed

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DIVISION OF RESPONSIBILITY / FEES ETC

John Rolfes in Private Banking is presently the RM for Presidio.
Private Banking will be responsible for

- Know Your Client and Suitability Review for all HNW Names
- Sourcing from Treasury the Loan proceeds
- Bearing the Capital Hit for making the Loans

Nancy Donohue/Francesco Piovanetti can act as the RM for Presidio. Global Markets will be responsible for:

- Setting up ISDAs for 40 accounts
- Setting up Margin Accounts for 40 accounts
- Pricing the Loan on the US Swap Curve
- Executing and Settling the Interest Rate Swap and FX Trades
- Monitoring, Daily , the value of the LLCs vs Equity Balances

Fees: Typical fee splits between Private Banking and Global Markets/Structured products have been: 30% to Private Banking and 70% to Global Markets/Structured Products , after accounting for all fees (legal etc) and risk reserve set asides.

**New Product Committee Overview Memo:
BLIPS Transaction**

This product has been developed with KPMG and Presidio Advisors. In simple terms, for the Blips project, Deutsche Bank will act as lender, transaction executor, foreign exchange trader, and Know Your Customer Screener. KPMG will distribute the product to its clients. Presidio has structured the product and will act as the investment advisor.

Presidio Advisors

There are 3 main partners at Presidio

Robert Pfaff
John Larson
Amir Makov

Bob and John built their careers at KPMG as tax attorneys and members of the 6,000 person tax accounting group. Amir was recently at Sentinel Advisors (Hedge Fund Company), where he was a client of Deutsche Bank Global Markets.

Amir left Sentinel to join Presidio in early 1999. Amir's original connection to Presidio was made through David Kelley and Roberto Marsella, formerly heads of the Deutsche Bank Structured Transactions Group. Kelley and Marsella will play no role in the Blips transaction.

Presidio is a well-known client to DB in the Private Bank, Structured Transactions Group and the Equity Derivatives Group (Frankfurt).

Presidio, in conjunction with ICA, has developed a new product called BLIPS. BLIPS will be marketed to client end users through KPMG mainly by John Larson and KPMG's high net worth advisory practice. Amir Makov will take responsibility for executing and managing the capital market transactions for BLIPS.

BLIPS TRANSACTION

BLIPS will be marketed to High Net Worth Individual Clients of KPMG.

It is envisioned that BLIPS will be a large program, covering over a 6 month period of time over 40 separate accounts / counterparties.

Loan Balances over time could be as large as \$5 billion in par amounts + \$3 bn. in premium. Fees to DB are estimated to be in the 1.25% of premium range (\$30+ mm usd).

If DB proceeds with the BLIPS program, it will involve the following:

1- HNW Individuals will be introduced to the DB Private Bank by Presidio/KPMG for Know Your Client Review.

2- The "LLC" (HNW Individual is the single member of a Delaware LLC) will receive a nominal 7 year loan from the DB Private Bank. The Loan will be a high coupon loan (16%) and the loan amount will be delivered to the HNW Individual in the form of a par amount (100) and a premium amount (estimated at 60). The loan/premium amounts will be priced by Global Markets off the US Interest Rate Swap Curve.

For tax and accounting purposes the Loan Liability for the LLC/HNW Individual will be the par amount only (100), not the premium. The LLC will also be obligated for the above market interest rate for the term of the loan. The Loan Proceeds (Par + Premium) will be held in custody in a DB Pledged Account in cash or near cash. Loan will include a prepayment clause with provisions to require repayment of unamortized premium in addition to principal. Loan conditions will be such as to enable DB to, in effect, force (p)repayment after 60 days at its option.

3- After a 7 to 10 day holding period, the LLC will transfer all Loan Proceeds to a Company/Partnership ("Company"). The Company will also have 3% of par amount Equity Capital contributed by the HNW Individual and an additional .3% Equity Capital contributed by the Manager of the Company, Presidio. (in our example here the Company will have 100 Par amount + 60 mm Premium + 3 mm HNW Equity Capital + .3 mm Presidio Equity Capital for a total of 163.3 mm USD). The entire amount of funds in the Company will be held in custody at a DB Global Markets Margin Account.

4- Monitoring of the Collateral will be handled by the Global Markets group, as it will be executing all transactions on behalf of the Company. Presidio will act as the Investment Adviser to the Company.

5- The Company will enter into an Interest Rate Swap to convert its Loan Liability from Fixed into Floating.

6- The Company will enter into a series of FX transactions, all approved by DB and all executed by DB. Typical trades will be in the 2 month forward FX market, Long USD/Short HKD, Long USD/Short Argentine Peso, Long Euro/Short, Danish Krone.

7- The Company's trades will typically have negative carry and will be designed to make \$ for the Company in the event of a global markets crisis. In addition there will be negative carry for the Company on the Loan Interest that it owes vs. the interest on the funds that it holds in the Global Markets Custody Account.

8- The appropriate amount of Equity Capital in the Company will be determined by Global Markets Credit.

9- The holding period / life of the Company will be 45 to 60 days. At the end of this time period, the Company will likely unwind all transactions, repay the loan par amount and premium amount. For tax and accounting purposes, repaying the premium amount will "count" like a loss for tax and accounting purposes.

10- At all times, the loan will maintain collateral of at least 101% to the loan + premium amount. If the amount goes below this limit, the loan will be unwound and the principal + premium repaid.

11- DB will have the right to approve/disapprove all trading activity in the Company. This will allow DB to effectively force the closure of the Company and the repayment of its loan to DB.

12- At no time will DB provide any tax advice to any individuals involved in the transaction. This will be further buttressed by signed disclaimers designed to protect and "hold harmless" DB.

13- DB has received a legal memorandum from Shearman & Sterling which validates our envisaged role in the transaction and sees little or no risk to DB in the trade. Furthermore, opinions have been issued to High Net Worth individual from KPMG Central Tax department and Brown & Wood attesting to the soundness of the transaction from a tax perspective.

WHO IS INVOLVED SO FAR AT DB

 The following people have been working on the transaction. Those from the Global Markets/Private Bank will be responsible for the ongoing running of the trade.

Private Bank	John Rolfes, Presidio Relationship Manager NN to come from DB/Bankers Trust Structured Credit Rick Stockton, Account Manager
Global Markets	Francesco Piovanetti, structured products Nancy Donohue, global market sales
Credit	Steve Cohen, structured credit
Accounting	Rob Arnig, KPMG as advisor to the Bank Linnae Latessa Controlling, <i>for treatment to the bank's capital vis a vis loan principal and premium</i>
Tax	Joe Cassidy, DB NA Tax
Legal	Michelle Cenis , DB Alvin Knott, Shearman & Sterling Gerry Rokoff, Shearman & Sterling

DIVISION OF RESPONSIBILITY

 John Rolfes, Francesco Piovanetti, Nancy Donohue and presently share RM responsibilities for Presidio Advisors in overseeing the BLIPS transaction.

Global Markets will be responsible for:

- Setting up ISDAs for 40 accounts
- Setting up Margin Accounts for 40 accounts
- Pricing the Loan on the US Swap Curve
- Global Markets will book the loans
- Executing and Settling the Interest Rate Swap and FX Trades
- Monitoring Real-Time/Daily, the value of the LLCs vs. Equity Balances

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Private Banking will be responsible for:

Initially Transaction Structuring/Approval Process
Know Your Client for all HNW Names
Account Opening and maintenance of accounts
Relationship Management of the HNW customers to the deal

Approvals received already from the following DB departments/divisions:

Global Markets: Ivor Dunbar, Managing Director, Co-Head Structured Transactions Group

Audit/Accounting: Rob Arning (KPMG Partner in charge of DB Americas audit)

DBNA Tax: Joseph Cassidy, Managing Director and Head of DBNA Tax

DBNA Legal: Michelle Cenis, Responsible for DBNA Legal Structured Products

Formal Approval is expected from DBNA New Products Committee.

2657

From /O=KPMG/OU=US/CN=RECIPIENTS/CN=8668
From: /O=KPMG/OU=US/CN=RECIPIENTS/CN=8668
To: /O=KPMG/OU=US/CN=RECIPIENTS/CN=20499
Subject: Bank representation
Sent: 2000-03-28 21:22:48.336
Date: 2000-03-28 21:22:49.613
X-Folder: Opinions - BLIPS

As we discussed, we should ask whether they will insert "in the ordinary course of business" after the word "approved." While our original places more responsibility on DBank with regard to industry standard, it is not worth the candle to hold them on that item at this point.

Bottom line: Go with the latest version below (3/28 at 3:07 pm). Try to get their agreement to add ordinary course language.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Tuesday, March 28, 2000 3:07 PM
To: Smith, Richard H (WNT)
Subject: FW: Bank representation
Importance: High

The continuing saga. I've pushed really hard for our original language. To say they are resisting is an understatement. S&S has agreed to the following as a compromise. It starts with our original language and incorporates their modification.

The Credit Agreement and associated exhibits contained therein (i.e., the Pledge and Security Agreement and the Account Control Agreement) and the Assignment and Assumption Agreement entered into between Individuals and Deutsche Bank have been approved by the competent authorities within Deutsche Bank as consistent, in the light of all the circumstances such authorities consider relevant, with Deutsche Bank credit and documentation standards which Deutsche Bank believes are consistent with industry standards.

What do you think? If we say OK, they still need general counsel approval (which shouldn't be withheld given outside counsel approval).

Jeff

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, March 27, 2000 10:21 AM
To: Smith, Richard H (WNT)
Subject: FW: Bank representation
Importance: High

Richard -

Thanks for the help. The bank has pushed back again and said they simply will not represent that the large premium loan is consistent with industry standards. They are willing to represent that they believe that their loan

Proprietary Material
Confidentiality Requested

Permanent Subcommittee on Investigations
EXHIBIT #110

KPMG 0025753

approval process, their credit standards and their documentation of these loans is consistent with industry standards. I propose the following which I think I can get them to agree with: "The loans to be made pursuant to the Credit Agreements will have been approved in the ordinary course of business by the competent authorities within Deutsche Bank as consistent, in the light of all the circumstances such authorities consider relevant, with Deutsche Bank credit and documentation standards. We believe the Deutsche Bank loan approval process, credit and documentation standards are consistent with industry standards.

Let me know if have any other ideas.

Jeff

-----Original Message-----

From: Watson, Mark T
Sent: Tuesday, March 21, 2000 12:08 PM
To: Eischeid, Jeffrey A
Cc: Ransome, Justin P; Wiesner, Philip J
Subject: RE: Bank representation

Jeff, I spoke with Phil Wiesner this morning about the subject representation and we both feel that the revised representation is not sufficient. Please revisit the representation with the appropriate individual(s) at Deutsche Bank. A speedy resolution of this issue is obviously important.

-----Original Message-----

From: Eischeid, Jeffrey A
Sent: Monday, March 20, 2000 12:37 PM
To: Watson, Mark T
Cc: Ransome, Justin P; Bickham, Randall S; Napier, Angie
Subject: Bank representation
Importance: High

During the development of BLIPS, the following representation was tentatively discussed and agreed to with Deutsche Bank:

* The Credit Agreement and associated exhibits contained therein (i.e., the Pledge and Security Agreement and the Account Control Agreement) and the Assignment and Assumption Agreement entered into between Individuals and Deutsche Bank are consistent with industry standards.

You might recall that when we drafted the representation, we simply wanted some comfort that the loan was being made in line with conventional lending practices. We obviously now know that to be the case since three different banks made similar loans. In any event, after final review by Shearman & Sterling, they have required the following language be substituted:

(a) The loans to be made pursuant to the Credit Agreements will have been approved by the competent authorities within Deutsche Bank as consistent, in the light of all the circumstances such authorities consider relevant, with Deutsche Bank credit and documentation standards.

Their purpose was to eliminate the undefined term "industry standards". They do not feel they can represent that their loans are consistent with a term that is undefined. They are willing, however, to represent that their loans are made in accordance with their own credit and documentation standards. As one

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of the largest banks in the world, they expect, but don't know, that they loans they make are in accordance with "industry standards".

I'm comfortable with this change. Please revisit the representation with whoever you feel is appropriate within WNT in order to seek their advice as well. A speedy resolution of this issue is obviously important.

Jeff

Proprietary Material
Confidentiality Requested

KPMG 0025755

7-1999 MON 07:23 PM NYPOVEREINSBANK FAX NO. 2126725591 P. 02

Ref./Product Mgr: Pantuch	CRM/ SCRM: Wolf	ZBR-C	Industry/Prod./Region: Thorpe/McVey
Phone: 212-672-5727	Phone: 55399	Phone:	

Corporate Banking Division-Credit Request dated: 9/14/99

Amount in TEUR (Exchange Rate)

Type of Request: New Group Commitment Review Increase/Extension Other Amendment

Approval Authority: Credit

Next Review On:

Capital Credit Positive Acknowledgment of Board Required Supervisory Report Required Copy to RRCY

Group: Presidio Advisory Services	SIC: Customer Since: 1999	Confirms with Credit Policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Qualification See No. 5)
External Ratings: SER: N/A Moody's: N/A KMY (EDF): N/A Other:		

1. Relationship Strategy: Tendencies: Increase Constant Decrease

Group Earnings				<input type="checkbox"/> Workout Credit Exposure <input type="checkbox"/> Country Risk	
Previous Year	Gross	DBI	of that Credit	DBS	ROE
Current (FY/YY)	N/A	ROE			
Projected *	5 mm **	Infinite*			
Applied for	60 days	60 days			

* up to 30.06. current year, from 1.7. following year

Country Rating: Yes No

Comments:

We are seeking an approval to fund four 7 year collateralized premium loans with principal plus premium totaling USD 53.33 million (the "Loans") to four special purpose, single member Delaware LLCs, each of which will be a "Borrower". The proposed transaction was presented to HVB by Presidio Advisory Services ("Presidio") on behalf of male principals and senior management. The transaction involves 4 loans made to four Delaware LLCs in the form of premium loans with aggregate stated Principal Element of \$33.33 mm and a Premium of \$20 mm. The purpose of the Loans is to finance the investment activities of the LLCs, each of which at inception is owned by an individual trust. In the early stages the Loans will be secured by an investment portfolio of money market securities, investments in money market funds and/or USD and EUR, all on deposit with or otherwise under the control of HVB. HVB will earn interest income of USD 400,000 and a one-time custodial fee of USD 50,000. Moreover, HVB Treasury will earn approximately 15 bps on the Stated Principal from the bid-offer spreads on the trades involved in this transaction. We expect this product to be the first in a series with Presidio. ROE on this transaction for the first 60 days will be infinite. For the remaining term of the Loan the ROE will change depending on the nature of the collateral.

In addition to USD 53.33 mm Loan, Presidio is offering to follow up this first deal with a series of similar transactions for non Presidio related individuals. We are seeking approval for a Platford of an additional USD 350 mm to fund these additional deals under the same terms and conditions. We are requesting that SRM Americas be authorized to approve each individual deal under the Platford.

Pursuant to our collateral formulas, the net exposure, after hedges, should never exceed our collateral.

2. Credit Exposure / Collateral: HypoVerenbank AG HVB-Group Platford (incl. approved credit limit of sub.)

	Repayment Risk Incl. Guarantee, Bilis of Exch., Direct Bilis	+ Replace-ment Risk	+ Insur Risk*	+ (Other Risk)	Total Credit Exposure	Correction Credit Exposure	Credit Exposure (Approval Limit I)	Not Covered Risk Portion	Settlement Risk = Credit Exposure (Approval Limit II)
Limit (K) /	\$ 53m	\$22m			\$ 75m		\$ 75m		\$ 93m
Platford (P)	\$ 950m	\$323m			\$1273m		\$1273m		\$1307m
Thereof: New	\$1003m	\$345m			\$1348m		\$1348m		\$1400m
Thereof: Tenor > 1 Year	\$1003m	\$345m							
Customer Group Indebtedness (Bil): Dated:					Total / Number of Bilis: Thereof HVB				
Thereof: New					Total / Number of Bilis: Thereof HVB				
* exclude if global limits applicable.					HypoVerenbank Group Risk (Total): \$ 1348m				

HVB 000147

Permanent Subcommittee on Investigations
EXHIBIT #111

3. Background (Counterparty / Purpose of Transaction):

Presidio Advisory Services is an investment advisory company whose principals are former KPMG employees. It creates investment products, which it markets through KPMG's network to high net worth individuals. HVB has been approached by Presidio to make the sales of 7-year premium term loans named above to the investment vehicles of individuals interested in investing in Presidio's products. These loans will be used as leverage for the investment strategy and will be fully collateralized by EUR or USD deposits with HVB and other high quality, short-term debt instruments in our custody.

HVB will earn a very attractive return if the deal runs to term. If, however, the advances are prepaid within 60 days (and there is a reasonable prospect that they will be), HVB will earn a return of 2.84% p.a. on the average balance of funds advanced. And, given the fact that our collateral will most likely be cash deposits at least through the early stages of the transaction, we enjoy the possibility of earning an infinite ROE on these loans (USD 3 mm before year end).

4. Analysis for the Group :

Method: Rating for International Rating for Corporate Customer

Financial Condition		Method: Rating for International Rating for Corporate Customer			
Amount in		%	%	%	%
Total Net Sales	N/A				
EBITDA	N/A				
Net Profit	N/A				
Total Liabilities	N/A				
Total Net Worth	N/A				
Total Assets	N/A				
EBITDA / (Tot. Inv. + CHLTD)	N/A				
Cash after Operations	N/A				
Cash after Cap. Exp./Investments	N/A				
Debt/EBITDA	N/A				
Debt/Capitalization	N/A				

Assessment: ---

Industry/Peer Analysis

N/A

Management Assessment:

Principal:	Principal:	Principal:	Contacts:
John M. Larson	David Amir Makov	Robert A. Pfaff	

— From 1997 to 1999, Mr. Larson has been a Managing Director of Presidio Advisory Services, a San Francisco based investment advisory firm. From 1985 to 1997, Mr. Larson was a CPA for KPMG.
 — From 1997 to 1999, Mr. Pfaff has been a Managing Director of Presidio Advisory Services, a San Francisco based investment advisory firm. From 1985 to 1997, Mr. Pfaff was a CPA for KPMG.
 — From 1997 to 1999, Mr. Makov has been a Managing Director of Presidio Advisory Services, a San Francisco based investment advisory firm. From 1997 to 1999, Mr. Makov has been a co-founder/co-manager of a USD 150mm private investment fund. From 1996 to 1997, Mr. Makov served as Director and Senior Hedge Fund Originator of the Global Private Capital Group of Deutsche Morgan Grenfell. Prior to that, he was a Vice President at Merrill Lynch in the Industry Specialist Group. Prior to that, Mr. Makov was a trader and a portfolio manager at Long Term Capital Management.
 Mr. Pfaff has been known personally to FNE for 8 years. Mr. Larson has been known personally for 5 years. In 1997 and 1998 HVB concluded 5 transactions with Messrs. Pfaff and Larson. All was concluded successfully. We have the highest regard for both gentlemen.

2663

SEP-27-1999 MON 07:25 PM HYPOVEREINSBANK

FAX NO. 2126725591

07:11 66.02 JES

P. 06

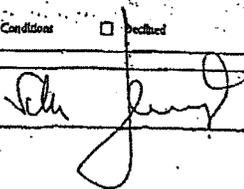
a Covenants/Other Conditions	Deadline	Responsible Unit
Covenants: <ul style="list-style-type: none"> No consolidation, merger, sale of assets except pursuant to our agreements No liens except in favor of HVB No indebtedness except to bank with minor exceptions Events of Default: <ul style="list-style-type: none"> Standard boilerplate Material Adverse Change Violation of 101.25% Collateral Value Ratio 		
b Conditions of Previous Approval not Complied with	Deadline	Responsible Unit


Richard Pankuch

6. Decision:

Approved by Requested Approved with Conditions Declined
Remarks / Conditions of the Approval Authority:

Date: Sept. 30, 1999

HVB 000150

27. Sep. 1999 19:17

HYPOVEREINSBANK LON
HYPOVEREINSBANK LON

No. 7893 P. 2

FRM 13 Thorpe
(discussed with FRM 4/Ted Wolf)
27 Sept. 1999

Stellungnahme - based on draft application.
"Presidio Advisory Services" Transaction

Specific Transaction USD 75 mio.

- The transaction is collateralised 101.25% by liquid assets (min. AA) no more than 90 days from maturity. Anticipated to be HVB deposits or G7 government paper.
- Structure requires a swap which accrues a premium payable (to HVB) at maturity in order to service the loan plus premium and amortise the premium. i.e. HVB is funding the amortisation of the loan premium via the accruing swap premium. The collateral must cover both positions at all times including break costs. Documentation must allow for appropriate payments between the parties in case the borrowers exercise their right of prepayment.
- The investment strategy requires the borrowers to take short FX positions. Our collateral is not sized to cover claims resulting from losses on these positions. HVB should hedge these risks for its own account. Losses from these positions could theoretically cause the borrowers to be insolvent.
- A written memorandum should be exchanged between DDM and FKD summarising responsibilities for all risk issues.
- The mechanism for valuing and monitoring the collateral is not described. This must be established and agreed with RCO/FRM 4 before committing.
- The mechanism for valuing and monitoring HVB total exposure must be agreed with RCO before committing. (Our ability to net between HVB entities where needed must be clearly established.)
- A zero regulatory capital weighting should only be applied with the agreement of KRC (Dr. Hinze) due to the definition of permitted investments.
- HVB accounting treatment for the interest received should be agreed with KRC to ensure that the loan premium (principal) can be correctly amortised by part of the interest (income) without creating a problem.
- All settlements should be on a net basis or covered by available collateral.
- The application does not anticipate stage III of the investment period. We must be certain that we have rights sufficient to avoid extension in this stage. The terms of any extension must be submitted for credit approval.

Platform USD 1273 mio

- This could involve some 18 transactions to be closed by 15 Oct. 1999. Although the documentation is standardised HVB has no previous experience with these documents. The capacity of HVB NY to complete this task to the required professional standard should be checked by Senior Management N.Y. and if needed the number of transactions reduced.
- This structure has been presented to HVB and reviewed over a short time frame. The deadlines do not allow for a pilot deal together with the usual learning process. The risk of a systemic error is therefore higher. We rely on the experience of Presidio/KPMG and Deutsche Bank to a material degree.

Conclusion

FRM 13 supports the specific transaction subject to the above recommendations and the agreement of FRM 4 (SRM Americas).

The systemic risk and capacity issues arise in the context of the Platform amount (and deal number) and the timescale. As the timescale cannot be changed a reduction in number of deals should be considered. We suggest two deals per experienced HVB professional (i.e.6) subject to individual approval by FRM 4.

Thorpe
FRM 13 27.09.99

HYB 000151

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P. 07

Credit Request

Delaware LLCs

September 17, 1999

1. Proposal:

HVB Structured Finance seeks approval to fund four 7 year collateralized premium loans with principal plus premium totaling USD 53.33 million (the "Loans") to four special purpose, single member Delaware LLCs, each of which will be a "Borrower". The proposed transaction was presented to HVB by Presidio Advisory Services ("Presidio"), a specialized advisory boutique operated by former KPMG partners, and focusing on high net worth individuals. It was developed in conjunction with Presidio's advisors KPMG and Shearman & Sterling.

The purpose of the Loans is to finance the investment activities of the four Delaware LLCs, each of which at inception is owned by an individual trust. In the early stages the Loans will be secured by an investment portfolio of money market securities, investments in money market funds and/or USD and EUR or other major currencies, all on deposit with or otherwise under the control of HVB. If the transaction runs until maturity, HVB will earn a return equal to 0.83% p.a. on the average balance of funds advanced. If the LLCs prepay prior to the sixty-day anniversary of the Borrowing Date, we will receive breakage fee such that the return to HVB will be at least 2.84% p.a. on the average balance of funds advanced. Given the likelihood that all amounts owing will be fully cash collateralized, capital allocation is based on 0% risk assets, making the ROE on this transaction infinite for the first 60 days. The total return in dollars on the Pfand amount would be USD 5 mm. In addition, we expect our Treasury Department to earn an additional profit of roughly 15 bps on the Stated Principal on the bid-offer spread on trades made through them by the LLCs. Earnings potential for the Treasury may be as high as 0.1% on total funds advanced.

2. Transaction Summary:

Four individual trusts form four respective Delaware LLCs. HVB provides 7 year, 17.8% premium Loans* to four Delaware LLCs. These Loans have an aggregate face amount of USD 33.33 mm. The premium will be USD 20 mm. HVB will advance both the Loan Face Amount and the Premium to each respective Borrower.

For the first several days Delaware LLCs will invest the proceeds of the Loans in money market instruments, money market funds or HVB paper or HVB deposits through HVB or one of its affiliates. No active investing activities will take place in that period of time.

* A premium loan is a loan bearing an above market rate of interest. Its premium is the net present value of the difference between the loan rate and the market rate.

HVB 000152

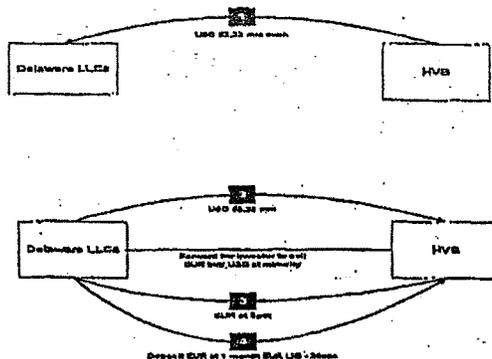
Cash Report
Delaware LLC
September 26, 1999

At the same time, the individual trusts will invest the following amounts in the respective Delaware LLCs:

Individual Trust	Cash investment	Delaware LLCs
D. Amir Makov Revocable Trust	\$468,000	Makov LLC
JL Capital Trust	\$466,000	Larsen LLC
RP Capital Trust	\$233,000	Pfaff LLC
Pointe du Hoc Irrevocable Trust	\$233,000	du Hoc LLC
	<u>\$1,398,000</u>	

After capitalizing an LLC, each trust will contribute its entire investment in its respective LLC to Hayes Street Management Inc., a newly formed, single purpose company established to manage the investments of the LLCs ("HSMI"). In return for a pro rata interest in HSMI, in this manner our four individual loans will remain with their respective LLC's throughout the transaction.

Delaware LLCs will convert the Loan proceeds of USD \$3.33 to EUR at the spot rate and deposit them with HVB at 1 month EUR LIBOR minus 25bps. Delaware LLCs will enter a forward agreement with HVB to sell EUR and buy USD in 2 months. Each separate LLC will open and maintain separate accounts with HVB or one of its affiliates through which all funds will flow and in which all collateral will be held. HSMI will then use the aggregate amount of USD \$4.7 mm to trade on behalf of the LLC's through HVB.



2
HVB 000153

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P. 09

Client Request
Lobvorn LLC
September 24, 1999

The Investment

HSMI will essentially act as the funds manager for the LLCs. Its objective is to generate profits through strategic investments in emerging market currencies. The primary strategy is based upon selectively selling overvalued emerging market currencies. It seeks to obtain high risk-adjusted returns by exploiting opportunities to short currencies that are under unsustainable managed currency regimes. As outlined in the Offering Memorandum, the Investment Strategy will be executed in three distinct stages over a seven-year period. Participation in the successive stages affords the investor the potential for higher levels of expected profitability with increasing levels of associated investment risk. At the end of each stage (or at any other time with notice), the investor has the option of continuing to the next stage or terminating his participation in the Fund. Additional investment capital is required if the investor wishes to continue to each successive stage. The investment stages commence after the LLCs have been transferred to HSMI.

Stage I - Investment cycle is 60 days with investments in relatively low risk financial instruments. Short positions in foreign currencies that are pegged to USD will be established. The investment manager intends to short the equivalent of USD 20 mm in HKD (USD 13 mm notional) and ARS (USD 7 mm notional) 2 months forward with HVB. There will be a cost of carry for these positions since interest rates in these two currencies are higher than USD. HSMI will invest the whole USD 53.33 mm in EUR at 1 month EUR LIBOR minus 25 bps hedged back into USD.

Stage II - Investment cycle is 120 days with a similar investment strategy as that of Stage I but utilizing higher notional amounts in the short positions.

Stage III - Investment cycle is 6.5 years with higher notional amount in the short positions than Stage II and additional investments in other permitted instruments.

During the life of the investment, the entire investment portfolio will be pledged as collateral for the loans and premium. The Loan Agreement will stipulate an overcollateralization trigger of 101.25%. If the risk-adjusted value of the collateral, as determined by HVB, falls below 101.25% of the value of the Loans, HVB will have a right to accelerate the Loans without prior notice. In addition, for all of the trades, HVB Treasury will act as the trading counter-party and deposit taker.

The Loans and the investment are structured to minimize the LLCs' overall interest rate risk. The sensitivity of a premium loan to interest rate fluctuation is higher in the beginning of the loan term. As the premium amount amortizes overtime, the sensitivity of the loan decreases. This feature of the premium loan will allow the LLCs to match interest rate sensitivity of their asset portfolios (which are designed to have low interest rate sensitivity in the early stages and higher sensitivity later) to that of the Loans.

3. Terms and conditions of the Loans:

The Loans made to the Borrowers is proposed to be in the form of premium loans having an aggregate stated Principal Element of \$33.33 mm and a Premium of \$20 mm. The Loan interest rate is approximately 17.8% p.a. payable quarterly (specific rate to be set at closing) and the maturity is 7 years. Borrowers have options to prepay the Loans at any time subject to appropriate prepayment penalties and breakage costs. HVB will earn an Interest Rate of 17.8% p.a. plus a margin of 1.20 % p.a. on the Stated Principal payable quarterly. In addition, HVB will charge a one time custodial fee of 0.15% on the Stated Principal for maintaining accounts with the LLCs. The 1.20% margin on the Stated Principal is economically equivalent to 0.63% p.a. margin on the average outstanding balance of the total funds advanced (loan principal plus premium). If the LLCs prepay prior to the six-month anniversary of the Borrowing Date, they will pay a breakage fee of 1.20% of the Stated Principal adjusted for the days from prepayment to six-month anniversary. If the LLCs prepay any day prior to the six-month anniversary of the

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P. 10

Credit Request
Delaware LLC
September 24, 1999

Borrowing Data, HVB in total will earn USD 250,000. Below is the grid describing the benefit to the HVB under various scenarios:

	No Prepayment Year 2-7	No Prepayment Year 1	Prepaid on 60th day
Custodial Fee, 15 bps of Stated Principal	\$ -	50,000	50,000
Margin, 1.2 %	400,000	400,000	68,667
Breakage Fee 1.2%*Principal*(180- Prepayment Days)/360	\$ -	\$ -	133,333
Total Benefit	400,000	450,000	250,000
Overall Return as % of average overall balance, p.a.	0.93%	1.05%	2.84%

The loan will be non-recourse to each of the individual investors. It will have recourse only to the assets of the LLCs. HVB will have a perfected security interest on all collateral. The Investment Portfolio will consist of Permitted Investments (See Attachment 1).

4. Tax attributes to the investors:

Investors have represented that they expect to profit from their investment in the Investment Fund and can enhance profit potential by leveraging their investments, hence the Loans from HVB. For reasons described above, namely to match investment risk with financing risk, the Loans have been structured as "Premium" loans. The nature of these loans can also result in certain tax attributes to the investors. At the time the individual trusts assign the LLCs (along with the Loan proceeds and equity contribution) to HSMI, a cost basis (for U.S. tax purposes) in HSMI is established.

In the event the Investments do not generate a significant return, the investors might elect to terminate their investments and liquidate the LLCs. Upon liquidation of the LLCs, a capital loss for U.S. federal income tax purposes is generated. This deduction can be used to offset other capital gains of the investors.

5. Risk Assessment:

- HVB's collateral pools, which include all investments and/or supporting cash deposits, decrease in value.

We are protected in our documentation through a minimum overcollateralization ratio of 1.0125 to 1 at all times. Violation of this ratio triggers immediate acceleration under the loan agreements without notice.

The Permitted Investments (See Attachment 1) included in our agreements are either extremely conservative in nature with little exposure to interest rate risk (maximum 90 day term) or have no collateral value for margin purposes (interest rate swaps and options). These Permitted Investments are those contemplated by the investment manager during Phases I and II of the program. Phase III anticipates a much more aggressive mix of investments (yet to be determined) which, however, would require our agreement to amend our loan documents to permit additional investments, which means that we would have an option to exit the transaction.

4

HVB 000155

SEP 27 1999

HYPOVEREINSBANK SRM SPECIAL FROD

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Credit Request
Delaware LLC
September 26, 1999

As a practical matter, all of the risk investments will be hedged either by, or through, HVB. The Delaware LLCs will enter forward agreements with HVB to sell EUR and buy USD two months forward to hedge its EUR deposits. HVB Treasury will assume responsibility for hedging the HKD and ARS positions into which it enters with the LLCs.

• Interest rate risk associated with prepayment of the loan.

The risk arises because the investments made by the LLCs are floating rate and their loan repayment obligation is fixed rate. To hedge the interest rate basis mismatch, LLCs will enter into interest rate swaps with HVB Treasury. LLCs will receive 17.55% on \$ 33.33 mm notional and will pay 1 month LIBOR on \$ 53.33 mm notional to HVB. On maturity date (7 years later), LLCs will also pay HVB \$20 mm, so both coupon and principal payments are matched. (See Attachment 3) The swap is designed such that, as the end result of all cash flows on the loan and the swap, HVB receives LIBOR (without the margin) on USD 63.33 mm for each of the 7 years. At the end of the loan HVB will receive USD 33.33 mm loan principal and USD 20 mm swap settlement. If the loan is prepaid and the swap is terminated at the same time, the algebraic sum of loan prepayment amount, swap termination payment and swap additional amount, if any, will equal the amount advanced.

• Bankruptcy of LLCs due to a failed investment strategy/inadequate cash flow

The likelihood of a bankruptcy for any reason other than a failed investment strategy is extremely remote. The LLCs will be single purpose companies and their activities will be limited to the investment strategies contemplated by our agreements. Debt other than that owing to us will be prohibited. We will have a perfected security interest in all collateral.

Furthermore, all collateral will be in possession of the bank. Thus we will have perfected our position through both filings and physical possession.

• Disallowance of tax attributes.

A review by the IRS could potentially result in a ruling that would disallow the structure. In addition, the IRS could possibly amend provisions of the tax code and disallow benefits recognized by the structure or the tax law itself could be changed. We are confident that none of the foregoing would affect the bank or its position in any meaningful way for the following reasons:

1. Disallowance: KPMG has issued an opinion that the structure will most likely be upheld, even if challenged by the IRS. Its opinion is based upon existing case law and provisions of the US Internal Revenue Code. The structure offers the opportunity for investors to make substantial profits over the life of the transaction through the use of a loan structure designed to fit the investment strategy.
2. Tax code amendment or change in law: It is highly unlikely that either would result in a retroactive effect on these transactions. There have been no legislative proposals or draft regulations that might endanger the structure retroactively.

Therefore, it is not likely that the transaction could be challenged successfully.

• Operational Risks

5
HVB 000156

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Credit Request
Dikeware LLC
September 24, 1999

A number of departments in HVB Americas will be involved in various aspects of this transaction. These include:

Risk Management, Loan Servicing, Treasury and others

We have spoken to each department (or will have done so prior to closing) and each has agreed that it is capable of fulfilling its responsibilities with respect to this deal. Furthermore, during the closing stage, approximately 4 KPMG staff will be stationed in the bank to assist us with closing and booking issues. SRM Americas will be satisfied that all operational issues have been resolved prior to closing each transaction.

- **Due Diligence**
HVB will accumulate substantial "Know Your Customer" background information on each investor to ensure both his/her financial sophistication and that our structure is not being used for illegal purposes.

6. Credit References

We contacted Deutsche Bank, which is in the process of closing several billion dollars of transactions similar to the one presented here. As of September 24, they had closed USD 1.8 billion in advances. The Deutsche Bank representative stated that they have been doing business with Presidio for approximately three years and have closed approximately USD 7 billion in transactions to date. The experience has been excellent and they have the highest regard for Presidio's principals.

7. Flow of funds:

Individual trusts make investments into newly created Delaware LLCs as described in Table 1. This group of Delaware LLCs obtains a USD 53.33mm loan from HVB. The trusts assign the respective LLCs with USD 54.7 mm to HSMI that trades on their behalf through HVB.

8. Conclusion:

Approval to fund the Loan to the Borrowers is requested based on the following factors:

- **Extremely Low Credit Risk**
First, there is a security interest, in the form of low risk collateral that will protect HVB from the credit risk. The security will consist of only very highly rated instruments. In addition, the collateral will be in accounts with HVB "perfecting" our security interest. Second, the Delaware LLCs are special purpose vehicles created for this particular transaction and do not have any other meaningful creditors including the US Government that can raise claims to their assets in case of bankruptcy filing.
- **Extremely low capital charge**
Given the likelihood that all amounts owing will be fully cash collateralized, capital allocation is based on 0% risk assets, making the ROE on this transaction infinite for the first 60 days. In case, the collateral ratio of 1.0125 to 1 is violated at any time, HVB can terminate the transaction without notice.
- **Better than average returns for loans of this credit rating (2)**
HVB will earn an Interest Rate of 17.8% p.a. plus a margin of 1.20% p.a. (\$400,000) on the Stated Principal payable quarterly. If the LLCs prepay prior to the sixty-day anniversary of the Borrowing Date, they will pay a breakage fee such that the return to HVB will be at least 2.84% p.a. of the average balance of funds advanced.

6

HVB 000157

SEP 27 1999

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P. 13

Credit Request
Debtors LLC
September 26, 1999

In addition, approval for the following FX/swap lines with the Borrowers is also requested.

1. USD interest rate swap: 7 years. HVB pays fixed on USD 33.33 mm notional and receives floating 1 month LIBOR on USD 53.33 mm notional and USD 20 mm at maturity.
2. Spot FX USD/EUR for USD 53.33 mm and 3 month FX Forward USD/EUR for USD 53.33/mm.
3. 3 month FX Forward (combination of USD/HKD and USD/ARS) - net cash settle in USD for USD 53.33 mm.



Financial Engineering Department



Financial Engineering Department



Senior Credit Risk Manager

HVB 000158

SEP 27 1999 07:27 PM

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Attachment 1

Permitted Investments:

(a) any of the following denominated in Dollars: (i) time deposits of HypoVereinsbank (or any of its Affiliates) with maturities of 90 days or less or other low risk investments in instruments offered by HVB or its affiliates

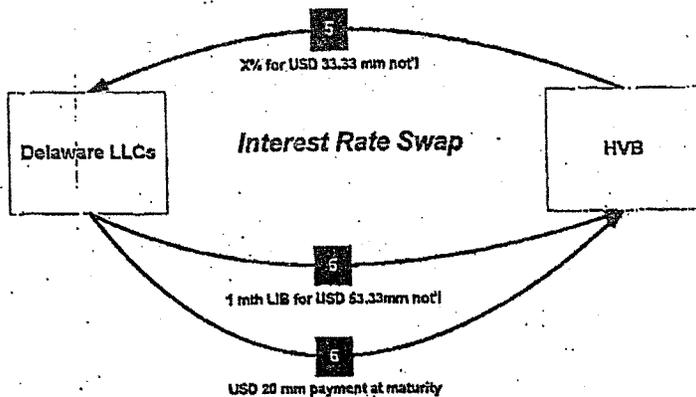
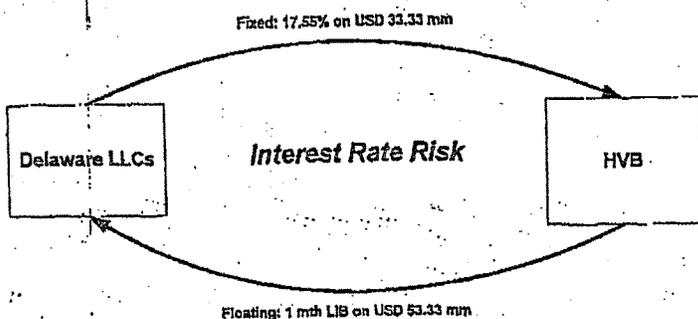
(b) fixed income securities purchased with remaining maturities of 90 days or less issued by any governmental or corporate issuer, the outstanding long or short term unsecured debt of which is rated in one of the two highest rating categories by an internationally recognized statistical rating organization, if such fixed income securities are (i) denominated in Dollars or (ii) denominated in Euros (or in the currency of any of the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany, the Republic of France, Japan, Canada and Italy).

(c) any (i) interest rate swap transactions and (ii) interest rate options that are entered into with HypoVereinsbank (or any of its Affiliates) as the counterparty requiring settlement not later than the Maturity Date.

(d) foreign currency spot, forward or option transactions entered into with HypoVereinsbank (or any of its Affiliates) as the counterparty requiring settlement in not more than six months for Dollars or Euros with respect to (i) the currencies listed in clause (b)(ii) above, and (ii) the following additional currencies: Hong Kong dollar, Argentine Peso, Egyptian dollar, Saudi Riyal and Danish Krone.

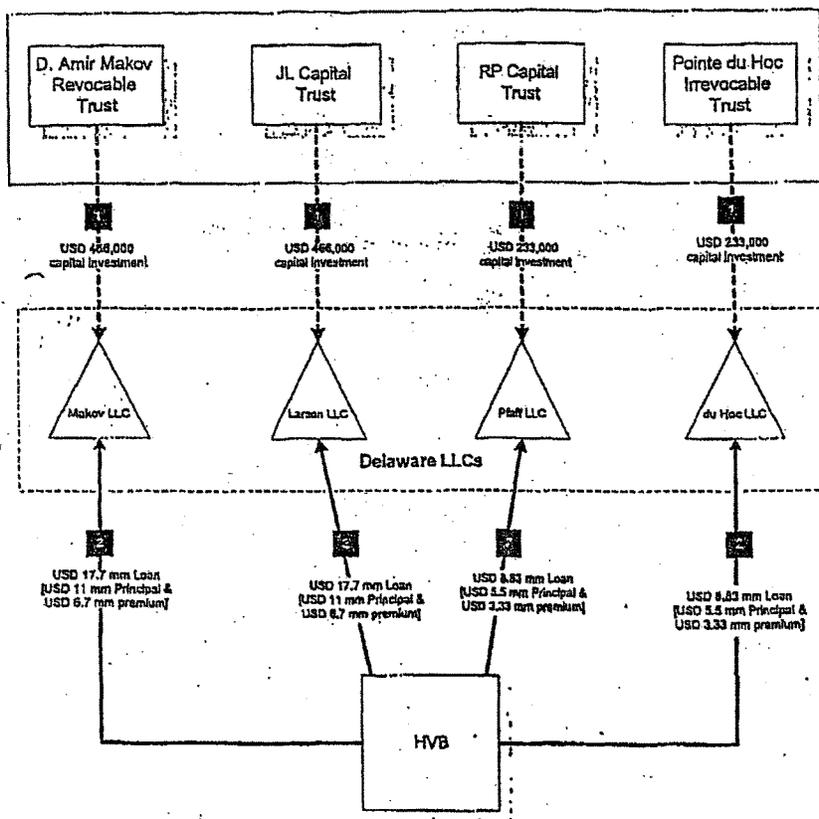
HVB.000159

Attachment 2



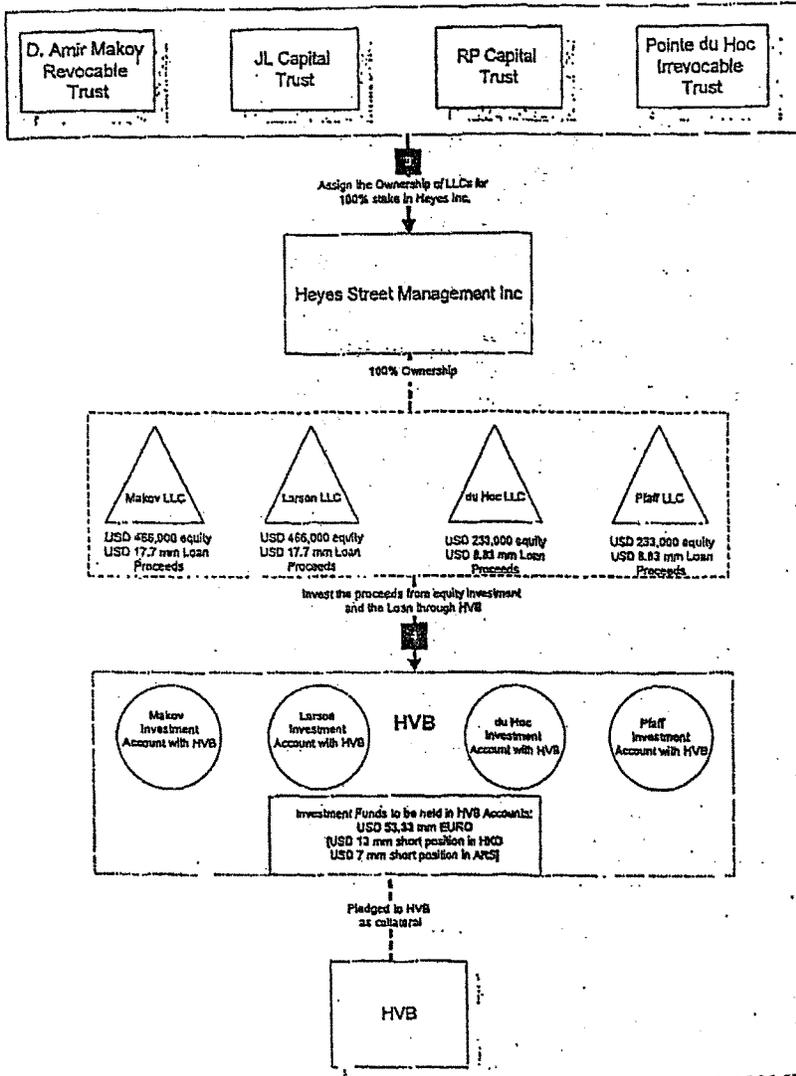
HVB 000160

Attachment 3



HVB 000161

Attachment 4



HVB 000162

Attachment 5

Plafond Structure

The Plafond structure differs in several respects from the specific structure presented here for approval, however, the risks (financial/collateral monitoring, operational) remain virtually identical. The significant differences are:

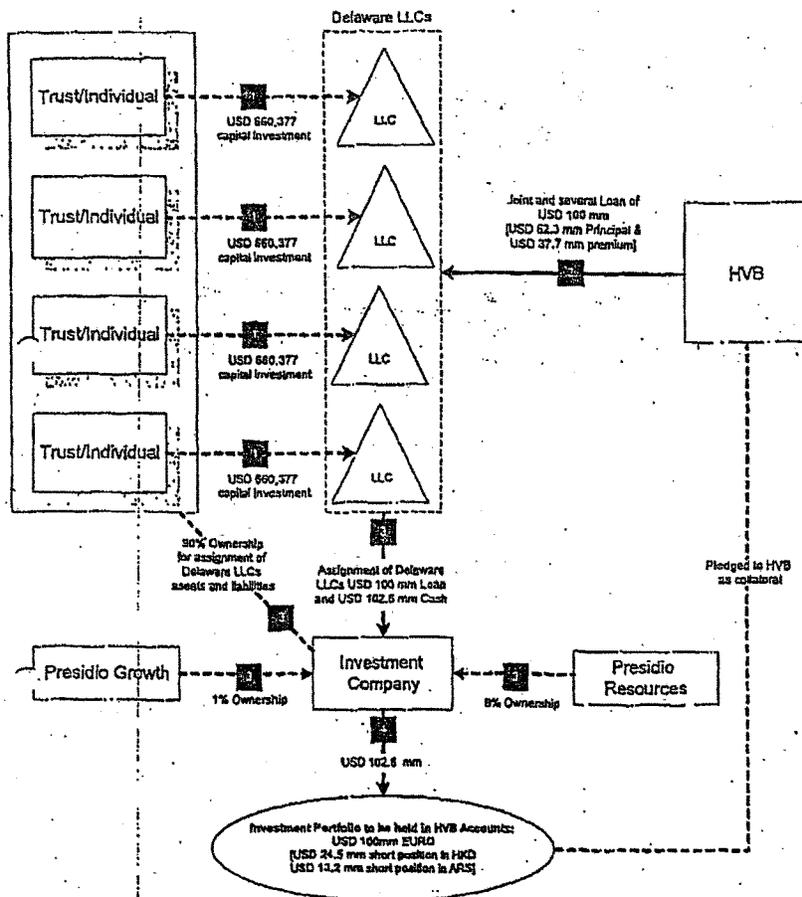
- 1. HVB will make a single, joint and several bank loan, to the LLCs.
- 2. Instead of transferring ownership of the LLCs to the Investment Company, the Investors/Trusts will cause the LLCs to transfer their assets and our bank loan to the Investment Company in exchange for a membership interest in the Investment Company.
- 3. To entities related to Presidio, Presidio Growth and Presidio Resources, will hold a combined 10% interest in the Investment Company.
- 4. The Investment Company itself, rather than individual LLCs, will then enter into the respective hedges and swaps with HVB; i.e. one set of trades per transaction.

Under U.S. Law, once the Investment Company assumes the loan on a non-recourse basis, we have effectively a new loan to the Investment Company secured by its assets.

We have reviewed this structure with counsel. They believe it is sound from a risk perspective.

HVB 000163

Platform Structure Assuming USD 100 mm Advance by HVB



1. Each trust or individual forms and capitalizes a single-member Delaware LLC
2. HVB provides a Joint and Several Loan of USD mm to the LLCs
3. LLCs assign their assets and liabilities to Hayes Street Management Inc. (HSM)
 Trusts/Individuals that own the LLCs receive 90% Ownership in HSM
 Presidio Growth and Presidio Resources will have 1% and 8% ownership interest in HSM respectively
4. HSM will invest the proceeds in Investment Portfolio to be held in HVB accounts

HVB 000164

KPMG Peat Marwick LLP

707 Seventeenth Street
Suite 2300
Denver, CO 80202

Telephone (303) 296-2323
Fax (303) 295-8839

Date March 13, 1998 Page 1 of 5
To Jeff Stein
Organization KPMG - New York
Fax (212) 872-6837
Sandy Smith
KPMG - Houston
(713) 319-2102
From Robert D. Simon
Department International Services
Tel (303) 382-7607
Fax (303) 382-7457
Subject OPIS

Jeff,

Sandy asked me to fix you any memos I had on the new product. The attached went to the entire working group (Pfaff, Ritchie, R. J. Ruble of Brown & Wood, Bickham, and Larson). I believe that the OPIS product ("Son of FLIP") is a stripped down version of the LLC (partnership) structure. As I mentioned to you, the draft opinion that formed the basis for the OPIS opinion was drafted by John Harris (and run through an international contract). I have cc:mailed you a copy of John's earlier draft.

As you may know, the research on some of the real troublesome issues with respect to the product was done in large measure by John Harris (through an international contract), Margaret Lukers (IS), and myself. These issues included (i) whether U.S. investor's interest in the Cayman entity was disguised equity, (ii) the at risk rules, and (iii) the basis of shares held by U.S. investor.

Regards,
Bob

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KPMG 0010262

Permanent Subcommittee on Investigations
EXHIBIT #112

2679

Ken Tarr To: John Rolles/NewYork/DBNA/DeuBa@DBNA
cc: paul.w.higgins@db.com
Subject: Re: BLIPS
Sent: 10/13/1999 01:02 PM

Hello John,
Let's try to clear this up so we can move forward. Thx.
KJT

----- Forwarded by Ken Tarr on 10/13/99 12:01 PM -----

From: Peter Sturzinger on 10/13/99 12:40 PM
To: Ken Tarr
cc: paul.w.higgins@db.com; kenneth.mcglain@db.com; allan.cuttle@db.com; Michael Lowengrub
Subject: Re: BLIPS

The following is an extract from the minutes of the Management Committee Meeting of August 4, 1999.

Deutsche Bank Private Banking, Management Committee Meeting

Wednesday, August 4, 1999

Present: Kenneth J. Tarr (Chairman)
Michel J. Baresich
Paul W. Higgins
Michael C. Lowengrub
Peter K. Scaturro
H. Peter Sturzinger (minutes)
Nicolai von Engelhardt (by phone)

Guest: Leo Grohowski

Absent: Jeanne Kausch
Kenneth J. McGlaln

1. BLIPS Product

PKS reports that a meeting with John Ross was held on August 3, 1999 in order to discuss the BLIPS product. PKS represented PB Management's views on reputational risk and client suitability. John Ross approved the product, however insisted that any customer found to be in litigation be excluded from the product, the product be limited to 25 customers and that a low profile be kept on these transactions. PB will execute the white glove treatment and KYC. John Ross also requested to be kept informed of future transactions of a similar nature. The volume is now expected to come in at USD 4.5bn resulting in revenues to the bank of approx. USD 30MM. PB's share would amount to approx. USD 5MM. KJT suggests that the 25 customers be selected from different geographic areas. PKS will ensure that written agreements be prepared.

H. Peter Sturzinger

Permanent Subcommittee on Investigations

EXHIBIT #113

DB BLIPS 6520

2680

revenues to the bank of approx. USD 30MM. PB's share would amount to approx. USD 5MM. KJT suggests that the 25 customers be selected from different geographic areas. PKS will ensure that written agreements be prepared.

H. Peter Sturzinger
Deutsche Bank Private Banking, New York
Telephone (212) 469-2977

----- Message History -----

From: Ken Tarr on 10/13/99 10:42 AM
To: John Rolfes/NewYork/DBNA/DeuBa@DBNA
cc: paul.w.higgins@db.com; kenneth.mcgoirn@db.com; allan.cuttie@db.com; Peter Sturzinger/NewYork/DBNA/DeuBa@DBNA
Subject: BLIPS

John,
I have not received any confirmation from you or anybody else that John Ross has approved an increase in the number of Blips transactions that could be booked. Please follow-up immediately on this since we had been limited to 25 (I have asked Peter Sturzinger to research the various minutes to confirm what was our understanding).
KJT

----- Forwarded by Ken Tarr on 10/13/99 10:38 AM -----

From: allan.cuttie@db.com on 10/12/99 11:33 PM GMT
To: John Rolfes
cc: paul.w.higgins@db.com; Ken Tarr; kenneth.mcgoirn@db.com; Alice Masters; Marius Marijosius
Subject: BLIPS

John,

Just to confirm our conversation from this morning, you are going to pull together a full set of KYC's as well as all the related disclosure documentation for each of the deals done to date and forward them to my attention. I would also like to obtain the same for all the remaining deals as they are completed.....

Also, something we did not discuss today, but think would be a good idea to solidify the review process around these types of transactions and just in case Audit or the Regulators come asking. Going forward, (for the remaining deals) please supply Alice Masters with a copy of the signed client disclosures when submitting the KYC for her approval...

If you should have questions give me a call

Thanks and regards,

Allan

DB BLIPS 6521

**New Product Committee Overview Memo:
BLIPS Transaction**

This product has been developed with KPMG and Presidio Advisors. In simple terms, for the Blips project, Deutsche Bank will act as lender, transaction executor, foreign exchange trader, and Know Your Customer Screener. KPMG will distribute the product to its clients. Presidio has structured the product and will act as the investment advisor.

Presidio Advisors

There are 3 main partners at Presidio

Robert Pfaff
John Larson
Amir Makov

Bob and John built their careers at KPMG as tax attorneys and members of the 6,000 person tax accounting group. Amir was recently at Sentinel Advisors (Hedge Fund Company), where he was a client of Deutsche Bank Global Markets.

Amir left Sentinel to join Presidio in early 1999. Amir's original connection to Presidio was made through David Kelley and Roberto Marsella, formerly heads of the Deutsche Bank Structured Transactions Group. Kelley and Marsella will play no role in the Blips transaction.

Presidio is a well-known client to DB in the Private Bank, Structured Transactions Group and the Equity Derivatives Group (Frankfurt).

Presidio, in conjunction with ICA, has developed a new product called BLIPS. BLIPS will be marketed to client end users through KPMG mainly by John Larson and KPMG's high net worth advisory practice. Amir Makov will take responsibility for executing and managing the capital market transactions for BLIPS.

BLIPS TRANSACTION

BLIPS will be marketed to High Net Worth Individual Clients of KPMG.

It is envisioned that BLIPS will be a large program, covering over a 6 month period of time over 40 separate accounts / counterparties.

Loan Balances over time could be as large as \$5 billion in par amounts + \$3 bn. in premium. Fees to DB are estimated to be in the 1.25% of premium range (\$30+ mmm usd).

If DB proceeds with the BLIPS program, it will involve the following:

1- HNW Individuals will be introduced to the DB Private Bank by Presidio/KPMG for Know Your Client Review.

2- The "LLC" (HNW Individual is the single member of a Delaware LLC) will receive a nominal 7 year loan from the DB Private Bank. The Loan will be a high coupon loan (16%) and the loan amount will be delivered to the HNW Individual in the form of a par amount (100) and a premium amount (estimated at 60). The loan/premium amounts will be priced by Global Markets off the US Interest Rate Swap Curve.

For tax and accounting purposes the Loan Liability for the LLC/HNW Individual will be the par amount only (100), not the premium. The LLC will also be obligated for the above market interest rate for the term of the loan. The Loan Proceeds (Par + Premium) will be held in custody in a DB Pledged Account in cash or near cash. Loan will include a prepayment clause with provisions to require repayment of unamortized premium in addition to principal. Loan conditions will be such as to enable DB to, in effect, force (p)repayment after 60 days at its option.

3- After a 7 to 10 day holding period, the LLC will transfer all Loan Proceeds to a Company/Partnership ("Company"). The Company will also have 3% of par amount Equity Capital contributed by the HNW Individual and an additional .3% Equity Capital contributed by the Manager of the Company, Presidio. (in our example here the Company will have 100 Par amount + 60 mm Premium + 3 mm HNW Equity Capital + .3 mm Presidio Equity Capital for a total of 163.3 mm USD). The entire amount of funds in the Company will be held in custody at a DB Global Markets Margin Account.

4- Monitoring of the Collateral will be handled by the Global Markets group. as it will be executing all transactions on behalf of the Company. Presidio will act as the Investment Adviser to the Company.

5- The Company will enter into an Interest Rate Swap to convert its Loan Liability from Fixed into Floating.

6- The Company will enter into a series of FX transactions, all approved by DB and all executed by DB. Typical trades will be in the 2 month forward FX market, Long USD/Short HKD, Long USD/Short Argentine Peso, Long Euro/Short, Danish Krone.

7- The Company's trades will typically have negative carry and will be designed to make \$ for the Company in the event of a global markets crisis. In addition there will be negative carry for the Company on the Loan Interest that it owes vs. the interest on the funds that it holds in the Global Markets Custody Account.

8- The appropriate amount of Equity Capital in the Company will be determined by Global Markets Credit.

9- The holding period / life of the Company will be 45 to 60 days. At the end of this time period, the Company will likely unwind all transactions, repay the loan par amount and premium amount. For tax and accounting purposes, repaying the premium amount will "count" like a loss for tax and accounting purposes.

10- At all times, the loan will maintain collateral of at least 101% to the loan + premium amount. If the amount goes below this limit, the loan will be unwound and the principal + premium repaid.

11- DB will have the right to approve/disapprove all trading activity in the Company. This will allow DB to effectively force the closure of the Company and the repayment of its loan to DB.

12- At no time will DB provide any tax advice to any individuals involved in the transaction. This will be further buttressed by signed disclaimers designed to protect and "hold harmless" DB.

13- DB has received a legal memorandum from Shearman & Sterling which validates our envisaged role in the transaction and sees little or no risk to DB in the trade. Furthermore, opinions have been issued to High Net Worth individual from KPMG Central Tax department and Brown & Wood attesting to the soundness of the transaction from a tax perspective.

WHO IS INVOLVED SO FAR AT DB

The following people have been working on the transaction. Those from the Global Markets/Private Bank will be responsible for the ongoing running of the trade.

Private Bank	John Rolfes, Presidio Relationship Manager NN to come from DB/Bankers Trust Structured Credit Rick Stockton, Account Manager
Global Markets	Francesco Piovanetti, structured products Nancy Donohue, global market sales
Credit	Steve Cohen, structured credit
Accounting	Rob Arnig, KPMG as advisor to the Bank Linnae Latessa Controlling, <i>for treatment to the bank's capital vis a vis loan principal and premium</i>
Tax	Joe Cassidy, DB NA Tax
Legal	Michelle Cenis, DB Alvin Knott, Shearman & Sterling Gerry Rokoff, Shearman & Sterling

DIVISION OF RESPONSIBILITY

John Rolfes, Francesco Piovanetti, Nancy Donohue and presently share RM responsibilities for Presidio Advisors in overseeing the BLIPS transaction.

Global Markets will be responsible for:

- Setting up ISDAs for 40 accounts
- Setting up Margin Accounts for 40 accounts
- Pricing the Loan on the US Swap Curve
- Global Markets will book the loans
- Executing and Settling the Interest Rate Swap and FX Trades
- Monitoring Real-Time/Daily, the value of the LLCs vs. Equity Balances

2685

Private Banking will be responsible for:

Initially Transaction Structuring/Approval Process
Know Your Client for all HNW Names
Account Opening and maintenance of accounts
Relationship Management of the HNW customers to the deal

Approvals received already from the following DB departments/divisions:

Global Markets: Ivor Dunbar, Managing Director, Co-Head Structured Transactions Group

Audit/Accounting: Rob Arning (KPMG Partner in charge of DB Americas audit)

DBNA Tax: Joseph Cassidy, Managing Director and Head of DBNA Tax

DBNA Legal: Michelle Cenis, Responsible for DBNA Legal Structured Products

Formal Approval is expected from DBNA New Products Committee.

Assurance/Tax Professional Practice Meeting
September 28, 1998

Summary of Conclusions and Action Steps

On September 28, 1998, the following tax and DPP-Assurance partners met in New York to discuss the tax product development and deployment process and certain professional practice and accounting issues related thereto.

Attending were:

<u>Tax</u>	<u>DPP-Assurance</u>
Larry DeLap	Mark Bielstein
Walter Duer	Andy Capelli
Ron Harvey	Mike Conway
John Lanning	John Guinan
Mike Lippman	Terry Strange
Mark Springer	Ed Trott
Jeff Stein	

The following is a summary of conclusions reached and action steps agreed upon.

Accounting Considerations of New Tax Products

Some tax products have pre-tax accounting implications. DPP-Assurance's role should be to review the accounting treatment, not to determine it. An assurance person (probably a senior manager) should be recruited to work closely with the Tax Innovation Center to determine the appropriate accounting treatment for transactions associated with new tax products.

Mark Springer will coordinate with Mike Conway in identifying and deploying such an individual.

Financial Statement Treatment of Aggressive Tax Positions

Larry DeLap will have further discussions with Mark Bielstein, Mike Conway, Terry Strange, and Ed Trott on financial statement tax accounting for aggressive tax positions. The purpose of these discussions is to determine whether modifications may be made to the Firm's policy on this issue.

The current Firm policy, in each case assuming the particular aggressive tax position is significant, is:

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EXHIBIT #115

XX-001369

1. No financial statement tax benefit should be provided unless it is probable the position will be allowed.
2. If it is probable the benefit will be allowed, the client may claim the full benefit in its financial statements.
3. Each discrete aggressive tax position is evaluated separately.
4. The "probable of allowance" test is based solely on the technical merits, so the probability of negotiated settlement is not taken into account.
5. As a practical matter, the "probable of allowance" concept is equated to a "should" level of opinion from the tax practice. It is not necessary that the tax practice actually issues a "should" opinion. It is sufficient if the tax practice affirms that it could issue a "should" opinion, if requested.

The basic issues include whether:

1. The "cliff" effect (full benefit if probable, no benefit if less than probable) of the current policy should be continued.
2. The likelihood of negotiated settlements should be taken into account.
3. The overall (rather than discrete) likelihood of success of multiple aggressive tax positions should be considered.
4. The base level for determining whether a financial statement tax benefit can be claimed, before consideration of a reserve for disallowance, should be a "more-likely-than-not" tax opinion.
5. There should be an overall standard as to the level of acceptable reserves for potential tax disallowances.

Contingent Fees

XX-001370

1. In light of an August draft interpretation by the AICPA's Professional Ethics Executive Committee, tax services can be provided on a contingent fee basis (if permissible under applicable state rules) to individuals in positions of significant influence over non-public audit clients. However, as the SEC takes a stricter view of contingent fee arrangements than does the AICPA, tax services may not be provided on a contingent fee basis to individuals in positions of significant influence over SEC audit clients. Subsidiaries and affiliates of SEC audit clients are included in the definition of "SEC audit clients".
2. The SEC takes the position that a CPA firm may not provide any service to a public audit client where the amount of the fee is dependent on the outcome, even if the outcome is beyond the control of the service provider. Thus, a fee arrangement with an SEC audit client that is expressly dependent on the closing of a transaction would be considered a prohibited contingent fee. This does not preclude us from using "value added fee" language, as illustrated in the Professional Practice Manual.
3. Some tax products involve a third party facilitator (such as an investment bank). An arrangement whereby we provide tax services to an audit client with respect to a tax product or strategy, but receive payment from the third party facilitator, will be viewed as a prohibited contingent fee (or, depending on the circumstances, as a prohibited commission).

In such situations, KPMG and the third party facilitator each need to issue separate engagement letters to the client and be separately paid by the client. The separate engagement letter between KPMG and the client must use permissible non-contingent-fee language.

Even where the underlying client is not an audit client, caution is needed where KPMG will receive payment from the third party facilitator, due to "broker-dealer" concerns.

4. In the case of SEC audit clients, there should be no written communications (whether in presentation handouts, proposal letters, feasibility letters, or engagement letters) stating that our fee for a particular tax strategy or service will be a certain percentage of the projected tax savings (unless the particular service, such as application for a private letter ruling or taxpayer account analysis, falls within the exception to the definition of "contingent fee" set forth in AICPA Rule 302).

The SEC views a fee based on projected savings to be a prohibited contingent fee, even if it is nonrefundable and will not be adjusted based on actual savings.

However, it is permissible to advise the client that the fee will be based on a variety of factors and "our experience with similar projects has been that the fee has approximated X% of the first Y years projected tax savings".

5. It is permissible for a fixed fee or value added fee engagement letter with an audit client to include "termination" language similar to the following:

If at any time during design or implementation, you decide it is not in the best interest of [client name] to continue with the engagement, you may notify us to that effect.

[Client name] agrees to pay KPMG for time charges at standard hourly rates and actual expenses incurred to the date of the termination of the engagement.

Independence

1. In view of AICPA Ethics Ruling No. 52, standard engagement letters for new tax products should continue to contain the following guidance where a schedule of fee payments is provided:

The schedule of payments should be related to the timing of delivery of services and cannot be or appear to be established to match the timing of projected savings to the client.

2. Unless and until the SEC expresses a clear view to the contrary, the existing prohibition against performing "net to gross" or "gross to net" calculations for expatriate employees of public audit clients will be discontinued (i.e., such calculations will be permitted).
3. The use of an "independent" firm to provide payroll processing services to KPMG SEC audit clients will not avoid the independence issue if the nature of the relationship with the "independent" firm appears to constitute a joint venture or contractor/subcontractor relationship.
4. A set of guidelines on permissible and impermissible legal services that can be provided by KPMG member firms was developed and approved by Bob Lambert and Jerry Claiborne in late 1997. However, that set of guidelines was not officially released or included in any KPMG manual.

John Guinan will be developing independence guidelines with respect to all services provided by KPMG member firms to SEC audit clients. He will include legal services in those guidelines.

5. There should be no direct or indirect reference to earnings per share in tax proposal letters or engagement letters issued to SEC audit clients.

Alliances

1. The "written documents" requirement set forth in the guidance on the alliance process should be expanded. An oral business relationship that has the effect of creating an alliance should be treated as an alliance.
2. It often is unclear whether a particular business relationship with another party with respect to a tax product creates an alliance. Larry DeLap will work with Jim Carney to more clearly define when an "alliance" will be considered to exist with respect to the development and marketing of tax products.

Federal Confidential Communications Privilege

The issue of how best to deal with the new federal confidential communications privilege in the context of audit clients is under review. We will be influenced by the consensus views of the Big 5 and the AICPA on this issue. Larry DeLap will coordinate with Andy Capelli and Office of General Counsel on this matter.

Timing of Involvement of DPP-Assurance

The earlier the involvement of DPP-Assurance with respect to independence and accounting issues bearing on new tax products to be marketed to audit clients, the better. However, product information presented to DPP-Assurance should be sufficiently developed that a meaningful review can occur.

A product development manual currently is under preparation. That manual is to include a section that explicitly deals with the step-by-step DPP (Tax and Assurance) review and approval process. Larry DeLap will coordinate with John Guinan and Ed Trott relative to

2691

Author: Randall S Rickham at KPMG_Palo_Alto
Date: 12/16/97 7:59 AM
Priority: Normal
To: Gregg W. Ritchie at KPMG_Warner_Center
Cc: Carolyn A. Stainaker at KPMG_Warner_Center
Subject: joint projects

----- Message Contents -----

Gregg

The B&W initiative is moving ahead as you can see from the attached. I asked RJ about ABA constraints, etc on joint ventures/fee splitting. His thought was that the only situation where a problem arises is when an opinion is involved, but he is following up with their person who specializes in the area on specifics.

Today I will summarize my thoughts on the how the B&W relationship would be structured and the associated benefits.

The tentative date for a meeting with B&W San Francisco is Thursday. If you want to meet with them on Wednesday after Max, I can reschedule.

Randy

----- Forward Header -----

Subject: joint projects
Author: "R. J. Ruble"<rruble@brownwoodlaw.com> at Internet
Date: 12/15/97 11:08 AM

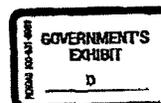
This morning my managing partner, Tom Smith, approved Brown & Wood LLP working with the newly conformed tax products group at KPMG on a joint basis in which we would jointly develop and market tax products and jointly share in the fees, as you and I have discussed.

To the extent it is possible it would be very beneficial from our perspective to involve our San Francisco office, and I have given Paul Pringle and Eric Rauster of that office your name and telephone number.

Please call me when you have a chance.

Best regards,

R.J.



644693

Permanent Subcommittee on Investigations

EXHIBIT #116

2692

Author: Cragg W. Ritchie at KPMG_WARNER_CENTER
Date: 10/1/97 12:21 PM
Priority: Normal
TO: Randall A. Hamilton at KPMG_DES_MOINES
Subject: Re: Flip Tax Opinion

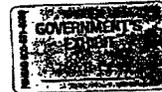
----- Message Contents -----

----- Reply Separator -----

Subject: Flip Tax Opinion
Author: Randall A. Hamilton at KPMG_DES_MOINES
Date: 9/30/97 2:58 PM

Greg, in your September 23rd cc:mail message which attached the September status memo, you indicated in paragraph 3(b) the fact pattern must also be concurrently sent to R. J. Ruble at Brown and Wood. You had previously indicated to me that we would not need to request the Brown and Wood opinion unless the client specifically requested it. At this time the client has only request our opinion but is aware that the Brown and Wood firm would issue the opinion if requested. Why are we now requiring this concurring opinion?

IF WE ARE FOUND TO BE A PROMOTER OF A TAX SHELTER, THE CLIENT IS NOT PROTECTED FROM 6662 PENALTIES BY RELIANCE ON OUR OPINION ONLY. ALSO, OUR DEAL WITH BROWN AND WOOD IS THAT IF THEIR NAME IS USED IN SELLING THE STRATEGY, THEY WILL GET A FEE. WE HAVE DECIDED AS A FIRM THAT OUR OPINION SHOULD BE GIVEN IN ALL DEALS. IF YOU DID A QUILTER DEAL, OUR SHARE OF THIS COST IS \$25K. IF YOU DID A DEAL THROUGH PRESBITO, THE COST IS ALREADY BUILT IN TO THE FEE SCHEDULE.



Permanent Subcommittee on Investigations

EXHIBIT #117


Peat Marwick LLP

PFP

To Gregg Ritchie
Warner Center

Date March 2, 1998

From Randall S. Bickham
Palo Alto

Steno ft
Ref c:\windows\temp\me0d0c
.2

B&W Meeting

For our meeting with R.J. on Wednesday, the suggested agenda is the following items
(John Larson is planning on joining us at 2:00 Wednesday):

1. Update R.J. on our new FCS practice with an emphasis on how the KPMG commitment to building an investment banking practice will benefit B&W. *ew*
2. Discuss the implications associated with registering the OPIS product as a tax shelter.
 - a) What is the criteria that is used by others in determining whether to register a tax product?
 - b) Any differentiation between registration criteria for individual versus corporate shelters? *Good*
 - c) How will registration impact marketability of product?
 - d) When must decision be made?
 - e) Assuming registration, how can we best use DMG in marketing products? Last year, DMG Technology's first full year of operation, they participated in 28 mergers and acquisitions worth \$14.2 billion.
3. In marketing presentations, what is the ~~KPMG~~ B&W position on the question of protection against imposition of penalties? What does our opinion letter effectively accomplish?
4. Discuss B&W position on whether "co-obligation" constitutes "assumption of liability" in the context of "basis shift" products.
 - a) What other groups have reviewed the Zens product-any problem with the issue?
 - b) What other products does the issue impact-e.g., the Presidio revised 357(c) product?
5. Discuss how to institutionalize the KPMG/ B&W relationship.
 - a) What are the key profit-drivers for our joint practice?
 - i) ~~KPMG~~- Customer list.
 - ii) ~~KPMG~~- Financial commitment to invest in the practice in terms of expertising products, hiring franchise players, etc.
 - iii) ~~B&W~~- Institutional relationships within the investment banking community.

name goodwill

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KPMG 0047358

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EXHIBIT #118

KPMG Peat Marwick LLP

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 Gregg Ritchie
 Warner Center
 March 3, 1998

- iv) B&W - More panache in closing larger deals where the buyer brings in his Wall Street/D.C. tax advisor.
- b) What should be the profit-split between KPMG, B&W and the tax products group/ implementor for jointly-developed products?
- i) Any formula used should incorporate an initial allocation for the "finder"/ customer list. (The standard finder fee seems to be 10%.)
- ii) For a 7% deal, the following approach is suggested:
- | | | |
|-----------------------------|-----|---|
| Gross Revenue | 700 | |
| Deal Costs | 375 | |
| Profit | 325 | |
| Finder's allocation | 70 | |
| Net allocated on 1/3 basis- | | |
| KPMG | 85 | } higher than existing profit, I think. |
| B&W | 85 | |
| Implementor | 85 | |
- iii) Accordingly, if KPMG brings the buyer to the table, KPMG would be allocated 155 basis points (70+85). All three JV partners would have joint responsibility for closing the deal.
- c) In deals where B&W acts as a co-venturer, B&W would not be able to write a concurring tax opinion.
- i) What are factors that impact this conclusion- the joint marketing of product, joint development, the form of receiving compensation as a joint venture partner?
- ii) What should be the strategy for selecting the law firm to write the concurring tax opinion?
6. Jointly discuss with John the Presidio Integrated Investment Strategy Program.
- a) The investment analysis presented by Presidio should be institutional-based (e.g., DMG marketing literature) with supporting investment analysis to satisfy an ACM/Colgate type of examination-Investor must have a "reasonable expectation of a reasonable profit".
- i) What needs to be done to finalize the analysis and who is responsible?
- ii) How often will analysis need to be updated?
- b) In addition to demonstrating the reasonable expectation of profitability, the analysis should demonstrate how the use of offshore leverage enhances the investor's financial return.

Who does the tax work?

"P115"

KPMG 0047359

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- c) Should an investment prospectus be given to Investor in our initial marketing presentation?

 Peat Marwick LLP

FFP

To: Gregg Ritchie
Warner Center

Date: December 19, 1997

From: Randal S. Bickham
Palo Alto

Steno ft
Ref: c:\data\busmod.doc

cc

Business Model - Brown & Wood Strategic Alliance

The establishment of strategic alliances to develop and market products for high-wealth individuals, large closely-held corporations and publicly-traded corporations is the cornerstone of our business model. The conclusion to externalize substantive functions is based upon the premise that the most expeditious strategy for establishing a predominant position in the tax products market is by engaging in strategic alliances. Such alliances will allow us to establish an immediate branded image within the tax products market, access technical expertise not available to us internally and establish market relationships which are critical to developing our practice.

In order for our practice to achieve its targeted revenue goals, we believe that it is critical that we focus at the outset on creating a branded image that effectively transcends the common market perception of an accounting firm's wherewithal to participate in large transactions (deals with professional fees exceeding \$1 million) and charge fees based upon value delivered. Simply stated, we believe that we can best establish a predominant position in the tax products market with a corporate transactions strategy group viewed by the market as a "Goldman Sachs"-style practice and, as a result, it will be significantly more profitable.

Potential alliances for product development are "Wall Street" law firms that specialize in corporate finance (e.g., Brown & Wood LLP); boutique tax product groups (e.g., Presidio Advisors, LLC), financial institutions with a strong tax product orientation, particularly in the international area (e.g., Citibank); and product development groups within KPMG including the Washington National Tax Group. As to the marketing and distribution of product, the primary requisite is alliances which will enhance our ability to brand both products and the group. The end objective for branding at the group level is to create a market perception of our practice as being one which is KPMG-centric, but with concentric relationships with institutions with exemplary reputations in the capital transactions market. Our leverage in developing concentric organization alliances is based upon our ability to invest the funds required to expertise a large portfolio of tax products, our contribution of an outstanding customer list base and our success in the high-wealth individual market sector.

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~~KPMG~~ Peat Marwick LLP

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Gregg Ritchie
Warner Center
March 3, 1998

To date, we have had strategic alliances with Quadra and Presidio. Whereas both alliances have been beneficial to us, particularly in terms of product development with Presidio, we need to evolve our business model to the next level in order to realize our objective of establishing a predominant position in the tax products market. The initial step is to further strengthen our existing alliance with Presidio and to look for additional sources of product development. Secondly, we need to consummate a formal strategic alliance with Brown & Wood.

Brown & Wood is unique in that it can make significant contributions to the product development process and would allow immediate brand recognition. Brown & Wood is a preeminent "Wall Street" law firm with a market focus on structuring complex financial transactions. For the four year period ending December 31, 1996, Brown & Wood ranked first among all U.S. law firms in terms of the aggregate number of public debt and equity securities issues in the United States in which it was involved (either as counsel to the issuer or underwriters), and number two in terms of the aggregate dollar amount of the securities issued in such transactions (1,127 transactions that raised \$176 billion). In 1996, Brown & Wood ranked in the top 10 nationally in a number of categories relating to the public financial markets: corporate high yield debt (underwriter's counsel), asset-backed securities (underwriter's counsel and issuer's counsel), REITs (underwriter's counsel), mutual funds (based on clients' net assets), and long term municipal debt (underwriter's counsel). Only 3 other firms ranked in the top 10 nationally in a greater number of categories. In addition, Brown and Wood has one of the largest practices involving privately placed structured securities, (e.g. structured notes and swap trusts), of any firm.

Because of its focus on underwriter's representation, Brown & Wood has broad market exposure both domestically and internationally. Brown & Wood has positioned itself in the market as the "technical expert" in structuring transactions involving complex financial securities (both tax-driven and otherwise), rather than going after the more traditional role of being a key M&A player. Of more importance to us is the market perception of technical excellence in the development of complex financial securities (from a branding perspective) and participation in the financial market to enhance our distribution network. Whereas, Brown & Wood has not been a significant player to date in the IPO sector, they are making a significant strategic commitment to build up their San Francisco-based practice in this area.

~~KPMG~~ Peat Marwick LLP

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Gregg Ritchie
Warner Center
March 3, 1998

The primary objective of the alliance between KPMG and Brown & Wood should be to build a mutually successful business based upon products that are jointly developed. Our group has targeted March 31, 1998, as the date that we wish to have our base organizational infrastructure in place. Accordingly, we need to identify an initial product that can be focal point for negotiating a strategic alliance with Brown & Wood. In light of the timeframe and the following ancillary considerations, the most reasonable approach is to use the LLC product currently under development as our initial joint product, particularly since one key element of the LLC structure will involve the creation of a unique financial derivative:

- We must get the new LLC product "on the street" as soon as possible. Mid-January is the targeted date based upon significant support from Brown & Wood.
- Our targeted market for the LLC product is large capital gain transactions where a co-branded product could potentially give us a competitive advantage.
- Brown & Wood has a significant profile in the Midco transaction market which will potentially constitute the best channel for the LLC product.

KPMG, like most financial services firms, has an organizational structure that is centralized and control oriented. For our business model to be successful, we must construct a non-traditional organizational structure, effectively a "virtual company" that can manage a large group of strategic partners and that can react expeditiously to new market developments. In negotiating our strategic alliance with Brown & Wood, the following guidelines should be considered:

- Goals must be well articulated and formally adopted
- Everyone (individuals and institutions) must commit to honest, direct and frequent communication
- Decision-making processes must be unencumbered by institutional inertia

2699

Author: Randall S Bickham at KPMG_Palo_Alto
Date: 1/5/98 9:23 AM
Priority: Urgent
TO: Gregg W. Ritchie at KPMG_Warner_Center
CC: Carolyn A. Stalnaker at KPMG_Warner_Center
Subject: Confidential Matters

Message Contents

Gregg

Please give me a call when you get a chance to discuss.

Randy

Forward Reader

Subject: Confidential Matters
Author: "R. J. Ruble"<rruble@brownwoodlaw.com> at INTERNET
Date: 12/24/97 9:37 AM

REDACTED

Dear Randy:

Thanks again (and be sure to thank Gregg) for spending time with Paul and Eric. Their meeting you all helps me immensely with the politics here.

On another point, as I have been mentioning with you, I do work for a number of people who have potentially complementary tax advantaged products. Let me state up front, I am not trying to push any of these on KPMG, but it might be useful if you are trying to get a repitioire of products jump started to talk to some or all of them. In addition, each of them has a relationship with one or more financial institutions who provide credit, derivatives trades, etc. necessary to execute the product. It shapes up like this:

product generates ordinary loss and does not need
sec. 351/721 to get it to the user; could be used in midcos;
ordinary loss on expiration or sale of high basis
currency option through section 351/721 transfer; uses for his
own account in midcos;
alternative structure to short-sale transactions,
generally only optimal for achieving high basis throughg
351/721;
various ftc and foreign tax strategies: and, of course,
Presidio: basis shift;357(c).

All of these folks are known to each other, with the exception of
Although they compete on one level, some are using another's strategies or midco capacities for deals they can't do themselves. (I'm beginning to feel like a dating service.) For example, I understand that Bob Pfaff has talked with Jimmy Haber about Presidio licensing or marketing Haber's option product. (Given this, it may be touchy talking directly to Haber, but from KPMG's perspective I would think direct access is better than indirect.)

Lastly, as I mentioned last night, if the latest rumours are true and the

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KPMG 0047356

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2700

are finally put to rest, alternative Midco strategies will become even more important, and some of these folks may be able to help.

To reiterate, I am not trying to push my relationships on KPMG. I only trying to give you direct exposure to people I have seen closing deals. If this is helpful to you fine, and if not , at least you know I'm trying.

I look forward to talking to you after Christmas.

REDACTED

2701

1436

Unknown

From: Henderson, Tracie K
Sent: Wednesday, May 24, 2000 12:43 PM
To: Eiseckel, Jeffrey A
Subject: FW: BLIPS - 7 percent

Jeff -

asked for this info. It looks to me like the fees are about 5.25% (excluding interest and the GP). Since you told that the fees are about 3.5%, I suppose you have another view? You're not counting all of the bank and mgt fees?

Also, wants to know if he would have some flexibility on the timing of BLIPS (he needs to liquidate some assets) as long as he gives us a signed engagement letter.

Thanks,
Tracie

-----Original Message-----

From: Napier, Angie
Sent: Wednesday, May 24, 2000 2:30 PM
To: Henderson, Tracie K
Subject: FW: BLIPS - 7 percent

Tracie,

Attached is Kerry's breakout of the 7 percent. gets 30 bpts from the Mgt. Fee. Is this detailed enough?

Angie

-----Original Message-----

From: Kerry Bratton [mailto:kbratton@presidioadv.com]
Sent: Wednesday, May 24, 2000 1:59 PM
To: tnapier@kpmg.com
Subject: RE: BLIPS - 7 percent

The breakout for a typical deal is as follows:

Bank Fees 125
Mgmt Fees 275
Guaranteed Pymt. 8
Net Int. Exp. 6
Trading Loss 70
KPMG 125
Net return to Class A 91

Please note that the Net Int. exp, Trading Loss will vary from deal to deal. This will cause some changes to the net return to Class A.

Thanks
Kerry

Kerry Bratton
Presidio Advisory Services, LLC
Phone: (415) 284-7282
Fax: (415) 284-7284

REDACTED

Proprietary Material
Confidentiality Requested

KPMG 0002557

Permanent Subcommittee on Investigations
EXHIBIT #121

Unknown

From: John Larson (jlarson@presidioadv.com)
 Sent: Saturday, September 11, 1999 6:48 PM
 To: eischeid@kpmg.com; rbickham@kpmg.com
 Cc: bob pfaft; kbratton@presidioadv.com
 Subject: BLIPS - managing deal flow

Jeff/Randy-

As you know, we have until 10/15 at the latest to close loans and 10/22 to activate the FX trading etc. (the 60 day countdown). Currently we have approximately 25-28 deals on our active list with another 15 or so on our "highly likely" list. Hence the total expected backlog is at least 50 deals. I know that your count gives a slightly higher number, perhaps indicating a backlog of 60. As of Friday, we had closed only 3 loans. This gives us only 5 weeks to complete all the closings.

We think it is possible to complete all the backlog in the available time if everything proceeds according to the closing schedules that Kerry developed. I am, however, very concerned about adding more deals to the already huge backlog. Therefore, my suggestion is to cut back on the sales effort, without closing the door on a few more significant deals. Accordingly, I propose that we raise the limit on new sales solicitations to deals of \$50 or greater effective this Monday. I also suggest that we inform everyone that the limit will be raised again in 10 days or so to \$100 (?).

I know this change will upset some KPMG partners who are still trying to set up more meetings. I also suspect that they will be even more upset if they sell a new deal now that we are unable to deliver. Those are the two choices I see.

Apart from limiting the addition of new deals, there are other incremental process changes that we have made and will continue to make. While this is really a subject for a more detailed discussion, I will note two ideas that I have discussed with Randy, Steve, and Kerry. First, we need to get key KPMG people in certain areas to liaise very closely with Presidio and the clients/investors in their area. We have been experiencing problems with slow and incomplete turnaround of information requests and signature pages that could be mitigated by much closer local monitoring.

Second, as an experiment last week I spent a day working out of DB's New York office. I found that being there I was able to trouble shoot very effectively. This made me think that a temporary Presidio outpost at the bank might be helpful. Conceivably, stationing someone knowledgeable from KPMG at the bank might also be good.

John L.

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 Confidentiality Requested

KPMG 0005587

Permanent Subcommittee on Investigations

EXHIBIT #122

Memo

To: Members of the Credit Committee
 Mr. Rampf
 Dr. Schuette
 Mr. Mendel
From: Richard G. Pankuch
CC: [Click here and type name]
Date: 10/15/99
Re: Presidio Credit Request Dated September 14, 1999

With this memo, we request an amendment to the credit request and related approval to correct an error in the Replacement Risk Section under Credit Exposure. The problem occurred because we erroneously used Presidio's initial estimate of their forward FX and currency short positions rather than amounts permitted in the credit application. We discovered this error as we were setting up our credit lines. The requested change does not in any way represent a change in the credit risk described in our credit request.

The differences are summarized below:

USD millions

	Approved Replacement Risk	Calculation Basis for Original Approval	Requested Replacement Risk	Calculation Basis for New Amount	Difference
Limits (K) (Presidio)	7.46	2% for 7 years on 53.33 notional = 7.46 on Interest Rate Swap	7.46	No change	0
	10.66	20% on 53.33 notional = 10.66 on FX Swap	10.66	No change	0
	4.00	20% on 20 notional = 4 on FX short positions	10.66	53.33 notional	6.66
Totals	22		29		+7

• Page 1

Permanent Subcommittee on Investigations
EXHIBIT #123

HVB 000680

Plafonds (P) (All other Deals)	133	2% for 7 years on 950 notional =133 for Interest Rate Swap	133	No change	0
	118.7	20% on 593.7 notional = 118.7 on FX Swap ***	190	950 notional	71.3
	71.2	20% on 356.2 notional FX= 71.2 on FX short positions	190	950 notional	118.8
	323		513		+ 190

***Please note with respect to the above: In actuality the FX swap will almost certainly be done on EUR vs. USD, thus a 14% risk factor should be applied. We have used the 20% figure to accommodate all possible trades. Were we to have used the 14% factor our requested increase for the Plafonds would have been only USD 133 million.

To summarize the above, the increased limits will now permit the full amount of our facility to be invested in EUR deposits and do related forwards. It will also accommodate all the short positions that might be entered by our borrowers. Again, let me reemphasize that our original analysis contemplated all of the above, however, we made an error in calculating the risk amounts for the cover sheet.

Finally, to reiterate some important points with respect to the forward and short positions:

- There will be no collateral risk associated with the EUR/forward combinations. NY Treasury will enter into a synthetic USD deposit by selling EUR spot and repurchasing EUR forward, such that, regardless of the movement in the USD/EUR exchange rate, the USD value of our collateral will not change.
- There is no settlement risk on the EUR/USD combinations because the deposit will always be held at HVB NY Branch (notwithstanding the fact that we have obtained approval for settlement lines as required).
- Our own hedge (into which HVB Structured Finance will enter with NY Treasury), will cover replacement cost on the short FX positions. There is also no settlement risk on these transactions since the source of settlement is collateral in our possession. (We have, however, obtained lines for these settlements as required.)

We will always be protected by our 1.0125 X collateral margin coverage.

I apologize for the errors and any inconvenience it may have caused and request that you urgently deal with this matter since we are far along toward closing.

Thank you.



Back-End Process

Definitions:

- D A calendar day
- LLC1 Single Member LLC/Borrower LLC/Class A Member(s)
- Fund LLC2/Multimember LLC
- Class A Member(s) Borrower/Investor

DATE	RESPONSIBILITY	ACTION ITEM
D		Assumption/Initial Contribution to Fund/Rate Determined
Pre D48	PAS <i>Presidio</i>	<ol style="list-style-type: none"> 1. Obtain distribution information from KPMG/Class A Member(s) <ul style="list-style-type: none"> • Character/Amount • Equities? • Sell from HVB account or elsewhere? • For transfers provide Army McCarthy with the DTC instructions: <ul style="list-style-type: none"> Firm Name Firm Number Ultimate Account Name & Account Number Contact name and number 2. <u>Can current HVB account for Fund buy equities?</u>
D48 (10 Bus days prior to withdrawal date)	Class A Member(s)	<ol style="list-style-type: none"> 1. "Fax Annex A - Withdrawal Request" to Fund c/o Presidio Growth at (415) 284-7284
D49	PAS	<ol style="list-style-type: none"> 1. Prepare and send to Class A Member(s) by FedEx a package containing: <ul style="list-style-type: none"> • Acknowledgement of Receipt of Withdrawal Request and, <ul style="list-style-type: none"> → <i>What do we need to complete to give PAS authority to sign on LLC1 HVB account to facilitate selling equities? This will be necessary if:</i> <ul style="list-style-type: none"> • Class A Member(s) will sell foreign currency or equities from LLC1 HVB a/c (Note: foreign currency will usually be EUR), or • Class A Member(s) will transfer equities from LLC1 HVB a/c • Note: On multi-borrower deals, the form only needs to be signed by the designated account signer.

	Class A Member(s)	1. Acknowledgement of Receipt of Withdrawal Request • Retain for files 2. Any other forms for investor signature?
D50	Fund	Send notice to bank re: Change in Continuity of Ownership and request to pay Class A prior to repayment of the loan
D56 (or earlier if have the information)	Fund/HVB HVB Fund	1. Buy equities (if applicable) 1. Send e-mail to Kerry, Steven, Eric and Amir with the terms of the equity purchase 1. Prepare instructions to transfer cash for the equities purchase. <ul style="list-style-type: none"> • Transfer cash from Fund HVB to Fund HVB accounts • Steven Buss signs the instructions • Fax the instructions to Amy McCarthy
D58	Fund/HVB HVB	Fund buys ARS forward to close out ARS short position Bank gives Fund notice that (1) loan is payable due to Change in Continuity of Ownership and (2) bank consents to Fund paying Class A prior to repaying the loan
D59 (or three days after equity purchase)	HVB	Settlement of purchase of equities by Fund

D60	Fund/PAS	<p>Withdrawal Date/Adjustment Date:</p> <ul style="list-style-type: none"> • Withdrawal of Class A Member(s) is effective • Adjustment Date Accounting/Allocation made to determine the value of Class A capital account as of D60
D61	Fund/HVB PAS	<p>Fund buys HK\$ forward to close out HK\$ short position</p> <p>Prepare transfer instructions dated D62 to transfer assets from Fund accounts to LLC1 account</p> <ul style="list-style-type: none"> • Send instructions to Amy McCarthy (<i>what is the cutoff time for the transfer?</i>)
D62	HVB PAS	<p>Distribution to Class A Member(s) in redemption of membership</p> <ol style="list-style-type: none"> 1. Execute transfer orders to move cash/currency/equities from Fund HVB account to LLC1 HVB account <ol style="list-style-type: none"> 1. Obtain information from Class A Member(s) regarding when they wish to sell/transfer equities/currency from LLC1 HVB account 2. Prepare instructions to sell/transfer equities/currency from LLC1 HVB account (Steven or Kerry can sign) 3. Fax instructions to Amy McCarthy 4. <i>What are the cutoff times for sales:</i> <ul style="list-style-type: none"> • FX 3pm EST (2 day settlement) • Equities 4pm EST (3 day settlement)
D65	Fund/HVB	<ol style="list-style-type: none"> 1. Fund repays loan etc. 2. Fund settles swap 3. Fund sells cap to bank 4. Fund converts Euro to \$

	Holland & Hart	<p>UCC-3's</p> <ol style="list-style-type: none"> 1. Prepare forms 2. Send to bank for signature 3. Send to Fund for signature 4. File UCC-3's
D66	PAS	<p>Class B and Managing Member receive liquidating distributions</p> <ol style="list-style-type: none"> 1. Allocate any profit/loss from last adjustment date (D60) between Class A and Managing Member 2. Prepare instructions to transfer cash from Fund HVB account to Presidio Growth HVB account. Send instructions to Amy McCarthy 3. Prepare instructions to transfer cash from Fund HVB account to Presidio Resources HVB account. Send instructions to Amy McCarthy
D67	HVB	<p>Execute transfer instructions from Fund HVB account to Presidio Growth HVB account</p>
	PAS	<p>Execute transfer instructions from Fund HVB account to Presidio Resources HVB account</p> <ol style="list-style-type: none"> 1. Prepare instructions to pay invoices from Presidio Growth HVB account. 2. Fax instructions to Amy McCarthy
D77	Holland & Hart	<p>Certificate of Dissolution for Fund</p> <ol style="list-style-type: none"> 1. Prepare certificate 2. Send to Steven Buss for signature 3. File with Secretary of State of Delaware

Procedures for the Unwind of PLUS Structures

Any of the transactions under the PLUS structure can be unwound by the investors at any time.
In the course of unwind, we can expect the following.

Start Date 10/27/99

Date	Day	Responsibility	Action Item
14-Dec-99	1		1. Have Set Up accounts for those customers planning to buy equities and FX
15-Dec-99	2		1. Presidio will need to have the authorization to sell equities for LLC1 accounts
16-Dec-99	3		1. Presidio will inform HVB if LLC1 wants to liquidate its interest in LLC2 (the Fund) 2. Presidio will ask HVB to pay liquidating partner its interest in the fund prior to repayment of the loan.
22-Dec-99	9		1. LLC2 will instruct HVB to buy equities for a portion of liquidation proceeds.
24-Dec-99	11		1. Funds buys ARS forward to close its ARS short positions.
25-Dec-99	12		1. HVB and settles purchase of equities by the Funds.

HVB 001310

27-Dec-99	14	1. Fund buys HKD forward to close out HKD short positions.
28-Dec-99	15	1. Fund distributes to the liquidating partner (LLC1) redemption of membership. Cash/Currency/equities is transferred from Fund HVB account to LLC1 HVB account.
29-Dec-99	16	1. Contingent on instructions from Presidio (that has authority to trade for LLC1), HVB will sell equities/currencies from LLC1 accounts.
1-Jan-00	19	1. Fund repays the loan, settles the swap, sells the cap back and converts Euro back to USD.
2-Jan-00	20	1. Presidio Groth and Resources receive liquidating distributions.
3-Jan-00	21	1. Transfer cash from Fund HVB accounts to Presidio Growth Accounts

Day	Use	Amazon PFCs	Amazon PFCs	1 and in DDA Description	1 and in DDA Description	Amount	Amount
4	9-Feb-00	Accounts open - Borrower LLC IMB Customer Number, Borrower USD DDA, EUR DDA Fund USD DDA, EUR DDA, MDA/SWELISINTAS	PNE, Army PNE, Army, Shell	Accounts open - Borrower LLC IMB Customer Number, Borrower USD DDA, EUR DDA Fund USD DDA, EUR DDA, MDA/SWELISINTAS			
4	9-Feb-00	Start receiving investors cash equity in Borrower USD DDA	PNE, Army	Start receiving investors cash equity in Borrower USD DDA			
0	17-Feb-00	Loan Premium & Principal funded to Borrower USD DDA + Cash Equity	PNE, Down	Loan Premium & Principal funded to Borrower USD DDA + Cash Equity		80,000,000	2,100,000
0	17-Feb-00	Borrower deposit loan & cash equity for 11 days	Met Down	Borrower deposit loan & cash equity for 11 days			82,100,000
2	18-Feb-00	Investor seeks wire transfer instruction to transfer from Borrower DDA to Fund DDA via 2/28/2000	PNE, Army	Investor seeks wire transfer instruction to transfer from Borrower DDA to Fund DDA via 2/28/2000			
11	28-Feb-00	Deposit Principal	Met Down	Deposit Principal		94,100,000.00	
11	28-Feb-00	Interest on 11 day deposit @ 5.5125%	Met Down	Interest on 11 day deposit @ 5.5125%		142,899.10	
11	28-Feb-00	Preretro Resource contribution	Met Down	Preretro Resource contribution		25,331.00	
11	28-Feb-00	Carrollton fee payable to FVB	PNE, Army	Carrollton fee payable to FVB		(75,000.00)	
		Total Cash in USD		Total Cash in USD			82,457,930.10
11	28-Feb-00	Set Swap Rate and Loan Interest retroactively to 2/17/2000	Met Down	Set Swap Rate and Loan Interest retroactively to 2/17/2000			
11	28-Feb-00	Exchange USD Amount to EUR Amount	Met Down	Exchange USD Amount to EUR Amount			USD 80,000,000
11	28-Feb-00	Client buys USD / sell EUR 1 mth forward	Met Down	Client buys USD / sell EUR 1 mth forward			
11	28-Feb-00	Deposit residual USD Amount @ 3/17	Met Down	Deposit residual USD Amount @ 3/17			2,493,351.10
11	28-Feb-00	Client shorts HOD 2 mth forward	Met Down	Client shorts HOD 2 mth forward			USD 30,000,000
11	28-Feb-00	Client shorts ARS 2 mth forward	Met Down	Client shorts ARS 2 mth forward			USD 15,000,000

HYB 004265

490040

YEAR 2000 STRATEGIC PLAN

I. OVERVIEW OF THE BUSINESS

Presidio now has 68 BLIPS Investment Funds under management, representing approximately \$3.6 billion of loan premium (which approximates to \$45 million in professional fees at 125 bps). Both KPMG and Deutsche Bank should be commended for such extraordinary performance, particularly given the short marketing cycle that we had for the BLIPS product. Whereas, we collectively had unprecedented success in 1999 with the BLIPS product, we believe that in order to sustain the growth of our business and realize its full potential, we must make substantial improvements in the business model in 2000.

Presidio's strategic focus in 2000 is to move beyond the "startup stage" that we have been in for the past two years, to effectively take our business to the "next level." Simply stated, we cannot attempt to manage and satisfy client expectations associated with a \$10 billion business using the same approach that we used in the past to manage a \$2-3 billion business. We believe that there are two key determinative factors inherent in achieving this objective. First, the business must be managed over a full 12-month cycle. Second, the requisite resources to meet anticipated deal capacity must be committed at the beginning of the year.

Over the past year, Presidio has invested significant resources to establish the appropriate strategic alliances and the internal infrastructure to support a \$10 billion product business. However, for our model to work, we must be able to manage our business over a 12-month cycle. Otherwise, our entire focus becomes merely "getting deals processed" versus "managing the client relationship." Over the past two years because of delays in obtaining the requisite approvals to market the OPIS and BLIPS products, we did not begin closing deals until September of 1998 and 1999, respectively.

In addition to managing the business model over a full 12-month cycle, we believe that we must develop a year 2000 business plan based upon the collective input of the respective parties. The plan would establish anticipated deal capacity and associated resource requirements before release of the 2000 product. In addition to establishing the required resource commitments by each party to satisfy anticipated deal volume, the plan would be used to communicate each party's capacity for deals so as to avoid any subsequent year-end misunderstandings. In that we wish to use the plan to manage the business, we anticipate strict adherence to its parameters as originally agreed upon once the plan has been sufficiently vetted by all participants.

As we are all aware, deal demand in the abbreviated 1999 selling season exceeded our expectations. Accordingly, we had to request additional capacity several times. Hence, Deutsche Bank became increasingly uncomfortable that we were not disciplined in our execution and we believe that it is critical that we alter this perception. Going forward, we believe that it is better to request a "stretch goal" capacity than to ask for additional capacity later in the year. Therefore, we collectively need to make thoughtful decisions in vetting our business plan for 2000. Once we have locked in a number, we need to communicate this number and live with it.

II. CALENDAR YEAR 2000 STRATEGIC PLAN – PRELIMINARY THOUGHTS

a. Market Demand Estimates

Based upon KPMG's input, we believe that there is carryover demand from 1999 of approximately \$1.5 billion to \$2.0 billion (measured by premium). This represents approximately 35 transactions. An estimate of year 2000 demand is in the range of \$7 billion to \$10 billion. The estimate is premised upon the notion that if we could market product for the entire year, we should be able to close 2 to 2.5 times the number of deals we closed in the last four months of 1999.

Ultimate deal volume could be impacted by the following variables:

- Adverse legislation or administrative pronouncements;
- The general state of the economy and equity markets; and
- An ever-increasing competitive market.

b. Plan for Meeting Demand

Assuming a market of \$8 to \$10 billion in 2000, the following alternative approaches are theoretically possible. In order to make an informed decision as to practicality of the alternative approaches, we need to await the outcome of what happens to the proposed legislation introducing the changes to the basis rules of Code Section 358 and how such changes would carryover to partnerships if enacted ("The Tax Relief Act of 1999" – "Prevent Duplication or Acceleration of Loss Through Assumption of Certain Liabilities").

- Phase-out BLIPS early in 2000 and limit its application to carryover demand from 1999.

- Use of a combination of phasing-out the BLIPS product while marketing the new product.
- Retire BLIPS and proceed immediately to the marketing of our new product.

c. Development of New Product

Both Deutsche Bank and KPMG have requested that we replace our existing BLIPS product with a new product in 2000. Randy Bickham has taken the lead in developing the tax strategy around which we intend to develop the investment strategy for our new product. We are refining the investment strategy. We have also consulted with Brown & Wood and Holland & Hart for "second opinions" on Randy's initial conclusions. Collectively, we believe we have a product that is a "considerable" improvement over the current BLIPS product.

Our objectives in designing the 2000 product (the "1001" product) were the following:

- To reduce our "development time to market" by leveraging-off our base knowledge derived from the BLIPS product.
- To continue with the same base investment strategy of entering into leveraged investments in emerging market currencies in that the economics continue to be compelling from an investment/business purpose perspective.
- To maintain the tax logic of using the non-applicability of the original issue discount ("OID") provisions (the underlying genesis for loan premium structure) as one of the base components for the new product because the approach allows us to differentiate our product from competitors. In addition, there are no legislative proposals that would impact our planned application of the base tax structure.
- To simplify the structure of the product from both commercial and tax perspectives by reducing the number of transactions and legal entities. [A Delaware Business Trust, which is treated as a single member LLC for tax purposes, will be the Borrower/Investor. Accordingly, the tax complexity associated with the contribution of loan proceeds and basis attachment will be eliminated.]

- To enhance the perception of tax symmetry, the tax loss will arise from a "gain or loss on disposition of property" transaction under Code Section 1001 with the seller (investor) taking the loss and the purchaser taking a corresponding reduction in the basis of the purchased assets.

Randy intends to circulate a first draft of a tax opinion by November 26, 1999. Our goal is to provide a final draft opinion to DPP and appropriate WNT personnel by December 15, 1999. We realize that this is an ambitious timeline, but we want to insure that WNT and DPP have the analysis/documentation necessary to be in a position to sign-off in January.

It is critical that we commence the credit approval and documentation as the Bank on a concurrent basis.

d. Banking Relationships

There are only a handful of banks with the requisite size, experience, and interest to lend into our structures and execute our trading strategies. Historically, we have used Deutsche Bank as our lead bank for the financing and execution of products. In our initial discussions with Deutsche Bank, they have indicated that their preliminary thoughts on deal capacity in 2000 is \$3 billion to \$4 billion.

As a result of the expected market demand in 2000 being in the \$8 billion to \$10 billion range, we find it necessary to establish additional banking relationships. In light of the uncertain timeline for new banks to decide whether they wish to participate in our 2000 product, we are now beginning these discussions in order to obtain capacity commitments as soon as possible.

Our considerations as to appropriate additional relationship banks are the following:

- Strategically, our key objective is to take capacity away from competitors by establishing relationships with their lead bank. Additionally, securing the relationship is the best protection we have against competitors "knocking off" our product. Currently, we view PWC and the tax boutiques that they are aligned with as our primary competitors. UBS has historically been the lead relationship bank in the PWC deals.

- The need to diversify capacity risk by having a second institution that can provide the deal capacity and experience of a Deutsche Bank.
- The KPMG mandate to have a bank participant which is not an audit client.

We have had exploratory discussions with the Banks that executed 1999 BLIPS transactions and have begun investigating the feasibility of establishing a relationship with UBS. Our preliminary thoughts on allocation of deal capacity for 2000 are as follows based upon the respective Banks' initial input on their potential deal capacity for a 2000 product:

• Deutsche Bank (lead bank)	\$3-\$4 Billion
• UBS	\$2-\$3 Billion
• HypoVereinsbank	\$1 Billion
• Rabobank	\$1 Billion

a. Pricing Considerations

We anticipate increased competition in the year 2000. It is likely that our competition will offer products that ostensibly produce same tax result at a lower price.

It appears we have at least two strategies for meeting the competition. The first would be to develop a brokerage (versus a bank) product that we could sell in the 4%-5% range. We are exploring the Section 1001 version of a short sale using foreign currencies.

Secondly, we are considering tiered pricing for BLIPS 2000. Larger transactions that are capital in nature would be "incentive" priced. Smaller transactions that are "ordinary" would be at the existing 7 percent price, or possibly higher — if this does not cause an "ACM" issue.

III. PROPOSED ACTION PLAN

- a. Schedule a meeting with Deutsche Bank the week of November 15, 1999 to discuss the 2000 business plan and to introduce the "specs" for the "1001" product.
- b. Schedule a meeting with UBS in November 1999 with the goal of securing their buy-in as the "co-lead" bank.

- c. Have a final draft tax opinion letter to KPMG WNT and DPP by December 15, 1999. The associated deal documentation will be to KPMG by December 31, 1999.
- d. Obtain approval from HypoVereinsbank for \$1 billion of capacity. They have indicated they should have the approval in early January 2000.
- e. Obtain approval of KPMG WNT and DPP for the "1001" product by January 15, 2000.
- f. Have 2000 business plan thoroughly vetted and agreed to by all participants by January 15, 2000.

Unknown

From: John Larson [larson@presidowv.com]
Sent: Friday, October 08, 1999 8:07 AM
To: jmonahan@kpmg.com; Kerry Bratton
Cc: john.rolfes@db.com; richard.stockton@db.com; eischeid@kpmg.com; Amir Makov
Subject: Re: Couple of quick questions - Liquidating distributions

We are still working on this issue so I can only give a preliminary answer. Ultimately the funds distributed to the investor can go anywhere the investor wants them to go. However, given how many trades we have closing near year end, it may be necessary to distribute all cash and property owed to the investor to his/hers Borrower LLC Deutsche Bank securities account as an intermediate step. This would have the affect of completing the desired liquidating distribution. Also, if property in the form of foreign currency or marketable securities are distributed, they could be sold by year end in the DB securities account. This would save time and confusion.

>>> "Monahan, Jean C" <jmonahan@kpmg.com> 10/07/99 02:28PM >>>
Upon distribution (at the end of the 60 day period), can the client designate where the funds go? John Rolfes at Deutsche Bank left me a message saying that the funds go into a mutual fund, with interest credited to the investor.

Question, can the client designate where it goes and/or which mutual fund it can go into? I asked Rick Stockton and he was not sure, he said to ask you guys.

The same question goes for Hypo and Rabo. Do you have a contact name there I can call?

Thank you.

Jean Monahan
Kpmg LLP
619-525-3227

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If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

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KPMG 0042717

Permanent Subcommittee on Investigations
EXHIBIT #127

Points of Work

2/4/98

1. Value-based fee limits law firm's malpractice protection. If client loses, more likely they could be sued because of their distinctions.
(a) Also an issue under S6662.
2. Pinchley
P+W can play a big role at providing protection in this area.
3. What's the impact of President's sale of securities for purposes of state blue sky laws & Federal securities laws.
4. Hunt register the product. P+W concern - cost is too high. Confirms of President that they will register.
5. OPIS
 - (a) Get ML economic analysis from Scott Cato
 - (b) President to speak to lawyers re: ^(securities) registration issues.
 - (c) Added features to analysis: long shares, OTC option, foreign currency exposure.
 - (d) Do model @ 90 day holding period
1st. May add 60 & 120 after.
 - (e) Get copy of Inadri's prospectus re: USS.

KPMG 0047317

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Permanent Subcommittee on Investigations EXHIBIT #128
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PRESIDIO ADVISORY SERVICES, LLC

333 Hayes Street, Suite 200
San Francisco, CA 94102

Telephone (415) 284-7333
Facsimile (415) 284-7284

Date September 14, 1999

To Dom DiGiorgio
Company Hypo Vereinsbank
Tel 212-672-5727
Fax 212-672-5591

cc

From Robert Pfaff
Tel 303-295-1314
Fax

Amir Makov

Subject BLIPS loan test case

*LIB float
C'd for Bank's simi
? can't use rate
? 10c day basis
? cost of carry
(include 17.8%
coupon)
? Investment LLC*

Dear Dom,

Per your request, we propose the following terms:

1. Premium amount: \$19.98 million
2. Principal amount: \$30.00 million *249,750*
3. Coupon rate on loan: 17.80%
4. Bank fees: ~~\$249,500~~ (1.25% * 19.98 MM)
5. Borrowers: Four special purpose, single member Delaware LLC, owned by:
four trusts: D. Amir Makov revocable trust (1/3), JL capital trust (1/3), RP capital trust (1/6),
pointe du Hoc irrevocable trust (1/6)
6. Investment mix: \$13 million short HKD, \$7 million short ARS, and \$30 million
invested in Euros hedged back into dollars. Any remaining cash will be invested in short
term, one to two month, dollar deposits.
7. Cost of carry: should be an annual 18bp on the total disbursement amount (\$49.98 million).
Specifically, assuming a two-month holding horizon, the carry cost will be \$14,000.
8. Collateral ratio: Same as DB documents
9. Fixed rate interest rate hedge - Investment LLC will enter a fixed to floating swap with your
bank which will result in eliminating all interest rate exposure.

See attachments.

Please call either myself or Amir should you have any additional questions.

Sincerely,

Robert Pfaff


Amir Makov

HVB 000202

Permanent Subcommittee on Investigations
EXHIBIT #129

2722

Unknown

From: Presidio Advisors [larson@presidioadv.com]
Sent: Tuesday, December 01, 1998 11:27 AM
To: 'schofield@kpmg.com'; 'lockhart@kpmg.com'; 'henderson@kpmg.com';
'mube@brownwoodlaw.com'
Cc: 'plaf@presidioadv.com'
Subject: BLIPS meeting

I understand that a BLIPS planning meeting has been proposed for next week. The purpose of the meeting as I understand it is twofold. First, Bob and I will bring the tax people up to date on the financing/investment work we have done over the last month or so. Second, the tax analyses and opinion-writing needs to go into high gear.

Since I know from experience that hotel space is likely to be unavailable in New York from now until Xmas, I suggest that we organize the meeting in Washington D.C. next Wednesday, 12/9. Maybe we can persuade Richard Smith to attend.

Proprietary Material
Confidentiality Requested

KPMG 0037335

Permanent Subcommittee on Investigations
EXHIBIT #130

Unknown

From: Presidio Advisors [jlarsen@presidioadv.com]
 Sent: Thursday, December 03, 1998 3:19 PM
 To: 'Bickham, Randall S'; Elmscheid, Jeffrey A; Henderson, Tracie K; 'gtheofel@jcb.com';
 'rubble@brownwoodlaw.com'
 Cc: 'rpaff@presidioadv.com'
 Subject: RE: BLIPS meeting

I'll have an outline of the financing/investment details of the proposed structure for you by Monday AM, hopefully sooner.

-----Original Message-----

From: Bickham, Randall S [SMTP:r.bickham@kpmg.com]
 Sent: Thursday, December 03, 1998 11:22 AM
 To: 'jlarsen@presidioadv.com'; Elmscheid, Jeffrey A; Bickham, Randall S; Henderson, Tracie K; 'gtheofel@jcb.com'; 'rubble@brownwoodlaw.com'
 Cc: 'rpaff@presidioadv.com'
 Subject: RE: BLIPS meeting

John

I spoke with R.J. this morning about a "tax-focused" meeting next week. As a first step before scheduling a meeting, we thought that we should first draft the base of an opinion letter in an outline format which will be circulated for comment before getting everyone together for a "all-hands" meeting. We are currently working on the document and expect to circulate it next week.

In light of how far you have gotten on the investment/financing front, it would be extremely helpful to us if you could take the same outline approach in summarizing the investment structure. We could then incorporate the investment discussion into the general document for distribution.

Randy

-----Original Message-----

From: Presidio Advisors [SMTP:jlarsen@presidioadv.com]
 Sent: Thursday, December 03, 1998 1:08 PM
 To: 'elmscheid@kpmg.com'; 'rbickham@kpmg.com';
 'tkhenderson@kpmg.com'; 'gtheofel@jcb.com'; 'rubble@brownwoodlaw.com'
 Cc: 'rpaff@presidioadv.com'
 Subject: BLIPS meeting

I can meet in New York either Wednesday or Thursday next week. I cannot meet there on either Monday or Tuesday. Bob will be in Denver all next week. I understand that Wednesday or Thursday works for RJ and George but I am not sure about the KPMG group. Also I am not sure how many KPMG people plan to attend. Will it be the same group as the initial meeting?

Proprietary Material
 Confidentiality Requested

KPMG 0037336

Permanent Subcommittee on Investigations

EXHIBIT #131

Unknown

From: Liston, Shannon L
 Sent: Wednesday, February 09, 2000 3:47 PM
 To: Eischeid, Jeffrey A
 Subject: RE: Brown & Wood opinion letter - BLIPS

Not a big deal, but contract nos. are always good. Total time is about 12 hours. Let me know if there is anything else I can help with.

-----Original Message-----

From: Eischeid, Jeffrey A
 Sent: Monday, February 07, 2000 6:27 PM
 To: Liston, Shannon L
 Subject: RE: Brown & Wood opinion letter - BLIPS

Shannon - Thanks for your help!!! Let me know if you can use a contract number for this project (including prior hours).

Jeff

-----Original Message-----

From: Napier, Angie
 Sent: Monday, February 07, 2000 5:34 PM
 To: Liston, Shannon L
 Cc: Hangle, Jeffrey; Eischeid, Jeffrey A
 Subject: FW: Brown & Wood opinion letter - BLIPS

Shannon,

Thanks for your voice mail regarding the opinion letter template. Attached is the most updated template which has been approved by Mark Watson. It would be helpful if you reviewed your analysis and brought it up to date using the latest version of the opinion letter.

Thanks for your help in this matter,
 Angie

<< File: BLIPS_OP1 FINALIZED 1-30-00.DOC >>

-----Original Message-----

From: Napier, Angie
 Sent: Monday, February 07, 2000 9:06 AM
 To: Liston, Shannon L
 Subject: FW: Brown & Wood opinion letter - BLIPS

Shannon,

When would be a good time for us to discuss? Jeff Eischeid has promised the Brown & Wood opinion template ready in two weeks and we need your analysis. Please call me at (404) 614-8602.

Angie

-----Original Message-----

From: Napier, Angie
 Sent: Thursday, February 03, 2000 2:26 PM
 To: Liston, Shannon L
 Subject: Brown & Wood opinion letter - BLIPS

Shannon,

Will you please call me regarding the Brown & Wood BLIPS opinion letter. It is my understanding that you

1

Proprietary Material
 Confidentiality Requested

KPMG 0006623

Permanent Subcommittee on Investigations
 EXHIBIT #132

2725

compared the KPMG opinion letter with the Brown & Wood opinion letter. I need to find out the results of your analysis.

Thanks,

Angie Napier
Personal Financial Planning
Kpmg LLP
Phone: (404) 614-8602
Fax: (404) 222-3435
tanapier@kpmg.com

.....
Our conclusions are limited to the conclusions specifically set forth herein and are based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. We are relying upon the relevant provisions of the Internal Revenue Code of 1986, as amended, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof.
.....

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If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

Unknown

From: Gray, Mike - RALEIGH
Sent: Thursday, January 04, 2001 3:23 PM
To: Escheid, Jeffrey A
Subject: RE: blps

Thanks

-----Original Message-----

From: Escheid, Jeffrey A
Sent: Thursday, January 04, 2001 6:19 PM
To: Gray, Mike - RALEIGH
Subject: RE: blps

A little bit. We're still working with Moore & Van Allen. They've declined to write a concurring opinion - their firm doesn't write such opinions as a matter of policy. They are considering, this week, whether they will write a MLTN penalty opinion. They're supposed to get back to Carolyn early next week.

Jeff

-----Original Message-----

From: Gray, Mike - RALEIGH
Sent: Thursday, January 04, 2001 5:17 PM
To: Escheid, Jeffrey A
Subject: blps

have we made any progress re a third party opinion?

REDACTED

Proprietary Material
Confidentiality Requested

KPMG 0045687

Permanent Subcommittee on Investigations

EXHIBIT #133

Form **8264** Application for Registration of a Tax Shelter OMB No. 1545-0865
 (Rev. April 1998) For IRS use only

Department of the Treasury Internal Revenue Service See separate instructions.

If this is an amended form, enter the tax shelter registration number previously issued to the tax shelter. See Amended Forms 8264 on page 2 of the instructions.

Part I Identifying Information Note: The tax shelter registration number will be sent to the organizer's address below.

Tax shelter name: **QA Investments, LLC** Tax shelter organizer's name: **QA Investments, LLC** If you are not the principal organizer, check this box

Number, street, and room or suite no.: **999 Third Avenue, Suite 4150** Number, street, and room or suite no.: **999 Third Avenue, Suite 4150**

City or town: **Seattle** State: **WA** ZIP code: **98104** City or town: **Seattle** State: **WA** ZIP code: **98104**

Identifying number: **91-1835018** Telephone number: **(206) 442-9292** Identifying number: **91-1835018** Telephone number: **206 442-9292**

Part II Tax Shelter Information

1a Type of business organization: Partnership (including a limited partnership) Trust S corporation Schedule C or F activity (Form 1040) Other (specify) **C Corporation** b Is this offering subject to the aggregation rules in the regulations? Yes No

2a Principal business activity code. See page 7 of the instructions. **6748** b Secondary business activity code. If not applicable, enter N/A. **N/A**

3a Type of principal asset acquired (or to be acquired): **Securities** b Was acquisition from a related party? Yes No

c(1) Cost (actual or projected) to tax shelter **\$** c(2) Cost to related party **\$** d Is the asset located in a foreign country? Yes No Country:

e Means of acquisition: Purchase Construction Lease Other (specify) f(1) Date acquired **6/1/98 or later** f(2) Date placed in service **6/1/98 or later**

4 Accounting method: Cash Accrual Hybrid Other (specify)

5a Is the tax shelter offering required to be registered with Federal or state agencies? Yes No b Is the tax shelter offering exempt from Federal or state agency registration but filing of notice is required? Yes No

c If you checked "Yes" in either item 5a or 5b, check the appropriate boxes in item c(1) and/or enter the names of the states in item c(2).

c(1) Federal: SEC HUD CFTC Other c(2) States

6 Tax shelter registration number of other registered tax shelters. See page 4 of the instructions.

Note: Complete items 7a through 5e for a minimum investment unit. See instructions for item 7a beginning on page 4.

7a Method of financing. Check applicable box and enter dollar amount. b length of financing c Is any financing collateralized by letters of credit? Yes No

(1) Cash **\$ 1,300,000** (2) Property contributions **\$** (3) Recourse debt **\$** (4) Nonrecourse debt **\$** (5) Other (specify)

(6) Total. Add items 7a(1)-(5) **\$ 1,300,000** e Foreign-connected financing. If none, check this box otherwise, enter: Country:

8a Gross deductions **\$ 310,000.000** b Deduction codes **99** c Total credits **\$ 0** d Credit codes **N/A**

9 Tax shelter ratio. Complete the worksheet on the back of this form.

a Year 1 **7.6** b Year 2 **8.7** c Year 3 d Year 4 e Year 5

10 Aggregate amount from sale of investment units **see explanation**

11a Maximum number of investors **see explanation** b Maximum number of investment units **see explanation** 12 Date investment unit was first offered for sale **5/1/98**

Under penalty of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the tax shelter organizer) is based on all information of which preparer has any knowledge.

Please Sign Here: **Samuel Smith** Date: **16-1-98** Title: **Executive Vice President**

Preparer's signature: Date: Check if self-employed Preparer's social security number:

Preparer's Use Only: Firm's name for years if self-employed, address and ZIP code: EIN: Telephone number:

Permanent Subcommittee on Investigations
EXHIBIT #134

UBS000044

Tax Shelter Ratio Worksheet

Part I Tax Benefits	(a) Year 1	(b) Year 2	(c) Year 3	(d) Year 4	(e) Year 5
1 Current year's gross deductions	9.866mil	8.33mil			
2 Prior years' gross deductions		9.866mil			
3 Cumulative gross deductions. Add lines 1 and 2	9.866mil	10.7mil			
4 Current year's credits					
5 Prior years' credits					
6a Cumulative credits. Add lines 4 and 5					
b Statutory factor	3.5	3.5	3.5	3.5	3.5
c Multiply line 6a by line 6b					
7 Cumulative tax benefits. Add lines 3 and 6c	9.866mil	10.7mil			
Part II Investment Base					
8 Cash contributed	1.3 mil				
9 Adjusted basis of property contributed					
10 Tentative investment base. Add lines 8 and 9	1.3 mil				
11 Reductions to investment base					
Current year's investment base. Subtract line 11 from line 10	1.3 mil				
12 Prior years' investment base		1.3 mil			
13 Cumulative investment base. Add lines 12 and 11	1.3 mil	1.3 mil			
14 Tax shelter ratio. Divide line 7 by line 14. Enter in the appropriate space on line 9 on the front of this form	7.6	8.2			

Explanation of Items

c(1): Cost dependent on amount of securities purchased.

10: Aggregate amount dependent on number of transactions not subject to reasonable estimation.

11(a): Aggregate amount dependent on number of transactions not subject to reasonable estimation.

11(b): Aggregate amount dependent on number of transactions not subject to reasonable estimation.

KPMG Peat Marwick LLP

Financial Services

21700 Oxnard St, Suite 1200
Woodland Hills, Calif 91387

Telephone 818-227-6900
Fax 818-702-0602

Date October 10, 1997

Page 1 of 3

To Larry DeLap
Organization KPMG Palo Alto
Fax 415-855-9258

From Gregg W. Ritchie
Department Tax Services
Tel 818-227-6905
Fax 818-227-6964

Subject Quadra Letter

Attached is a fax from Quadra again requesting that we help them with the tax shelter registration issue for the Foreign Leveraged Investment Program. I have drafted a response for your consideration. While I believe we should not be in a position where we are rendering advice to them, their decision to register the strategy as a tax shelter would not be in our clients' best interests. I would appreciate your thoughts on how to manage them through this issue.



KPMG JAC 329290
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delivering this message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the information is strictly prohibited. If you have

received this telefax in error, please immediately notify us by telephone (call collect to the number listed above) to arrange for the return of the original document to us.

640246

10 10 97 16:26 No. 008 P. 01

10:18-227-6964

KPMG W/C PFF

PEREZ 150673

Permanent Subcommittee on Investigations
EXHIBIT #135



QUADRA ADVISORS, LLC

One Sansome Street, Suite 2100, San Francisco, CA 94104 | (415) 984-3113 | Fax (415) 984-3111

FAX COVER SHEET

DATE: October 9, 1997	TIME: 3:30 PM
TO: Mr. Gregg W. Ritchie KPMG - Peat Marwick	PHONE: (818) 227-6905 FAX: (818) 227-6964
FROM: David L. Smith	PAGES: 1

In keeping with the spirit of our relationship over the past year and as further outlined in an engagement letter dated September 15, 1997, in which KPMG Peat Marwick indicated their responsibility for all tax issues, please provide us with a letter confirming earlier discussions that the redemption transaction is not required to be registered as a tax shelter.

Concern has been raised regarding this issue and we seek your advice. Specifically, Quadra is concerned that without your letter, we would be required to register the redemption transaction or suffer penalties for non-compliance with these registration provisions. It is our intention to comply with these provisions. Therefore, we eagerly await your response. We would prefer to avoid seeking outside counsel.

Thank you in advance for your prompt attention to this urgent matter.

Regards,


David

KPMG JAC 329291
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640247

10:00 P.02 16:27 NO.008 P.02 OCT 10 97 1D:818-227-6964 KPMG W/C PFP

PEREZ 150674

2731

DRAFT

10/10/97 5:27 PM

October 10, 1997

PRIVATE & CONFIDENTIAL

Mr. David L. Smith
Quadra Advisors, LLC
One Sansome Street, Suite 2100
San Francisco, California 94104

Dear David,

I have received your fax dated October 9, 1997 in which you request our advice concerning tax shelter registration.

As you know, our engagement letter with Quadra Advisors, LLC ("Quadra") indicates that "KPMG has agreed to provide *Clients* with an analysis of one or more aspects of the Strategies and of the applicable tax consequences, including but not limited to federal tax consequences, of the various transactions that may be undertaken in connection with a Strategy" (emphasis added).

The analysis of the tax shelter registration requirements which may be applicable to Quadra must be made by your Firm in conjunction with your own tax counsel.

Sincerely,

Gregg W. Ritchie

cc: Larry DeLap

KPMG JAG 329292
CONFIDENTIAL

640248

KPMG W/C PFP ID:818-227-6964 OCT 10 1997 16:27 No.008 P.03

PEREZ 150675

2732

KPMG Peat Marwick LLP

21700 Oxnard Street, Suite 1200
Woodland Hills, CA 91367

Telephone 818 227 8900



Telex 818 112 162

October 10, 1997

PRIVATE & CONFIDENTIAL

Mr. David L. Smith
Quadra Advisors, LLC
One Sansome Street, Suite 2100
San Francisco, California 94104

Dear David,

I have received your fax dated October 9, 1997 in which you request our advice concerning tax shelter registration. The analysis of the tax shelter registration requirements which may be applicable to Quadra must be made by your Firm in conjunction with your own tax counsel. However, please be advised that KPMG Peat Marwick LLP has determined that it will not register this engagement as a tax shelter.

Sincerely,

Gregg W. Ritchie

cc: Larry DeLap

KPMG JAC 328964
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637445



PEREZ 150378

**QUADRA ADVISORS, LLC**

One Sansome Street, Suite 2100 | San Francisco, CA 94104 | (415) 984-3113 | Fax (415) 984-3112

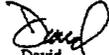
FAX COVER SHEET

DATE: October 16, 1997 **TIME:** 11:10 AM
TO: Mr. Gregg W. Ritchie **PHONE:** (818) 227-6905
 KPMG Peat Marwick LLP - Peat Marwick **FAX:** (818) 227-6964
FROM: David L. Smith **PAGES:** 1

Thank you for your letter dated October 10, 1997, in which you indicate that KPMG Peat Marwick LLP will not register the redemption transaction as a tax shelter. However, we are confused regarding your conclusion concerning KPMG Peat Marwick LLP's responsibility to register the redemption transaction. Therefore, could you please confirm that the reason that KPMG Peat Marwick LLP does not intend to register the redemption transaction as a tax shelter is because KPMG Peat Marwick LLP does not believe it to be one; and not because it expects Quadra Advisors LLC to register the redemption transaction.

Thank you in advance for your prompt attention to this urgent matter.

Regards,


David

KPMG JAC 314089

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637490

PEREZ 130229

2734



Nancy.Donohue@db.com To: william.boyle@db.com
cc:
Subject: hi bill..presidio
Sent: 07/12/1999 05:39 PM

ring when u r back , x 5972 , alvin knott from shearman and sterling
called to catch up on a few items

i informed him that you are point man on the deal and that all
comments should go through you

thnks bill..from nancy

Permanent Subcommittee on Investigations

EXHIBIT #136

Author: Larry DeLap at KPMG_Palo_Alto
Date: 7/29/97 1:55 PM
Priority: Normal
TO: Gilbert D. Bloca at KPMG_WWT
TO: Paul S. Lowry at KPMG_Boston
TO: Richard J. Solway at KPMG_NY_Tax
Subject: Revised Memorandum

----- Message Contents -----

The attachment obviously is very confidential. Please do not share it with anyone. I would like to get your general thoughts on the proposal therein following our '87(c) discussion tomorrow.

Larry

----- Forward Reader -----

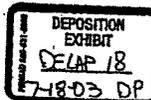
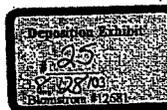
Subject: Revised Memorandum
Author: Robert A. Pfaff at KPMG_Denver
Date: 7/29/97 2:09 PM

Attached is a revised version of my July 18, 1997 memorandum.

I have added additional comments concerning my perception of KPMG's opportunity in the international banking market.

Jeff, as you requested, I have copied Larry DeLap.

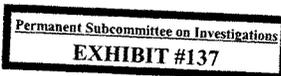
Bob



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KPMG JAC 33116
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637378



KPMG Peat Marwick LLP

To John Lanning/Jeff Stein
New York

Date July 29, 1997

From Bob Pfaff
Denver

From
Re: Lanning_memo.doc

cc John Larson, San Francisco
Larry DeLap, Palo Alto

My Thoughts Concerning:

- (I) KPMG's Tax Advantaged Transaction Practice
- (II) Presidio's Relationship with KPMG
- (III) Transition Issues

(I) KPMG's TAX ADVANTAGED TRANSACTION ("TAT") PRACTICE

While I am certain there is no shortage of frustration, I think we made significant progress in FY1997. First and foremost, the TAT Opinion & Procedures Committee (implemented by Larry DeLap) turned chaos and inconsistency into a tough but, fair, prompt, independent, and reliable process. I think these procedural safeguards ("nonengagement letters," releases, etc.) have significantly reduced the Firm's exposure in what is clearly a high-risk practice.

(a) Consistency

I think our big challenge now is to make sure that we comply with the procedures and not make substantive changes to the transaction that has been approved by the opinion committee. I sincerely believe any slippage on this front is the result of ignorance of the new DPP policies. This highlights the need to have dedicated teams involved in delivery and implementation. I believe we have identified most, if not all, of the "one off" deals that were done. However, on a prospective basis, we should make certain that the delivery and opinion process is uniform. The partner who will ultimately write the opinion needs to have input on the front-end before any structure is implemented.

KPMG JAC 331161
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637379

 Peat Marwick LLP

Page 2
 July 29, 1997
 Memorandum to John Lanning/Jeff Stein

(b) Process

I believe there are four distinct phases from creation to revenue-recognition on these products. Whoever you select to run the practice will need to be involved and manage all four phases.

(i) Idea Generation

Keep in mind that we are ultimately looking for "turn-key" products. In most cases, they will require capital and an intermediary. Generally, this will involve a "name," financial institution, and an intermediary domiciled in a favorable jurisdiction, who is nontaxable in the jurisdiction of receipt and can absorb an item that can be characterized as "income" under U.S. tax law.

We have an abundance of KPMG professionals who are capable of generating idea-flow. Additionally, KPMG's reputation in the international banking community is stellar. An internal issue we need to resolve is how to reward the idea-generators so they will be more forthcoming.

(ii) The Turn-Key Process

In my view, this process is our missing link. We need to think how we can create a critical component of a product and then earn a royalty on sales.

To succeed in this area, one needs to gain entrance to the international banking, investment and leasing community and have an alignment with the "handful" of law firms who are skilled and respected in this area. Fortunately, the KPMG name is highly-respected and will open most doors. Once the door is open, you obviously need to deliver an idea that is impressive. Patience and fastidiousness are virtues that will be rewarded.

It should also be noted that providing a true turn-key product, with KPMG as sole provider, will in many cases be difficult or impossible due to restrictions placed on the firm's scope of activities by authorities such as the SEC.

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 Peat Marwick LLP

Page 3

July 29, 1997

Memorandum to John Lansing/Jeff Stein

(iii) Marketing and Dissemination

This is tougher than it appears and runs counter to one's intuition. Logically, we would simply issue an edict that "any client with an imminent gain of a threshold amount" should contact the TAT practice. However, after reading *Colgate Palmolive* it is clear we cannot openly market tax results of an investment. Rather, our clients should be made aware of investment opportunities that are imbued with both commercial reality and favorable tax results. Conversely, we cannot offer investments without running afoul a myriad of Firm and securities rules. Ultimately, it was this dilemma that led me to the conclusion that I was in the wrong industry to play the role I enjoy the most and, hence, the Firm's need to align with the likes of a Presidio.

In my observation, Gary Powell and Gregg Ritchie are well-suited for the role of figuring out where our target markets should be and how to strategically and efficiently identify such markets and gain entry. I might add that John Larson and I discovered, after about 18 months of trial and error, that it is far more efficient, albeit less glamorous, to close a transaction with a privately held enterprise, than it is with IBM. Recognize that calls to the *Fortune 100* may be important for strategic reasons, but may rarely result in a prompt closing.

Finally, it is also important to remember the distinction between marketing and sales. I think sales calls should be limited to the KPMG partner or manager relationship and a TAT member who knows the product.

(iv) Sales, Delivery and Opinion Writing

I think the same professional(s) should be involved to assure consistency with the TAT-approved product and to make certain the product is "opinionable." If we bifurcate this process, the sales guy has a tendency to stretch too far to get the sale and promise modifications that we ultimately cannot deliver. It appears we have a couple of these situations.

The ideal candidate would be someone who knows the product cold, is flexible, decisive, and has reasonably good sales skills. However, given the fact that a relationship partner is likely to be present, I would recommend

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 Peat Marwick LLP

Page 4

July 29, 1997

Memorandum to John Lanning/Jeff Stein

erroring on the side of going with a technician with the caveat he or she not be a "waffler."

As you are no doubt aware, the TAT Opinion Committee consists of:

- Larry DeLap
- Gil Bloom
- Paul Lowry
- Rick Solway

The professionals I have identified with the aptitude and the interest include:

- Bob Simon, Denver
- John Harris, Denver
- Marcel Maier, Fort Lauderdale
- Bill Albaugh, Atlanta
- Randy Bickham, Palo Alto
- Richard Smith, WNT
- Gregg Ritchie, Warner Center
- Jeff Eischeid, Atlanta

I am sure there are others that will emerge if encouraged.

II. PRESIDIO'S RELATION WITH KPMG

I strongly desire a close relationship with KPMG and would be willing to commit to an arrangement whereby Presidio would agree to offer KPMG a right of first-refusal on products. I believe it would be a reasonable consideration, in turn, for KPMG to offer Presidio a preferred provider opportunity in such instance. I think a formalized relationship between Presidio and KPMG may be subject to scrutiny, considering the problems the firm had with KPMG Baymark. I am also aware that entering into an "alliance" with KPMG is now a difficult and complex matter under current firm policy.

It is clear that Presidio desires to offer a number of products. We have several ideas that we would like to "turn-key" in the near future. We would be willing to

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637382

 Peat Marwick LLP

Page 5
 July 29, 1997
 Memorandum to John Lanning/Jeff Stein

engage in dialogue with KPMG with the goal of developing mutually-beneficial products. Quite frankly, the first question is *"who is in charge and responsible for 'cutting the deal' on behalf of KPMG?"* This role requires more of a "businessman role" than anything else.

(a) Quadra Potential Conflict

With regard to the foreign leveraged investment program, KPMG took the idea to Quadra who, in turn, brought UBS to the table. We used them exclusively, but discovered that after Dave Lippman joined Quadra, he cut a deal to expand the network to C&L by striking an alliance with Mike Schwartz. My best sense of all this is that Quadra figured they were the only game in town and probably counted on KPMG being irritated but, ultimately, decided to continue to do business with Quadra.

My initial reaction would be to sever the Quadra relationship, in light of their open and notorious relationship with C&L, on a product KPMG developed and brought to Quadra. On reflection, this would probably be ill-advised because we need to live with Quadra, particularly on IRS exams and on completed transactions. We also have several clients who did well economically on the UBS stock and will probably want to do more.

Finally, as we learned with Quadra, it is always better to have the leverage of having more than one source of supply, unless we (KPMG) are confident the supplier is equally committed to an exclusive relationship. In the current situation, I think it would be in KPMG's best interests to keep the Quadra relationship with a number of caveats. Firstly, KPMG needs assurance that our modifications and refinements (effectively, our intellectual capital) are not pipelined directly to C&L. Clearly, we had close to a one-year head-start and are likely to be more evolved than C&L. Secondly, if Presidio commits to be exclusive to KPMG on this product, it would appear to be a fair consideration for KPMG to offer Presidio and Deutsche Bank the first opportunity to present its product.

Finally, it would be essential that if KPMG works with both providers, that there be a "Chinese Wall," separate engagement teams, sales teams, and opinion writers.

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(b) Other Presidio Issues

If Presidio and KPMG strike some sort of agreement, the following business issues need to be resolved:

(i) KPMG Fees

The deal with Quadra was confusing because different partners had different deals. KPMG needs to speak with one voice and any pricing system must be easily understood.

The current pricing arrangement between KPMG and Quadra is 1.5 points less shared costs. The shared costs diminish as a percentage as the size of the transaction increases.

The "shared costs" concept has caused confusion and, in certain instances, distrust. A better formula would be a fixed amount, escalating based upon deal size.

Amount	7.0% Charge	7.5% Charge
(a) \$10m - \$20m	1.0%	1.50%
(b) \$20m - \$50m	1.25%	1.75%
(c) >\$50m	1.30%	1.80%
(d) >\$100m	To be separately negotiated because the client may attempt to negotiate a fee of less than 7.0%	

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(ii) KPMG Fees for Various Roles

In certain circumstances a party, other than KPMG, may be a "finder." In such instance, KPMG may play a limited role, which could include:

- Opinion Provider
- Structuring and Comfort
- Authorization to use KPMG's name

There should be a sliding scale of fees for these limited roles or, alternatively, KPMG may agree to fee sharing. We have a number of these deals pending where KPMG was not the finder. These are significant transactions with very wealthy individuals who are not currently clients of the firm. The situations we are currently pursuing represent excellent opportunities for the PFP practice and, especially for the Bay Area ICE practice.

III. TRANSITION ISSUES

(a) Existing Deals

John Larson, working with Randy Bickham and John Harris, intends to have completed prior to his departure the KPMG opinion on closed transactions regarding to the foreign leveraged investment program.

I think it would be advisable for all the teams to meet in the next several weeks to make sure we have covered all bases. Denver would appear to be the most logical location.

(b) New Technology

There are several ideas that we have, which we believe have a reasonable prospect of becoming near-term products. KPMG needs to figure out what commitment and role they want to make. Assuming the answer is affirmative, a "business deal" then needs to be struck.

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(c) Transfer of Relationship

I have spent a significant amount of time courting a relationship with Bayerische Vereinsbank ("BV"). It now appears that this investment may pay-off in terms of deal and product flow. BV has engaged Caplan & Drysdale to assist them on these products. BV has also interviewed a number of accounting firms and are most impressed with PW's TAT practice. PW's practice is London-based and, accordingly, presents itself as the only multinational TAT practice among the Big Six. Although beyond the scope of this memorandum, it has become clear to me that the multinational banks are chasing increasingly-sophisticated customers in a market that has increasingly small profit margins. Accordingly, they are looking for competitive edges to shore-up their operating margins and respective share of the market. Two key differentials are: (i) tax advantaged transactions and (ii) financial accounting enhancements. The market is brimming with opportunity for KPMG to tax advantage its standing. By way of example, in the last week, Bank of America's Structured Finance has inquired about a relationship with Presidio to bring them leading-edge products.

I will use my best efforts to introduce Tony Alexandrou (Jeff's recommendation) to BV.

I would be pleased to continue to work with a replacement to help assure a smooth transition.

Similarly, I have NOL monetization prospects.

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Other important relationships include:

- Kreditbank
- ING
- Deutsche Bank
- Bank of America, Structured Finance - Chicago
- Republic Financial Corporation
- ICA
- Fortrend
- Stamford Capital
- Skandia

I recognize that it will take beyond the end of July to provide appropriate introductions. I would be willing to work with whomever KPMG designates after my departure.

In summary, it is clear that KPMG needs to make business decisions concerning the tax advantaged transaction process. I have attempted to address the most critical issues.

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2745

FRM 13
08.06.00
Thorpe

Stellungnahme

DRAFT

Presidio - Plafond
Increase from USD 1500mio to USD 2250mio.

Comments

- No change in the transaction structure.
- Good experience with previous transactions.
- Investors have, so far, chosen to liquidate before the second (180 day) phase. ie after 60 days.
- Increased staffing providing a dedicated person to administer the transactions.
- 5 transaction administrative limit to be controlled by FRM 4.

Recommendation

FRM 13 recommends the increase in the Plafond based on successful execution of previous transactions, low credit risk and excellent profitability. Our recommendation is subject to the FRM 13 Stellungnahme of [] and a satisfactory review by FRM 4 of operational procedures and performance.

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EXHIBIT #138

HVB 001805



Robert B. Coplan
01/17/2000 08:37 AM

To: Charles R. Kowal/Southeast/TAX/EYLLP/US@EY-Namerica, Michael K. Szalkowski/Southeast/TAX/EYLLP/US@EY-Namerica, Robert Johnson/GulfCoast/TAX/EYLLP/US@EY-Namerica, Richard W. Jones/GulfCoast/TAX/EYLLP/US, Richard J. Joyner/Southwest/TAX/EYLLP/US@EY-Namerica, Victoria R. Mataloni/Southwest/TAX/EYLLP/US@EY-Namerica, Allan M. Harbour/SCalifornia/TAX/EYLLP/US@EY-Namerica, Michael S. Fredlender/SCalifornia/TAX/EYLLP/US@EY-Namerica, James A. Cox/NCalifornia/TAX/EYLLP/US@EY-Namerica, Robert M. Haynie/NCalifornia/TAX/EYLLP/US@EY-Namerica, Michael Reed/Missouri/Kansas/TAX/EYLLP/US@EY-Namerica, Richard F. Kraner/Missouri/Kansas/TAX/EYLLP/US@EY-Namerica, Brian W. Upchurch/Ohio/Kentucky/Indiana/TAX/EYLLP/US@EY-Namerica, Carl A. Rhodes/Ohio/Kentucky/Indiana/TAX/EYLLP/US@EY-Namerica, Jeff Brodsky/Chicago/TAX/EYLLP/US@EY-Namerica, Gary M. Duboff/Chicago/TAX/EYLLP/US@EY-Namerica, David G. Johnson/Ohio/Michigan/TAX/EYLLP/US@EY-Namerica, William P. Murphy/Ohio/Michigan/TAX/EYLLP/US@EY-Namerica, Charles R. Cangro/NewYork/TAX/EYLLP/US@EY-Namerica, Glenn H. Hascher/Connecticut/TAX/EYLLP/US@EY-Namerica, Robert L. Carson/NewEngland/TAX/EYLLP/US@EY-Namerica, Andrew Kyriacou/NewEngland/TAX/EYLLP/US@EY-Namerica, Charles W. Paul/Washington/TAX/EYLLP/US@EY-Namerica, Michael F. Bearer/Washington/TAX/EYLLP/US@EY-Namerica, Mark A. Tronconi/Pittsburgh/TAX/EYLLP/US@EY-Namerica, James A. Hutchinson/Philadelphia/TAX/EYLLP/US@EY-Namerica, Robert C. Schlemmer/Ohio/Kentucky/Indiana/TAX/EYLLP/US@EY-Namerica, Brian L. Vaughn/Southeast/TAX/EYLLP/US@EY-Namerica, Martin Nissenbaum/NewYork/TAX/EYLLP/US, Peter D. Lucido/NewYork/TAX/EYLLP/US@EY-Namerica, Melinda S. Merk/National/TAX/EYLLP/US, Robert B. Coplan/National/TAX/EYLLP/US@EY-Namerica, David Gerson/NewYork/TAX/EYLLP/US@EY-Namerica, Ray Knight/Carolinas/TAX/EYLLP/US@EY-Namerica, Richard J. Shapiro/NewYork/TAX/EYLLP/US@EY-Namerica, Robert J. Garner/National/TAX/EYLLP/US@EY-Namerica, Charles L. Ratner/Ohio/Michigan/TAX/EYLLP/US@EY-Namerica, Sylvia J. Pozansky/Chicago/TAX/EYLLP/US, Hunter A. Payne/Washington/TAX/EYLLP/US@EY-Namerica, Jennifer L. Haggerty/Philadelphia/TAX/EYLLP/US@EY-Namerica, Paula B. Kennedy/Minneapolis/TAX/EYLLP/US@EY-Namerica, Lynne M. Lehman/SCalifornia/TAX/EYLLP/US@EY-Namerica, Stewart G. Goodson/GulfCoast/TAX/EYLLP/US@EY-Namerica, John M. Bean/Minneapolis/TAX/EYLLP/US@EY-Namerica, Stephen R. Akers/Southwest/TAX/EYLLP/US@EY-Namerica, Jeffrey S. Williams/Chicago/TAX/EYLLP/US@EY-Namerica, Barton C. Francis/Florida/TAX/EYLLP/US@EY-Namerica, Robert J. Sepe/SCalifornia/TAX/EYLLP/US@EY-Namerica
cc: Michael S. Kelley/National/TAX/EYLLP/US@EY-Namerica, David J. Kauter/National/TAX/EYLLP/US@EY-Namerica
Subject: CDS Lives!

In keeping with the optimism I expressed during last week's conference call, we have obtained clearance to sell CDS this year. Further details will be forthcoming on the sales process and certain changes from last year's implementation model. For the first quarter we will be using a one-swap model, which should simplify things a bit. (It is also our intention to announce in the near future a cut-off date for the sale of the transaction sometime around June or July. While earlier than last year's September 30 cut-off, it should provide more strength to the transaction.) We will also be providing you with samples of updated documents soon. One change we are instituting is the addition of a provision that essentially requires the written authorization of the limited partner before funds can be withdrawn from a partnership custodial account to a different account not in the name of the partnership. This provision will provide added

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EXHIBIT #139a

2003EY011613

security for our clients and our firm, and addresses a key concern of several of our TSCs.

One point Mike Kelley stressed is that we should be very certain that the individuals we approach with this transaction are sophisticated investors who fully understand the economic and tax risks of the transaction, and would not be likely to seek compensation from us if the anticipated tax benefits are not ultimately realized. I know that you have always sought to target these types of individuals in the past, but this is just a reminder to realistically assess each potential engagement with regard to this issue. You should be especially mindful of this issue when considering an engagement that would include several investors who are aggregating their loss amounts in order to reach the \$20 million minimum for the transaction. The potential partners with the smallest contributions may need to be challenged regarding their suitability for the transaction under this guideline.

I will take this opportunity to inform you that name changes are in the works. We will likely be renaming the VIPER group in order to avoid a name that might be "misconstrued" in the marketplace and the media (i.e., used as a word rather than as its less sinister sounding acronym). Names presently under consideration are Strategic Individual Solutions (SIS) and Strategic Individual Tax Solutions (SITS). SIS has obvious appeal because it presents us as the individual client counterpart to the SBS group. The strategies themselves will likely be assigned more benign names as well, in light of the attention the name BOSS attracted in the media. This would include CDS, which may become simply Solution Number 3.

Another point you may find interesting is that there are rumors that at least one of the other Big 5 firms (in addition to PWC) are leaning toward not selling their 1999 loss generator products in 2000. More on this as we hear details.

Finally, let me congratulate you again on a phenomenal first quarter. The next quarter will pose challenges without COBRA, but we will strive to bring you new solutions and complete those in the pipeline to restock your quivers. Good luck.

2003EY011614

2748



Robert B. Coplan
09/15/1999 02:05 AM

To: Robert J. Garner/NewYork/TAX/EYLLP/US
cc:
Subject: VIPER Products - IRS Representation, etc.

BOB COPLAN

Phone Number: 202-327-8707

Fax Number: 202-327-6725

EYComm Number: 9292672

This email will provide the background underlying our decision to provide IRS representation through the appellate level for clients who engage us with respect to the Contingent Deferred Swap (CDS) strategy. It will also cover the movement of our Picante product into the corporate market before all accounting issues had been resolved. These issues were apparently raised as a concern on a recent TMP call and were summarized in a followup voicemail from Beth Brooke to you and Dave Kautter.

The CDS strategy is designed to produce a result whereby a client's ordinary income is taxed at long-term capital gains rates (along with deferral for a year). The strategy involves a transfer to a partnership that generates a level of trading activity designed to enable the partnership to achieve trading partnership (or business) status, that in turn allows swap payments and other first year expenses of the partnership to be treated as ordinary losses that can offset the client's ordinary income in that year. The strategy is for the most part implemented through a boutique tax strategy firm (Private Capital Management Group) and UBS.

Although Ernst & Young's fee is expressed in the engagement letter as a flat dollar amount (to avoid contingent fee issues), we calculate our fee based on 1.25% of the losses generated through the strategy. Since the strategy requires a client to generate a minimum of \$20 million of losses, E&Y generally receives a minimum of \$250,000 for each transaction. For earlier sales, this amount is reduced by the amount that the trading partnership will pay for a "should" level opinion from a reputable law firm - generally about \$50,000. On our largest transaction to date, E&Y has realized a fee of \$1 million.

We arranged for a law firm to be engaged by the CDS partnership to issue an opinion letter on the transaction because of E&Y's financial interest in the transaction. The law firm's opinion letter provides greater protection from the potential assessment of tax shelter penalties. Therefore, because E&Y has limited involvement in implementing the transaction and does not provide an opinion letter, we discussed with Ron Friedman, and in particular Ed Swalls, the possible characterization of our fee as a commission in certain states. In order to reduce the possibility of our fee being considered a commission we wanted to provide some level of services beyond simply selling and explaining the transaction. Since we disclose that an audit is likely as a result of the CDS transaction and prospects inevitably inquire about representation in the event of audit, we concluded after consulting with Ron and Ed that agreeing to represent them through the appellate level of the IRS would generally address the commission issue, while providing something these individuals were looking for as part of the transaction.

To date, our PFC practice has sold nine CDS transactions for net fees to E&Y of \$3,345,000. There are several promising transactions pending that may well close before the September 30 date on which the CDS transaction is being closed down. I would estimate that 3-4 additional deals may close with average E&Y fees of about \$300,000 per transaction. That would make 12-13 partnerships formed with aggregate fees to E&Y of around \$4.5 million.

While not intending to minimize the effort involved in selling and closing one of these transactions, the fees received are well in excess of 100% of standard. We expect little time to be spent at the agent level on this transaction, and that a National coordinated effort would be involved in the appeals process to reduce the time needed to be spent by the areas. National would craft a protest letter from the opinion letter that could be used for all of these transactions. Even with National assistance at the Appellate conference, I expect the time charges for representing each client in this manner to be \$30,000-\$40,000. For the nine transactions completed to date, that would represent less than 10% of our fees. I have

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EXHIBIT #139b

2003EY011387

previously discussed with offices that have made CDS sales, the issue of creating a reserve for this future expense.

With regard to the Picante transaction, it is true that we did not exercise sufficient control to prevent it from being taken to corporate targets prior to having all accounting issues ironed out through National AABS. This product, which enables a taxpayer to avoid a large portion of the capital gain on the sale of a highly appreciated public stock position and also make a charitable contribution, had obvious appeal to corporations because of their 35% tax rate on capital gains (plus state tax). The "pull" from the areas for a new product can be quite strong, and this was a case where the product itself was already known in the PFC practice in the individual context. Nevertheless, we ran into a situation where AABS professionals in a practice office drew their own conclusion as to the accounting treatment of Picante based on initial conversations they had with National AABS professionals. It ultimately turned out that the individuals in National AABS (who I have spoken with at length about Picante) reached a different conclusion, and we are only now close to a final resolution of the issues with a memo on the subject. Clearly, we have learned from this experience and will prevent premature distribution of products in the future -- and will certainly prevent such unfinished products from being pitched to clients. Fortunately, there have been no corporate Picante deals closed where the corporation acted with a mistaken impression of the accounting treatment.

I hope this satisfactorily addresses the concerns expressed on the TMP call regarding these products. Let me know if I can provide further clarification.

2003EY011388

2750



Robert B. Coplan
06/04/2000 10:06 PM

To: Brian L. Vaughn/National/TAX/EYLLP/US@EY-NAmerica,
belle_six@mindspring.com@Internet, Richard J.
Shapiro/NewYork/TAX/EYLLP/US, Martin
Nissenbaum/NewYork/TAX/EYLLP/US
cc:
Subject: SISG Solution Update – CDS Add-On

Please review this message for accuracy and tone, and get your comments to me ASAP. It has to go out on Monday, as you know. Any open items that we can resolve before it goes out would be helpful. I thought some level of detail was necessary to give our folks an idea of what was going on.

I have been holding off sending out this email in an effort to avoid prematurely announcing a new product variation that has been in the works recently. We can now formally unveil what is so far being referred to as the "CDS Add-on", which is described conceptually below. In a separate email, I will provide an update on other solutions in various stages of completion and near-completion. Make sure you note the paragraph below regarding time constraints.

CDS Add-On

Genesis We were informed by Bolton Asset Management (BAM) – who currently serves as the asset manager for the CDS foreign currency trading program – that they wanted to diversify the trading returns and enhance performance through the use of a manager with significant expertise in trading digital currency (and other) options. The new manager indicated to BAM that he could not manage a multitude of separate accounts (i.e., for the various CDS partnerships), but would have to consolidate the separate trading accounts into one entity. Therefore, it is expected that a portion of the trading accounts will be transferred from the existing CDS partnerships into a newly formed LLC. Brian Vaughn began working on a way to combine these non-tax motivated events with the short-option technical position that allows basis in the long position in a digital currency option spread to be established without reduction for a related short currency option position that is out of the money at the time the spread is transferred to a partnership or LLC. After continued analysis in National, we have resolved our main issues, and are ready (subject to finalizing a couple fee and marketing matters early this week) to actively market this solution to clients.

Benefits This Add-on to the CDS transaction is more likely than not to achieve deferral of the capital gain that would otherwise be generated in the 2nd year of the CDS transaction (i.e., this year for 1999 CDS transactions, and 2001 for CDS transactions completed this year). Thus, clients who have already completed CDS solutions will need to be contacted to discuss the planned changes in trading and the formation of the LLC, along with the potential for deferral of the capital gain from 2000 or 2001. A sample letter will be distributed to you in the next day or two for you to forward to CDS clients to alert them to these developments and tee-up your calls to them. Also, new 2000 CDS transactions may be marketed with the conversion feature and this additional feature of indefinite capital gain deferral. If the client maintains his or her position in the strategy until death, a stepped-up basis in the CDS partnership interest will preclude taxation of the gain – assuming Congress does not repeal the estate tax along with the imposition of carryover basis.

Mechanism The 1999 CDS transactions produced 1999 ordinary losses from the swap payments that offset the client's 1999 ordinary income. If there is a premature termination of the swap in 2000, there would be a corresponding long-term capital gain realized from the partnership. Assuming basis is generated in the CDS partnership by the profit-motivated trading of digital currency options and the transfer of the option spreads to the newly formed LLC, the subsequent redemption of the CDS partnership's interest in the LLC should produce a capital loss that would offset the capital gain generated by a swap termination in 2000. In order to have basis to deduct the capital loss and then to continue deferring the gain, the client would have to 1) leave their remaining investment from the original contribution (e.g., \$6.6 M on a \$20M transaction) in the CDS partnership, and 2) maintain the partnership's recourse borrowing (\$15M on a \$20M transaction) indefinitely. At present, we believe the borrowing could be done at a net cost of about 10 basis points each year, which is quite nominal in comparison to the economic benefits of the gain deferral. The CDS partnership would continue its trading activity by

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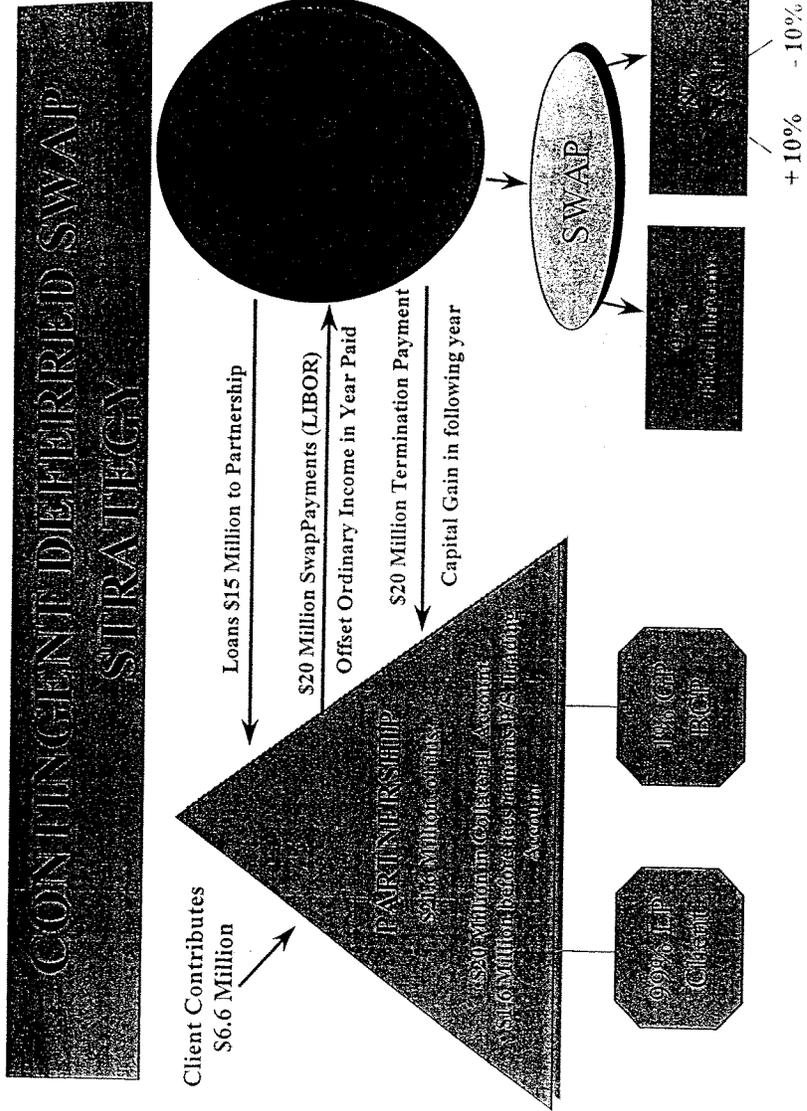
2003EY011874

agreement between the General Partner and the limited partners.

New Target Market: Deferral of Capital GainThe Add-on feature also makes it possible for new clients implementing CDS to use it for a capital gain deferral strategy. This would occur through the use of CDS to generate an ordinary loss this year to offset the client's capital gain, with the Add-On feature's short option position generating a capital loss in 2001 to offset the CDS generated capital gain, and set up the continuing deferral. This is admittedly a complex way to achieve capital gain deferral, but for clients not eligible for or interested in SOAP, or who have already realized their gain, it may be a viable option.

Time Constraints. We will need to move quickly to capitalize on this new strategy, since the CDS transactions for 2000 must be implemented by July 31. That means clients need to be ready to fund their partnerships by mid-July. You should be alerting prospective clients to this deadline as you set up appointments and conduct initial meetings.

Fees. The total fees for the combined CDS with Add-On strategy will be 2% for E&Y and 2% for Bolton, which will likely be collected 1.25% in year one and .75% in year two. Legal fees will be in addition to these payments -- \$50,000 for Locke Liddell (as at present) for the basic CDS opinion, and an amount still to be determined (but possibly greater than \$50,000) for the opinion on issues related to the add-on strategy. The source of this opinion and the exact amount of the fee, as well as the final approach to collection of the fees will be announced in the next day or two. However, the same fee structure would not hold up for a capital gain deferral transaction, because the *maximum* benefit is 20% and may be less if the investment or loan are terminated (or if stepped up basis is repealed). Therefore, it is appropriate to limit the fee for such transactions to the current total of 2.5% (1.25% to each of E&Y and Bolton). Because of the complexity involved, however, and the limited time in which to implement transactions before the end of July, we will need to increase the minimum size of a capital gain deferral transaction from \$20 million to \$40 million. Clearly, the limited time factor should mean that in deciding which prospective clients to devote your time to, the size of the transaction should dictate your prioritization.



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EXHIBIT #139d

2753

 Melinda S. Merk
01/15/2000 07:31 AM

To: Heather Jacobs/SCalifornia/TAX/EYLLP/US@EY-NAmerica
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica
Subject: Re: CDS

Heather:

Here's response from Belle Six of PCMG re: your question. I'll give you a call when I get back in the office on Monday to discuss.

Melinda

----- Forwarded by Melinda S. Merk/National/TAX/EYLLP/US on 01/15/2000 07:34 AM



Sixbelle@aol.com on 01/14/2000 06:07:17 PM

To: Melinda S. Merk/National/TAX/EYLLP/US@EY-NAmerica
cc:
Subject: Re: Quick Question re: CDS

Sure, and how are you? I haven't seen or heard from you, well since August!

Any way, here are the facts, I don't think they help her, but if you need more, let me know:

I think she is looking for anything that can pull it in to California. The partnership has no assets, employees or anything anywhere with the exception of the books and records which for 1999 were kept in Charlotte, North Carolina. The partnership did not pay salaries to anyone. The partnership paid fees to E&Y and to TPCMG.

The only tie to California is David Smith. David is the Managing Director of TPCMG (which of course is the general partner of the partnership). TPCMG has an office in California. David Smith is the only person in it. David directed the activities of the trading partnership through BOLTON. Bolton is located in Memphis, Tennessee.

I know this isn't helpful, but it is what it is. If you can tell me what would work, maybe we can figure out how to find it.

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EXHIBIT #139e

2003EY011612

2754



09/28/1999 01:35 PM

To: [REDACTED]
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica,
Sixbelle@aol.com@Internet, amunn@tpcmg.com@Internet,
[REDACTED]
Subject: Re: Fwd: CDS trades for TPCMG

Dear Belle,

The two CDS transactions which were delayed by several weeks have now been executed [REDACTED]. We received the full package of required information for these trades on 26th August and the trades were executed on 24 September.

As I explained to you on our call with Martin Nissenbaum of E&Y, this delay was not in any respect the fault of the The Private Capital Management Group, but rather reflects the current pace of the approvals process at UBS.

To further explain our situation, the CDS trade has been fully approved by our internal tax, legal and regulatory functions (following receipt of the appropriate tax opinions). However each individual transaction must further be submitted to the Chief Credit Officer (CCO) of UBSAG (Marco Suter) who determines whether any specific transaction will give rise to unacceptable reputation risk for the bank. This has created a bottleneck and thus resulted in unusually long delays in execution.

I currently have six trades before the CCO [REDACTED] for which all required documents have been received. I also have a further ten trades for which I do not yet have complete information and which therefore have not yet been submitted.

Given the current process I would expect the approval time for trades to be five to ten days from the date of receiving full transaction information. This timeframe is not the usual speed with which we respond to client requests, however at present given recent tax related cases (i.e. [REDACTED]) UBSAG has implemented this more stringent policy.

I can only apologise for the inconvenience this has caused both you and your clients. I realise that not only your reputation but also that of UBS is at stake here and will do my utmost to improve the quality of service you receive. I hope you will bear with me during this temporary disruption to our normal high quality execution.

kind regards
[REDACTED]

Reply Separator

Subject: Fwd: CDS trades for TPCMG

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EXHIBIT #139f

2003EY011416

2755



Robert B. Coplan
03/03/2000 02:39 PM

To: Robert J. Garner/National/TAX/EYLLP/US@EY-Namerica
cc:
Subject: Re: VIPER Communication

This was the best I could do. If I remove any more from CDS, it would only confuse him, so there is still some of the tax language in here.
Robert J. Garner



Robert J. Garner

02/29/2000 04:50 PM

Personal Financial Counselling
Phone Number: Palo Alto-650 849-3787; Walnut Creek-925 977-2923
EYComm: 2874276

To: Robert B. Coplan/National/TAX/EYLLP/US
cc: Brian L. Vaughn/National/TAX/EYLLP/US@EY-Namerica, Martin Nissenbaum/NewYork/TAX/EYLLP/US
Subject: VIPER Communication



Bob--We met last week with the CEO of a technology company who is an excellent candidate for both SOAP and CDS. He understood the techniques, but asked if we could send him something to read to help him get his arms around the ideas "emotionally". Please have a look at what's set forth, below. It's culled from information in our VIPER database. Let me know if you think I can e-mail these descriptions to him. I know that the web's not private, so I've got concerns in regard to that. What do you think? Pls advise. Thanks.--Bob
SOAP - Sale of Appreciated Property

The SOAP transaction is ideal for an individual who is:

- Contemplating the sale of a highly appreciated asset (ideally C Corporation stock) with at least \$5 million of unrealized gain
- Willing to defer the use of the proceeds for a relatively long period of time
- Charitably inclined
- Interested in a long-term investment horizon and has a risk tolerance to invest in equities

The SOAP transaction provides:

- Tax deferred diversification
- Wealth creation
- Control over a large pool of investments
- Control over when tax is paid
- Satisfaction of charitable intentions
- Community recognition for charitable generosity, if desired

SOAP - Overview

A strategy to allow an individual to diversify his stock holdings on a pre-tax basis while retaining control over investment decisions. The individual will defer for 20 years the tax on the inherent built-in capital gain in the asset(s) being diversified. The deferral must be accompanied by an irrevocable gift of the initial FMV of the stock(s) contributed to a charity or charities at the end of 20 years. The individual can defer

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EXHIBIT #139g

2003EY011660

the selection of the charity until the 20th year and may establish a private foundation (personal charity) to receive this gift (at the cost of a reduced charitable income tax deduction in the initial year). During the 20 years, the client can reinvest the pre-tax proceeds and defer taxation on the earnings for 20 years. The individual is entitled to most of the post-contribution earnings and may choose to take current distributions or defer until the end of the 20th year. The net present value of the deferral versus paying the initial capital gains tax ranges from 35% to 80% depending on the various yield assumptions the client may choose to analyze.

The ideal individual is someone looking to diversify out of a single stock position without the need to consume the proceeds. The client should be looking to reinvest in growth oriented investments with solid rates of return. The SOAP strategy is not suited for individuals looking to diversify for current cash flow needs. Annual distributions from the SOAP strategy deplete the net present value benefits, but could occur to some extent after the 14th year or so.

CDS - Contingent Deferred Swap

CDS - Benefits

- Converts income subject to tax at ordinary income rates to income taxable at capital gain rates
- Defers incidence of capital gain tax until the following year

CDS - Recommended Individual / Investment Profile:

- Individual with \$20 million + income taxed at ordinary income tax rates.

CDS - Key Investment Vehicles and Tools:

- Limited partnership that does active trading with a portion of its assets
- Contingent deferred Swap agreements with Bear Stearns for both fixed income and S&P plays;
 - Client gets to select whether he is bullish or bearish on the S&P
- Account to invest funds held as collateral on Swap contracts

CDS - Advisors and Other Parties

- Ernst & Young - Advisor, tax return preparation, compilation of partnership activities, IRS defense
- Locke, Liddell & Sapp - Advisor, legal tax opinion
- Bolton Capital Planning LLC - General Partner and Money Manager responsible for trading
- Bear Stearns & UBS - Bank loan, swap agreements, collars

CDS - Pricing

On a \$20 million loss transaction fees would be as follows:

- E&Y receives \$250,000
- Bolton Capital Planning receives \$250,000
- Other investment fees would include collar costs and trading costs
- Attorney's fees = \$50,000 for one individual, \$75,000 for multiple parties

CDS - Overview

Client invests cash equal to 1/3 of his ordinary income amount in an investment partnership that through its trading activity is treated as a trader for tax purposes. Swap payments on the leveraged notional amount produce a current ordinary trade or business deduction which can offset current year ordinary income arising from the exercise of stock options, S-Corp or Partnership ordinary income allocations, interest, dividends or other ordinary income items. The partnership produces a long term capital gain in the subsequent tax year if it disposes of its interest in the swap contracts. Therefore, the deduction in the current year produces a tax benefit of 40% and the capital gain in the subsequent year yields a cost of

2003EY011661

2757

PERSONAL AND CONFIDENTIAL

February 10, 2000

[Client Name and Address]

Dear [Client Name]:

This letter will confirm our engagement to provide tax advice to you concerning the implementation of the Contingent Deferred Swap strategy we have discussed with you. This strategy will involve the creation of a Partnership by you and third parties. Our work will include assisting in the tax planning aspects of this transaction, working with counsel and other third parties in reviewing the tax aspects of the entities required, reviewing trading reports of the partnership you will be funding on a monthly basis, and other consulting services as required. If necessary, we also agree to represent you before the Internal Revenue Service with respect to tax issues associated with this strategy up to and including the appellate level. If you would like us to represent you with regard to other tax issues in the event of an audit, we would charge our normal fees for time and expenses in connection with such representation.

In this engagement, we will be using information provided by you and the Partnership and will be relying upon you and the Partnership for the accuracy and completeness of this information. We will maintain the information provided to us in confidence within our firm and will not disclose to others such confidential information except with your consent or as required by law or permitted under professional standards.

Our fee for providing the professional services referred to above will be \$[Insert amount at 1.25 % of losses to be generated. If size of transaction is not certain at the time this letter is signed, add "based on your investing \$ million in the Partnership."] and it will be paid by the Partnership. We will invoice the Partnership for our fee after you have contributed your funds to the Partnership. In the event you later decide not to implement the technique described above, our fee will be paid by you and will be limited to our time incurred from the date this letter is signed up to the date we receive written notification of your decision not to proceed, and will be billed at our standard hourly rates. In addition to bills for our hourly fees, an administrative expense charge of 8.5% of our standard fees will be billed at the same time.

All advice and other services we provide pursuant to this arrangement are intended to be solely for your benefit and that of the Partnership and are not for the benefit of anyone else.

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2003EY011138

July 9, 2003

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Accordingly, our advice may not be relied upon by any other person or persons, used in connection with any other transaction, or used for any other purpose without our prior written consent. Furthermore, the content of any oral or written communication made by us in connection with this engagement shall not be communicated to the public or otherwise publicized in any manner without our prior written consent.

Ernst & Young LLP will not be liable for any claim for damages arising out of or in connection with any tax services provided to you in an amount greater than the amount of fees actually paid to Ernst & Young LLP with respect to the services directly relating to and forming the basis of such claim.

Any controversy or claim arising out of or relating to tax and tax-related services now or hereafter provided by us to you (including any such matter involving any parent, subsidiary, affiliate, successor in interest, or agent of Ernst & Young LLP) shall be submitted first to voluntary mediation, and if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures set forth in the Attachment to this letter. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

Except as expressly provided herein, this engagement letter does not modify the terms or provisions of any engagement letter for other professional services which were agreed to prior to the date noted below.

Information relating to federal tax advice we provide to you, including communications between us and material we create in the course of providing that advice, may be privileged and protected from disclosure to the Internal Revenue Service. Should the Internal Revenue Service seek disclosure from you or us of written or oral communications relating to such advice, we will discuss with you whether and how you assert, or waive, the privilege.

If any portion of this letter is held to be void, invalid, or otherwise unenforceable, in whole or part, the remaining portions of this letter shall remain in effect.

If these arrangements are acceptable, please sign one copy of this letter and return it to me in the enclosed self-addressed envelope.

If you have any questions concerning our engagement, please call me at _____.
We very much appreciate the opportunity to work with you.

2003EY011139

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July 9, 2003
Page 3

Very truly yours,

[Engagement Partner]

Attachment

Agreed to by:

Name: _____ Date: _____

2003EY011140

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Mary A. Sigler
09/08/1999 06:16 PM

To: Brian L. Vaughn/Southeast/TAX/EYLLP/US@EY-NAmerica
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica, David C.
Garlock/National/TAX/EYLLP/US@EY-NAmerica, Ronald E.
Friedman/National/TAX/EYLLP/US@EY-NAmerica, Meloni M.
Hallock/National/TAX/EYLLP/US@EY-NAmerica
Subject: Re: CDS Transaction

Brian:

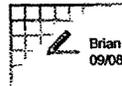
While your statements may have been "accurate" as you state, don't you think if you were the client it would be an important fact for you to know if E&Y could not get to a "should" level on this transaction? Don't you think that my client went away with the impression that not only the law firm was at a "should" level, but so must be E&Y since we said nothing to the contrary? Care to take any bets? I certainly, as well as Meloni, walked away with the impression that E&Y was at a should level, and that David Garlock was very supportive of this transaction and I'm more knowledgeable about this than my clients. In fact, I think at one point, you made reference that CDS actually had to change the transaction to get David "happy" with it.

Especially since you were so "careful" to disclose all the other "issues" as you mentioned, wouldn't you expect, if you were my client, that if we were coming to a different opinion than the law firm, we would communicate it to the client, when you were in the middle of all your other "disclosures"?

I too hope my client considers our product, but I want them to do so knowing all the facts. I know these people and they were basing their conclusions on the "should" opinion. I think they should be entitled to determine for themselves if it matters whether E&Y and these two major law firms are coming to different conclusions. I feel that you at least owed me making sure that I understood the differences.

Regards, Mary Ann

Brian L. Vaughn



Brian L. Vaughn
09/08/99 02:57 PM

To: Mary A. Sigler/SCalifornia/TAX/EYLLP/US
cc: Robert B. Coplan/National/TAX/EYLLP/US, David C. Garlock/National/TAX/EYLLP/US, Ronald E.
Friedman/National/TAX/EYLLP/US, Meloni M. Hallock/National/TAX/EYLLP/US
Subject: Re: CDS Transaction

Mary,

The representations I made to your client were accurate. David Garlock did review Brent Clifton's opinion on our firm's behalf. David may disagree with Brent's level of comfort, but his opinion was never needed in this situation. I represented to your client, our firm will not issue an opinion because the client could not rely on the opinion. This came from a discussion between Robert Coplan and Ron Friedman. Our firm will be considered a promoter in their view and therefore, our clients cannot rely upon an EY opinion. Therefore, I believe I fairly represented to your client the facts. I discussed the tax risks, the bankruptcy of the GP and the economic risks. David did review Brent's opinion. He could have stated at that time for our firm not to proceed. However, he did not. I respect David's opinion. However, there are at least two major law firms who have reviewed the transaction and conclude a "should" level exists. In addition, Richard Shapiro of our firm has also worked with Brent Clifton to design the CDS transaction as to mitigate tax risks. His opinion also differs from David's as to the level of comfort. As a representative of our VIPER practice, I strive to represent to all parties the relevant risks and rewards. Our practice has issued a risk memo with respect to this strategy and all partners have access to review it prior to any client

Permanent Subcommittee on Investigations

EXHIBIT #139i

2003EY011351

2761

meeting. I enjoyed working with you with respect to this opportunity and look forward to future opportunities to work with your clients. Our firm has successfully implemented nine CDS transactions and we look forward to implementing many more before 9/22. I hope [REDACTED] can be one of the many.

thanks,

Brian
Mary A. Sigler

Mary A. Sigler
09/08/99 04:35 PM
Phone Number: 213-977-3816
Fax Number: 213-977-3755
EYComm: 3967445

To: Brian L. Vaughn/Southeast/TAX/EYLLP/US@EY-NAmerica
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica, David C.
Garlock/National/TAX/EYLLP/US@EY-NAmerica, Ronald E.
Friedman/National/TAX/EYLLP/US@EY-NAmerica, Meloni M.
Hallock/National/TAX/EYLLP/US@EY-NAmerica
Subject: CDS Transaction

Brian:
As a follow up to our meeting last week regarding the sale of CDS to one of my current clients, I think there is something that I want you to clarify.

It has come to my attention that our firm is not at the "should" level opinion with respect to this transaction. I clearly was under the impression from your references in the meeting with my client that our firm, in particular, David Garlock, was behind this transaction. You indicated that we were not issuing an opinion because we would be considered a promoter—not because we would not issue a "should" opinion. Your use of David's name in your presentation was persuasive to me—and remember I am the tax preparer for these clients and they look to me for guidance. You never mentioned that David was not at a "should" level on this transaction, either to my client, or to me in private. I left the meeting, as did Meloni Hallock, with the impression that our firm, including David Garlock was at a "should" level on this transaction.

It has come to my attention that the above statement is not entirely true. In fact, I think if you speak with David directly, as I have done, he isn't even at "more likely than not" let alone "should". To me this is an important fact and I am extremely disappointed that you did not make me aware of this fact.

It is one thing to treat targets on a "buyer beware" philosophy, but I am part of the buyer here. These are my individual clients and they are looking to me for advice. They may well go ahead with the "risk" vs. "reward" concept, but they are looking for me for assistance. I think there is a large difference between a "more likely than not" and "should" and I feel you owed it to me to make certain I understood the thinking of our firm experts.

I was adamant that we disclose the prior financial situations of the promoter to my client in the "interest of full disclosure" so I cannot imagine that I left you with any other impression than I wanted to be straight forward in my dealings.

I am interested in your response to this and I would like to make certain we are leaving the proper impressions with my client as they make their decision to proceed or not.

Regards,

Mary Ann Sigler

2003EY011352

2762

LOCKE LIDDELL & SAPP LLP
ATTORNEYS & COUNSELORS

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SUITE 2200
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www.lockeliddell.com

AUSTIN • DALLAS
HOUSTON • NEW ORLEANS

Writer's Direct Dial: (214) 740-8555
Internet: bclifton@lockeliddell.com

October 1, 1999

VIA E-MAIL AND TELECOPY

Mr. Wolfgang Stolz
UBS

This firm has undertaken a review of the proposed contingent deferred swap strategy ("CDS") offered by Private Capital Management Group ("PCMG") and is prepared to issue a tax opinion in connection with each such transaction executed by a PCMG partnership following our engagement by each such partnership and our review of all relevant documentation.

Should you have any further questions, you may directly contact the undersigned.

Sincerely,



R. Brent Clifton
For the Firm

RBC/yms

Permanent Subcommittee on Investigations
EXHIBIT #139j

2003EY011434



Robert B. Coplan
09/07/1999 06:44 PM

To: Brian L. Vaughn/Southeast/TAX/EYLLP/US@EY-NAmerica
cc: Patricia F. Klitzke/Chicago/MARC/EYLLP/US@EY-NAmerica, Jeff Brodsky/Chicago/TAX/EYLLP/US@EY-NAmerica, Gary M. Duboff/Chicago/TAX/EYLLP/US@EY-NAmerica
Subject: FW: CDS Transaction at Risk

I am not available Wednesday afternoon. I know you are in a meeting with Brent and David tomorrow. Can you bring this email up with them and possibit schedule a time to resolve this?

----- Forwarded by Robert B. Coplan/National/TAX/EYLLP/US on 09/07/99 06:39 PM -----



Patricia F. Klitzke
09/07/99 06:30 PM

.....

Sent by: Patricia F. Klitzke

To: Robert B. Coplan/National/TAX/EYLLP/US, Jeff Brodsky/Chicago/TAX/EYLLP/US@EY-NAmerica, Gary M. Duboff/Chicago/TAX/EYLLP/US, Brian L. Vaughn/Southeast/TAX/EYLLP/US
cc: Sylvia J. Pozamsky/Chicago/TAX/EYLLP/US@EY-NAmerica
Subject: FW: CDS Transaction at Risk

This is the information that [redacted] sent to [redacted] regarding the CDS transaction. Jeff and I are available after 2pm tomorrow and would like to have a conference call with Bob at that time.

Pat
312-879-6715

----- Forwarded by Patricia F. Klitzke/Chicago/MARC/EYLLP/US on 09/07/99 05:26 PM -----



[redacted] on 09/07/99 12:32:36 PM

To: Patricia F. Klitzke/Chicago/MARC/EYLLP/US@EY-NAmerica
cc:
Subject: FW: CDS Transaction at Risk

Partricia

We need to address these comments. I believe that on the basis of this, [redacted] not proceed.

[redacted]

-----Original Message-----
From: [redacted]@com [mailto:[redacted]]
Sent: Tuesday, September 07, 1999 12:10 PM
To: [redacted]
Subject: [Fwd: RE: fax]

----- Original Message -----
Return-Path: <[redacted]>

Permanent Subcommittee on Investigations
EXHIBIT #139k

2003EY011345

2764

Received: from mongoose.slip.net ([207.171.193.14]) by mx7.mindspring.com (Mindspring Mail Service) with ESMTTP id rt0u4c.8di.37kbi15for <ed-miller@mindspring.com>; Fri, 3 Sep 1999 21:40:28 -0400 (EDT)
Received: from [209.152.190.138] (helo=slip.net.slip.net) by mongoose.slip.net with smtp (Exim 2.12 #4) id 11N4oc-0002Ok-00for ed-miller@mindspring.com; Fri, 3 Sep 1999 18:40:26 -0700
Reply-To: <rls@taxprophet.com>
From: [REDACTED]
To: [REDACTED]
Subject: RE: fax
Date: Fri, 3 Sep 1999 18:32:15 -0700
Message-ID: <000001bef675\$52510300\$8abe98d1@net.slip.net>
MIME-Version: 1.0
Content-Type: text/plain; charset="iso-8859-1"
Content-Transfer-Encoding: 7bit
X-Priority: 3 (Normal)
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook 8.5, Build 4.71.2173.0
Importance: Normal
In-Reply-To: [REDACTED]
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2314.1300
X-Mozilla-Status: 9011
X-Mozilla-Status2: 00000000
X-UIDL: rt0u4c.8di.37kbi15

Reply:

[REDACTED]

I have reviewed the materials you provided to me and from all indications, the transaction appears to be a classic "sham" tax shelter that would be successfully challenged on audit by IRS. The transaction apparently has little, if any, economic significance outside of the tremendous tax breaks promised to the investors and is apparently highly tax motivated, as opposed to being a bona fide investment transaction that people would invest in regardless of the tax breaks. The concept of a packaged tax shelter sold to investors who need specific tax breaks is under attack by the IRS and courts. My understanding is that IRS has a huge project underway to ferret out these types of tax shelters and will aggressively litigate them (expect penalties to be asserted, in addition to taxes and interest owed).

The opinion provided to me did not discuss the relevant facts, as I understand them. There was little discussion of the hedging within the transaction that will protect the investors against risk of loss or the high level of tax motivation behind the concept. The analysis of the downside to the transaction was weak and often irrelevant. Apparently, there is a

2003EY011346

dubious loan interest deduction for funds that will be parked in Treasuries.
I understand that a very small portion of the investment will involve trading.

The largest problem with the structure and the opinion, however, is that the partnership is not engaged in a trade or business as a "trader;" but will have the status of an investor. Trader status is critical to claim the deductions discussed in the opinion. The opinion states that the general partner will delegate the actual trading to a Fund Manager. The opinion then wrongly states that the Fund Manager's activities will be attributed to the partnership, thus making the partnership a trader. The opinion relies on *Adda v CM* (10 TC 273), 1458, a 50 year old case that has nothing to do with trader vs. investor status.

The opinion fails to address the relevant case law, which includes *Mayer v CM*, 94-2 USTC Para 50,509 (1994), a case which expressly states that the trading activities of others are not attributed to the taxpayer (citing the U.S. Supreme Court case of *Higgins*, 312 US 214) in support of its conclusion. Mayer unequivocally states that the taxpayer must personally make the trading decisions and cannot delegate this task to others.

Based on what I have provided, my recommendation would be not to invest in this transaction until the issues raised in the email are satisfactorily addressed.

-----Original Message-----

From: [redacted] [mailto:[redacted]]
Sent: Thursday, September 2, 1999 9:23 PM
To: [redacted]
Subject: fax

I received your fax this evening and signed and returned it immediately. I'll send you a check tomorrow. If there is any chance you can review this tomorrow it would be greatly appreciated. Let me know if you need any additional info or need to speak with anyone from E&Y. I can best be reached tomorrow on my cell phone at [redacted]

Thanks,
[redacted]

2003EY011347

2766



Mary A. Sigler
09/08/1999 05:35 PM

To: Brian L. Vaughn/Southeast/TAX/EYLLP/US@EY-NAmerica
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica, David C.
Garlock/National/TAX/EYLLP/US@EY-NAmerica, Ronald E.
Friedman/National/TAX/EYLLP/US@EY-NAmerica, Meloni M.
Hallock/National/TAX/EYLLP/US@EY-NAmerica
Subject: CDS Transaction

Brian:

As a follow up to our meeting last week regarding the sale of CDS to one of my current clients, I think there is something that I want you to clarify.

It has come to my attention that our firm is not at the "should" level opinion with respect to this transaction. I clearly was under the impression from your references in the meeting with my client that our firm, in particular, David Garlock, was behind this transaction. You indicated that we were not issuing an opinion because we would be considered a promoter—not because we would not issue a "should" opinion. Your use of David's name in your presentation was persuasive to me—and remember I am the tax preparer for these clients and they look to me for guidance. You never mentioned that David was not at a "should" level on this transaction, either to my client, or to me in private. I left the meeting, as did Meloni Hallock, with the impression that our firm, including David Garlock was at a "should" level on this transaction.

It has come to my attention that the above statement is not entirely true. In fact, I think if you speak with David directly, as I have done, he isn't even at "more likely than not" let alone "should". To me this is an important fact and I am extremely disappointed that you did not make me aware of this fact.

It is one thing to treat targets on a "buyer beware" philosophy, but I am part of the buyer here. These are my individual clients and they are looking to me for advice. They may well go ahead with the "risk" vs. "reward" concept, but they are looking for me for assistance. I think there is a large difference between a "more likely than not" and "should" and I feel you owed it to me to make certain I understood the thinking of our firm experts.

I was adamant that we disclose the prior financial situations of the promoter to my client in the "interest of full disclosure" so I cannot imagine that I left you with any other impression than I wanted to be straight forward in my dealings.

I am interested in your response to this and I would like to make certain we are leaving the proper impressions with my client as they make their decision to proceed or not.

Regards,

Mary Ann Sigler

2003EY011348

2767



Robert B. Coplan
09/08/1999 05:52 PM

To: Charles R. Kowal/Southeast/TAX/EYLLP/US@EY-Namerica
cc:
Subject: Re: Capital Loss/ Ordinary Loss Technique

In a word, No. That will take at least a week after Locke Liddell gives their final OK. Brian was supposed to mention that in the Email. We may use Richard Shapiro or Garlock. We will also need partnership group buyin, which is tricky with their large group politics.
Charles R. Kowal



Charles R. Kowal

09/08/99 05:46 PM

Sent by: Charles R. Kowal

To: Robert B. Coplan/National/TAX/EYLLP/US@EY-Namerica
cc:
Subject: Capital Loss/ Ordinary Loss Technique

Has this been thru Garlock and/or other appropriate Nat'l folks for clearance?

Chuck

Forwarded by Charles R. Kowal/Southeast/TAX/EYLLP/US on 09/08/99 05:45 PM



Brian L. Vaughn
09/08/99 05:16 PM

To: Glenn H. Hascher/Connecticut/TAX/EYLLP/US, Charles R. Cangro/NewYork/TAX/EYLLP/US, Robert L. Carson/NewEngland/TAX/EYLLP/US, Andrew Kyriacou/NewEngland/TAX/EYLLP/US, Charles W. Paul/Washington/TAX/EYLLP/US, Michael F. Bearer/Washington/TAX/EYLLP/US, Michael K. Szalkowski/Southeast/TAX/EYLLP/US, Charles R. Kowal/Southeast/TAX/EYLLP/US, Richard J. Joyner/Southwest/TAX/EYLLP/US, Victoria R. Mataloni/Southwest/TAX/EYLLP/US, Stephen R. Akers/Southwest/TAX/EYLLP/US, Robert Johnson/GulfCoast/TAX/EYLLP/US, Richard W. Jones/GulfCoast/TAX/EYLLP/US, Carl A. Rhodes/OhioKentuckyIndiana/TAX/EYLLP/US, Brian W. Upchurch/OhioKentuckyIndiana/TAX/EYLLP/US, Richard F. Kriner/MissouriKansas/TAX/EYLLP/US, Michael Reed/MissouriKansas/TAX/EYLLP/US, David Merritt/Minneapolis/TAX/EYLLP/US, Robert M. Haynie/California/TAX/EYLLP/US, James A. Cox/California/TAX/EYLLP/US, Michael S. Fredlender/California/TAX/EYLLP/US, Allan M. Harbour/Chicago/TAX/EYLLP/US
cc: Robert B. Coplan/National/TAX/EYLLP/US, Martin Nissenbaum/NewYork/TAX/EYLLP/US, Peter D. Lucido/NewYork/TAX/EYLLP/US, Melinda S. Merk/National/TAX/EYLLP/US
Subject: Capital Loss/ Ordinary Loss Technique

Based on meetings today with Brent Clifton at Locke Liddell, David Smith and Belle Six of PCMG, we believe we will have a permanent capital loss/ordinary loss strategy by September 15th. We will hold a conference call shortly after 9/15 to discuss the details of the strategy. We will have until 10/31 to market the strategy. The opinion will be issued by Locke Liddell and will be a "more-likely-than-not" level of opinion. The client will have to contribute approx. 10% of the loss and will have a realistic chance to make a profit after fees. The fees will be 1.5% to PCMG and 1.5% to EY. Locke Liddell will take their fee from our % (to be determined). This strategy will be different than DIABLO. It involves the use of foreign currency contracts, "contingent liabilities", trading partnership, and NO Bank loans. You heard it, no recourse debt.

By the way, DIABLO is officially dead. We decided not to pursue DIABLO given the comfort with the new strategy. The new strategy will create a 1999 permanent capital or ordinary loss. We anticipate a \$1.0 billion worth of loss for 1999. A great start to the new fiscal year. Once we roll this product out, I will

2003EY011349

2768

travel to each area to help you present this strategy to your clients. Then in November, I AM ON VACATION. Let's have fun with this new strategy and kick some KPMG, PWC and AA ??? No more BLIPS and BOSS. If you have any suggestions for a name to the new strategy, e-mail me. Remember, Howard Eisenberg left the firm mysteriously shortly after PICANTE was chosen for a VIPER strategy. If your name is chosen, I was told the winner gets a paid vacation to Disney World with my children.

Please be patient with us and keep your clients hungry for a capital loss strategy

CDS continues to gain momentum in the final hour. Robert Haynie just closed his fourth CDS deal today. Congratulations to Robert, Jim Cox and Jason Rydberg for their efforts. We were also told today, Vicky Mataloni and Richard Joyner closed a CDS deal in Dallas. Congratulations on their efforts as well.

thanks, Brian

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2003EY011350



Brian L. Vaughn
05/10/2000 01:43 PM

To: James A. Cox/NCalifornia/TAX/EYLLP/US@EY-Namerica, Robert M. Haynie/NCalifornia/TAX/EYLLP/US@EY-Namerica, Jason B. Rydberg/NCalifornia/TAX/EYLLP/US@EY-Namerica, Robert J. Gerner/National/TAX/EYLLP/US@EY-Namerica, Peter Klinger/NCalifornia/TAX/EYLLP/US@EY-Namerica, Meloni M. Hallock/National/TAX/EYLLP/US@EY-Namerica, Michael S. Fredtender/SCalifornia/TAX/EYLLP/US@EY-Namerica, Allan M. Harbour/SCalifornia/TAX/EYLLP/US@EY-Namerica, Bruce E. Bulloch/NCalifornia/TAX/EYLLP/US@EY-Namerica, Richard J. Joyner/Southwest/TAX/EYLLP/US@EY-Namerica, Victoria R. Mataloni/Southwest/TAX/EYLLP/US@EY-Namerica, Stephen R. Akers/Southwest/TAX/EYLLP/US@EY-Namerica, Richard W. Jones/GulfCoast/TAX/EYLLP/US@EY-Namerica, Stewart G. Goodson/GulfCoast/TAX/EYLLP/US@EY-Namerica, Michael Reed/MissouriKansas/TAX/EYLLP/US@EY-Namerica, Richard F. Kraner/MissouriKansas/TAX/EYLLP/US@EY-Namerica, Paula B. Kennedy/Minneapolis/TAX/EYLLP/US@EY-Namerica, David Merritt/Minneapolis/TAX/EYLLP/US@EY-Namerica, Brian W. Upchurch/SOhioKentuckyIndiana/TAX/EYLLP/US@EY-Namerica, Carl A. Rhodes/SOhioKentuckyIndiana/TAX/EYLLP/US@EY-Namerica, Robert C. Schlemmer/SOhioKentuckyIndiana/TAX/EYLLP/US@EY-Namerica, Lynne M. Lehman/SCalifornia/TAX/EYLLP/US@EY-Namerica, Victor G. Kmetich/NOhioMichigan/TAX/EYLLP/US@EY-Namerica, William P. Murphy/HRC/TAX/EYLLP/US@EY-Namerica, Robert L. Carson/NewEngland/TAX/EYLLP/US@EY-Namerica, Andrew Kyriacou/NewEngland/TAX/EYLLP/US@EY-Namerica, Jody R. King/NewEngland/TAX/EYLLP/US@EY-Namerica, Judith Saxe/NewEngland/TAX/EYLLP/US@EY-Namerica, Charles R. Cangro/NewYork/TAX/EYLLP/US@EY-Namerica, Glenn H. Hascher/Connecticut/TAX/EYLLP/US@EY-Namerica, Michael F. Bearer/Washington/TAX/EYLLP/US@EY-Namerica, David E. Lees/Philadelphia/TAX/EYLLP/US@EY-Namerica, Jennifer L. Haggerty/Philadelphia/TAX/EYLLP/US@EY-Namerica, Charles W. Paul/Washington/TAX/EYLLP/US@EY-Namerica, James A. Hutchinson/Philadelphia/TAX/EYLLP/US@EY-Namerica, Gregory M. Guthrie/Southeast/TAX/EYLLP/US@EY-Namerica, Charles R. Kowal/Southeast/TAX/EYLLP/US@EY-Namerica, Jeff Brodsky/Chicago/TAX/EYLLP/US@EY-Namerica, Gary M. Duboff/Chicago/TAX/EYLLP/US@EY-Namerica, Kevin King/Washington/TAX/EYLLP/US@EY-Namerica
cc: Robert B. Coplan/National/TAX/EYLLP/US@EY-Namerica, Martin Nissenbaum/NewYork/TAX/EYLLP/US@EY-Namerica, Richard J. Shapiro/NewYork/TAX/EYLLP/US@EY-Namerica, Hunter A. Payne/Washington/TAX/EYLLP/US@EY-Namerica, Melinda S. Merik/National/TAX/EYLLP/US@EY-Namerica, Peter D. Lucido/NewYork/TAX/EYLLP/US@EY-Namerica

Subject: CDS Update

Just wanted to send each of you an update regarding our CDS success nationwide. As of today, we have posted the following sales.

1	\$17 million loss	Ohio Valley
2	\$62 million loss	Midwest
3	\$22.5 million loss	Southeast
4	\$36 million loss	PACNW
5	\$90 million loss	PACNW
6	\$30 million loss	Midwest
7	\$58 million loss	Midwest
8	\$20 million loss	Midwest
9	\$20 million loss	PACNW

Permanent Subcommittee on Investigations
EXHIBIT #1391

2003EY011850

total \$355.5 million loss

As you can see, we are having some success across the country, but not in every area. We have revised the CDS transaction to appeal to more clients. We have added more investment choices and worked hard to achieve better pricing. Belle Six has worked very hard to keep our clients satisfied and is constantly improving the communication process with our clients by providing timely activity reports. We have extended the selling season for CDS to July 31 to accommodate those executives that are "locked out" until July 15th.

Our goal this year was \$1 billion of loss. With your help we can make this goal. As of today, I have the following list of leads that have been given to me. Please send me your leads and the amount of potential loss. I want to help each of you obtain your own CDS goals. Please let me know how I can help. Also, please provide me with updates to this list. Thanks and good luck!!!

Prospects

1.	\$50 million loss	PACNW
2.	\$50 million loss	GulfCoast
3.	\$300 million loss	Midwest
4.	\$100 million loss	Midwest
5.	\$20 million loss	PACNW/Ohio Valley
6.	\$23 million loss	Southeast
7.	\$20 million loss	Southeast
8.	\$20 million loss	Mid Atlantic
9.	\$20 million loss	PACNW
10.	\$20 million loss	PACNW
11.	\$20 million loss	PACNW
12.	\$20 million loss	New York
13.	\$20 million loss	New England
14.	\$20 million loss	PACNW

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2771



Robert B. Coplan
07/18/2000 06:19 PM

To: Dickensg@aol.com@Internet
cc:
Subject: Re: [REDACTED] family-potential CDS deal

I would think we would do it for a minimum fee of \$150,000 to E&Y. At that amount, I am reluctant to include defense before the IRS through the appellate level, which as you know cost the same for us whether our fee is \$150,000 or \$1,500,000. It is a bad risk to include representation on a small transaction. Let me know what you think about that.

Finally, on the big issue of promising to give back the fee or some part of it if the deal doesn't work, the answer is an unequivocal no. We are not able to do that, and I doubt PWC had that built into their engagement letter. WE have a dispute resolution procedure in our engagement letters that protects the client if he doesn't receive the value he has paid for. Obviously, a big 5 firm would not retain a fee if the client was never put in a position to obtain the tax benefits on the transaction. But that doesn't mean we could insert such a provision up front that would clearly make our fee contingent on the tax outcome of the transaction. That is nonnegotiable. We have been down this road many times before.
Dickensg@aol.com on 07/18/2000 05:10:52 PM



Dickensg@aol.com on 07/18/2000 05:10:52 PM

To: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica
cc:
Subject: [REDACTED] family-potential CDS deal

You may have received a call from Charles Cangro in NY regarding the [REDACTED] transaction by [REDACTED]. They are a client of mine and were pitched the [REDACTED] and I suggested CDS (with the option add-on) as an alternative. They would like to move forward. However, there are two issues. One, the amount of income they wish of offset is \$10 to \$12 million rather than the \$20 million. Second, against my advice they did the BOSS transaction last year (also thru [REDACTED]). They got most of their money back on that deal since PWC could not issue the opinion. They want a similar right here. If the opinion can't be issued because of a change in the law they get a refund of the fee (or most of it, e.g. trading costs would not be refunded). Question, if [REDACTED] can't pair the [REDACTED] up with another party to reach the \$20 million threshold would you consider an exception. I would not think you would have to reduce your fee in proportion to reduction in size of transaction. Rather, just a small reduction to evidence EY desire to work with them to get deal done. Let me know your thoughts.

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Permanent Subcommittee on Investigations
EXHIBIT #139m

2003EY011938

2772



Robert B. Coplan
07/19/2000 09:30 AM

To: Dickensg@aol.com@Internet
cc: Brian L. Vaughn/National/TAXEYLLP/US@EY-NAmerica
Subject: Re: [REDACTED] family-potential CDS deal

I think I have to stand on my prior response -- i.e., we cannot "promise" to return the fee if certain events occur that would make the tax results less obtainable. As you know, we go to great lengths to line up a law firm to issue an opinion pursuant to a separate engagement letter from the client that is meant to make the law firm independent from us. We do not want to convey the notion that our completing the transaction with the client is dependent on the issuance of a favorable opinion from the independent law firm. If the independent nature of the opinion were ever to be challenged, I think it would be a bad fact if there were a written indication that E&Y would return our fee if the supposedly independently engaged law firm were -- due to some post-transaction occurrence -- unable to issue the client an opinion. If all they want is a verbal assurance from us, I think I am still reluctant to do that, other than to reiterate the dispute resolution procedure that indicates our intention to review the transaction if the client does not receive the value they paid for. For a small transaction, I do not want to have to make a concession in this regard that we have not had to make for any other transaction, including some huge ones.
Dickensg@aol.com on 07/18/2000 10:18:14 PM



Dickensg@aol.com on 07/18/2000 10:18:14 PM

To: Robert B. Coplan/National/TAXEYLLP/US@EY-NAmerica
cc:
Subject: Re: [REDACTED] family-potential CDS deal

Thanks for the input. I think you misunderstood about the fee return. I think all the [REDACTED] want is a promise to return the fee if there was a development that would prevent them from receiving LLS's opinion and/or prevent EY from signing the tax return. They weren't asking for a money back guarantee. In the BOSS case PWC decided they could not issue the opinion after the notice came back and they returned their fee.

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2003EY011939

2773



Brian L. Vaughn
12/12/2000 11:44 PM

To: Robert B. Coplan/National/TAX/EYLLP/US@EY-NAmerica
cc: belle_six@mindspring.com@internet
Subject: New LLC Strategy

Bob,

I wanted to share with you an idea that I had relating to the new LLC strategy. I understand your concern that Bolton is affiliated with the new strategy due to the recent IRS letter they received regarding CDS. However, it may simply be remedied by selecting a new entity that Chuck and Belle would own to serve as the managing member. Without the Bolton Capital Planning name associated with the new trade, there should be no association with the CDS tax shelter registration. I would like the opportunity to discuss the new strategy with Ron Friedman and yourself to determine if the strategy has merit. There has been a tremendous amount of effort placed into the production of this strategy. I would at least like the opportunity to demonstrate our efforts with Ron. I will be available tomorrow to have this discussion with you and Ron.

With regards to CDS, we all knew one day we would receive a letter. We told our clients to expect the letter. What we don't know at this point is whether the IRS will pursue an IRS exam of the strategy. You ask me this afternoon would I buy the strategy assuming the IRS was aware of the trade. The answer is definitely "YES". Remember, the IRS knew about COBRA, but our clients still made the purchase. In fact, the clients continued to buy the "add-on" trade even though we knew the IRS was extremely familiar with the issues. If the IRS pursues and audit and we successfully defend the strategy, the why wouldn't our clients want to buy the trade. It would be premature at this point to assume our clients would not buy a strategy that the IRS has knowledge of. Why don't we let the clients decide? Therefore, I would like to propose that CDS is not "stopped" at this point. Brian Upchurch and I have a client that is considering CDS and I would be happy to let him know that the IRS has issued a notice to Bolton requesting information on the trade. My belief is he would say "so what".

That is my two cents worth. As I told you, I am a fighter. I don't enjoy giving up before I get my chance to fight. Remember our opinion on CDS is a should. Let them bring their guns!!!! I believe they will turn their tales and run the other direction. CDS has economic substance and has the best promoter in the business associated with the trade. I think we owe it to Belle and ourselves not to give up and stop the sales process at this point. Let the clients decide.

thanks for allowing me to be honest with you and speak my mind.

Brian

thanks for your help with this matter.

Brian

.....
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Permanent Subcommittee on Investigations

EXHIBIT #139n

2003EY012125

2774



Robert B. Coplan
01/05/2001 12:02 PM

To: Quickstrike Team, Adjunct Quickstrike members
cc: Ronald E. Friedman/National/TAX/EYLLPAUS@EY-NAmerica, David J. Kautler/National/TAX/EYLLPAUS@EY-NAmerica
Subject: SISG Update; 1/8 Conference Call

The purpose of this email is to inform you of:

- 1) some new guidelines for selling SISG solutions to executives of audit clients,
- 2) a letter received by Bolton asking them for a list of clients who executed the strategy they filed as a registered shelter in 2000 (i.e., CDS),
- 3) some enhancements to the swap choices in CDS, and changes to the required investment
- 4) solutions currently available for sale in 2001 and those under development, and
- 5) a conference call to discuss these matters in greater detail that has been set for Monday January 7 at 3 PM Eastern time.

Selling SISG To Executives Of Audit Clients

As a result of a meeting held January 3 that was attended by the leadership of the tax practice, certain adjustments need to be made in the manner in which we approach top executives of companies to sell SISG strategies. First and foremost, we are not to approach the C-level executives of very high name recognition SEC-registrant audit clients of the firm. This was a carefully weighed decision, and balances the potential revenue from such sales against the independence and reputation issues that could arise if a problem developed with such executives. With respect to C-level executives of other audit clients (including closely-held) as well as C-level executives on very high name recognition non-audit clients [REDACTED] before approaching them for an SISG sale, you need to 1) inform me and/or Martin Nissenbaum of the opportunity so that we can decide whether the situation warrants clearance from the Tax Leadership, and 2) inform the audit partner on the engagement of the proposed sales meeting. In certain appropriate high profile cases, you will be instructed by me or Martin to also inform the AMP of the proposed sales meeting.

It is our expectation that these new procedure will not significantly impact our SISG opportunities, but they are clearly very important from a firm standpoint, and you will be expected to follow them.

IRS Letter to Bolton Re CDS Client List

Bolton Capital Planning has received a letter from the IRS by virtue of their having registered certain transactions as tax shelters "in which securities are the principal asset acquired." Bolton was not singled out by the IRS for the receipt of such a letter. In fact, three other Big 5 firms received similar letters they have determined are seeking information related to BOSS and other "listed" transactions. There is a reasonable likelihood that that the IRS is actually looking for BOSS-related transactions and sent the letter to Bolton because they registered a series of shelters during 2000 that from the information filed on Form 8264, "could" be a BOSS-type transaction. Regardless of what the IRS is looking for, they will end up receiving enough information to make them aware of the CDS transaction.

The IRS letter requests that Bolton provide the IRS with 1) a detailed description of the transaction with its structure and intended tax benefits, 2) copies of written materials (in Bolton's possession) that were presented to potential or actual participants in connection with the offering of sales of interests in the transaction, and 3) the list of investors in the transaction. The response must be provided to the IRS by January 21. We are assisting Bolton in determining what documents and information need to be provided in order to comply. Because the 1999 CDS transactions were registered by PCMG (unrelated to Bolton), Bolton is not required to provide a list of those investors. PCMG has not received a letter as of now, so the IRS may only have gone through the 2000 shelter registrations. Also, we have determined that for the two transactions for which 51% of the loss was invested so as to avoid registration, if the transaction was "completed" and fees were paid before August 11, 2000, then those names would not have to go on the list provided to the IRS.

Further information will be provided and questions answered on the Conference call Monday at 3 Eastern.

Enhancements to the CDS Swap Choices/Changes to Avoid Registration

Permanent Subcommittee on Investigations
EXHIBIT #139o

2003EY012139

See the attached email from Brian below regarding these new options to make CDS more attractive on the investment flexibility side. For 2001, investors will have to put up more than 50% of the loss amount so that the transaction will not have to be registered with the IRS. In light of the Bolton IRS letter, it does not seem prudent to continue marketing CDS as a registered tax shelter. It remains to be seen whether the fact that the IRS will be receiving information on CDS from Bolton (a fact that you will have to disclose to prospective CDS purchasers) will deter people from signing up. Initial indications are that it will not have that effect, since Brian and Dom Salvemini just sold a CDS transaction after disclosing that information to the prospects. We will be exploring alternatives for the additional investment needed to bring the investment base for shelter registration purposes from 33% to 51%.

Solutions For 2001

Presently available for sale in 2001 are CDS (as revised), PICO, SOAP, and ECS. More information on SDI will be forthcoming in the near future. In addition, several other solutions are going to receive review by Quality Control in the near future, including one that Brian has been working on dealing with an LLC that has a PICO flavor. We will provide information on these ASAP over the next couple weeks, but client presentations should never address details of any strategy that has yet to be formally approved for rollout. So until I give you the go-ahead on a new strategy, you should at most inform a client that we are working on other strategies that achieve similar results, but we cannot discuss them until they have been approved by the National Office.

Conference Call

To keep this email from getting unreasonably long, and to give you an opportunity to ask questions about the rather significant items contained herein, I have scheduled a conference call for this Monday, January 8 at 3:00 PM Eastern time. I will follow up very soon with the call-in information.

Brian's Email on CDS Revisions

Here is Brian's Email:

The purpose of this e-mail is to bring to your attention the substantive changes to the CDS solution. Version 2001 should be a great alternative for clients with ordinary income looking to convert to long term capital gain. We now have 15 investment choices rather than the 2 we had last year. In addition, the client must now contribute 51% of the targeted loss in order to avoid tax shelter registration. Bolton has added new traders which should enhance the overall ability to make a profit in the trading program. In addition, Bolton is in the final stage of negotiations with Chase H&Q to serve as an additional counterparty choice.

The new investment choices are as follows:

- Long the Dow 30
- Short the Dow 30
- Long the Nasdaq100
- Short the Nasdaq 100
- Long the S&P
- Short the S&P
- Long the dollar against the yen
- Long the Bank Index (traded on the Philadelphia Exchange as BIO)
- Short the Bank Index
- Long a Tech Basket (includes adobe systems, cisco, dell, intel, microsoft, qualcomm, sun, voicestream wireless, worldcom, and yahoo)
- Short the Tech Basket
- Long a Pharmaceutical Basket (includes Abbott Labs, American Home Products, Astrazeneca PLC, Bristol-Myers, Glaxo, Eli Lilly, Merk, Pfizer, Pharmacia and SmithKline Beecham)
- Short the Pharmaceutical Basket
- Long a Utility Basket (includes American Electric Power, AES, Costal, Dominion, Duke, Consolidated

2776

Edison, Enron, Exelon, Southern Company and the Williams Companies)
Short the Utility Basket

One copy of each model will be posted to the toolkit. Remember that the model will change as prices change. However, Belle indicates that there is no real need for you to contact her for updated pricing. Bolton will update the pricing every few weeks or more frequently if there are many sales. Getting a separate hypothetical quote really doesn't serve much of a purpose until we are at the time of closing a transaction. As always, if the market doesn't hold, Bolton is willing to sit on your client's trade until it changes or give the money back to the client - without any fees.

Congratulations are in order to Dom Salvemini. He sold the first 2001 CDS. A \$100 million CDS. Great job, Dom!!!! Thanks Dom for allowing me to help you on the call. Good luck to all this year in your CDS pursuits. If you need me to assist on a sales call, please call.

2003EY012141

Discussion of the Ernst & Young agreement with the Internal Revenue Service and the Quality and Integrity Program

Closing Agreement

On July 2, 2003, the IRS announced a closing agreement with Ernst & Young resolving all issues in an examination of Ernst & Young's compliance with tax shelter registration and list maintenance requirements for the period January 1, 1995 through June 30, 2003. The IRS examination of Ernst & Young was one of over one hundred IRS investigations of professional services firms. IRS Commissioner Mark W. Everson has commented that, "This represents a real breakthrough and is a good working model for agreements with practitioners."

Quality and Integrity Program

Ernst & Young has invested heavily in our "Quality and Integrity Program" in order to enhance quality and consistency across our tax practice and to ensure compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. The Quality and Integrity Program has the following key components:

- Ernst & Young has implemented a comprehensive centralized process to capture, analyze and maintain information pertinent to the assessment of our list maintenance and registration obligations.
- Ernst & Young has provided for a national level review of the application of the rules in registration determinations by a "national review staff".
- Ernst & Young will perform audits of compliance with its program at least annually.
- Ernst & Young requires, at least annually, certification by firm professionals that they have complied with the registration and list maintenance requirements in the Internal Revenue Code.
- Ernst & Young's Quality and Integrity Program provides the IRS with a streamlined process whereby the IRS may test the program for list maintenance and registration compliance by requesting a sample of the information redacted of all client-identifying information.

In its implementation, the Quality and Integrity Program involves a detailed process whereby:

- All senior tax professionals have been required to take nationally sponsored educational programs focused on the requirements of the settlement, the statute and the regulations regarding list maintenance and registration.
- At the beginning of a tax engagement, the Ernst & Young professional responsible for the client (the Tax Services Coordinator or "TSC") must complete a checklist of information that enables the firm to verify that the prospective engagement has been scrutinized under the criteria established by the registration and list maintenance provisions of the Internal Revenue Code and regulations.
- A preliminary determination is made by the TSC as to whether the engagement is subject to the registration or list maintenance requirements.
- Where registration may be required, the preliminary determination is reviewed by an Ernst & Young Tax Quality and Standards professional to validate the registration determination and to ensure firm-wide consistency in applying the registration rules.
- The firm will conduct periodic checks, not less than annually, of its tax consulting practices to verify compliance with the program.
- All senior tax professionals must annually certify compliance with the program.
- The IRS has the ability to test compliance with the Ernst & Young Quality and Integrity Program

IRS Comments on Ernst & Young agreement and program

IRS Commissioner Everson reiterated his favorable comments about the Ernst & Young closing agreement and its Quality and Integrity Program in testimony delivered before the Senate Finance Committee on October 21, 2003:

"We are pleased that Ernst & Young has cooperated fully with the IRS in resolving these matters. This represents a real breakthrough and is a good working model for agreements with practitioners.... [L]ooking at the big picture, we are trying to differentiate between those who cooperate with the IRS, who try to remedy past mistakes and who seek transparency in their dealings with the Service, and those others who simply refuse and continue to peddle abusive transactions. Our intention is to differ in our approach to them based on their behavior."

2779



Robert B. Coplan
09/10/1999 12:12 PM

To: Robert J. Garner/NewYork/TAX/EYLLP/US
cc: Martin Nissenbaum/NewYork/TAX/EYLLP/US
Subject: Re: Ralph Lovejoy <-- Attachment History Removed

It would have been good if there had been 2 separate interviews -- one at First Union and one at NationsBank. Certainly, the interview at First Union is at odds with Tom Hines' description. Tom was rather emphatic about Ralph. I have rarely heard someone described as "the least ethical person I have ever met," which is how Tom referred to Ralph. We all tend to gloss over things about former employees, rather than state our true feelings. Nevertheless, the interview does come off as somewhat positive, and it would be hard to refer to Ralph as a "straight shooter" and to answer the direct question at the end about whether there was something the client (E&Y) should know about Ralph with a straight "No" had McMullen known that Ralph was fired from First Union. So there is a little Twilight Zone feeling about this. I wonder why there were no records on NationsBank, although I gather that was the older employment.

I suppose until the Tom Hines info, we were in a position to feel we had checked up on Ralph in an appropriate manner, and only found the bankruptcy as a problem, which McMullen indicated did not affect Ralph's performance. So what we knew then about Ralph could not get us into trouble for doing business with him-- as long as we inform the client of the negative things we did come across (i.e., the bankruptcy). I think we have to discuss with Ron how we best deal with the disclosure to clients who have already done CDS. Unless we are prepared to (and can) get them out of the partnership if they want out upon hearing the news about Ralph, it would seem like a bad thing to create worry among this group of clients. They would not have been given the chance to back out up front, but would now be worrying whether something will go wrong. If they can get out of the partnership and decide to do so, there will clearly be costs to do so (UBS and David Smith will still want their fees, and who knows what the economic and tax impact of prematurely terminating the swaps would be). E&Y would probably end up swallowing these costs as well as forfeiting our fee -- when things may very well otherwise have gone along swimmingly and according to plan. So I want to make sure we don't turn a Merry-go-Round inspired nagging concern into a "Lose-Lose proposition" where we begin making late disclosures that won't necessarily provide ultimate protection for the firm, but may accelerate (or create) an adverse financial occurrence. One thing is for sure -- making this after-the-fact disclosure to the executives we are talking about will be something they will remember, and could create a skeptical client for future transactions.

Of course, which of these possible occurrences comes to pass will primarily hinge on whether anything bad actually does happen. If the deal works as advertised, our decision to go forward will prove warranted, and our comfort level with the due diligence we did will be borne out. If something bad does happen, we will be on the hook either way in all likelihood, but it is possible we would limit our exposure to the costs the client would have expended in order to pull out of the deal upon hearing of the bankruptcy information.

After you have had a chance to think this over, we should try to talk with Ron.
Robert J. Garner

Robert J. Garner
National Tax / PFC
Phone Number: 914 421-3501
EYComm: 2874276

09/10/99 10:58 AM

To: Robert B. Coplan/National/TAX/EYLLP/US
cc: Martin Nissenbaum/NewYork/TAX/EYLLP/US
Subject: Ralph Lovejoy

Permanent Subcommittee on Investigations

EXHIBIT #139g

2003EY011383

2780



Here's the report on Ralph. As you'll see, the interview that I asked for was with Don McMullen, an EVP at First Union, to whom Ralph reported while he worked at First Union and, apparently, Mellon. It's a "no bad news" report, actually quite positive. It alludes in no way to the Tom Hines stuff and characterizes Ralph as a stand-up guy. What do you think?

2003EY011384

2781



Robert B. Coplan
01/31/2000 12:34 AM

To: Sylvia J. Pozamsky/Chicago/TAX/EYLLP/US
cc: David J. Kauter/National/TAX/EYLLP/US@EY-NAmerica
Subject: VIPER Update

Thought I would pass along an update so you would know that VIPER revenue is not on hiatus with COBRA out of the picture.

CDS

As you know, CDS has been approved by Mike Kelley, and we are working on finalizing the new model with PCMG, organizing a new detailed work plan, and updating the documents. We have learned from last year's difficulties and along with Belle Six and David Smith of PCMG, we are doing what we can to make things go smoothly. We will be laying out all the details at the Quickstrike Team meeting on 2/15-16 in Dallas, the CDS portion of which will be attended by David Smith and Belle. There are already several CDS transactions that have teed up on Brian's recent trips to Tampa and the Pac NW, and I have gotten other calls from areas that have very promising prospects for large transactions. So CDS is looking promising with a good six months or so of selling ahead of us. By the way, David Smith has responded to our concerns about having to disclose his partner Ralph Lovejoy's old bankruptcy by reorganizing his company so that the entity we will be doing business with will not involve Ralph. The General Partner will not be David Smith, but will actually be the investment firm that does the trading in the trading partnership, which should provide greater safety for clients and better optics for the IRS.

Nomenclature

By the way, I will roll out the new name of the VIPER group and our new products names at the Quickstrike Meeting. It may be a little confusing for a while for people around the practice, but it is clearly something that has to be done. I am leaning toward the name Strategic Individual Solutions Group (SISG). It is the parallel name to the Strategic Business Solutions (SBS) group. I am incorporating the "G" since I want to avoid being called 'sis' for obvious reasons. I thought about SITS T for tax, but settled on SISG. "Products" are out, "solutions" are in. Although SOAP and CDS are innocuous enough, we will probably rename them as Solution #1 and Solution #2. I am not as convinced about that, but I believe Mike Kelley will feel better if we follow that pattern. Naturally, the Quickstrike Group will change its name as well -- probably to the more mundane "Area Sales Leaders" or "Area Sales Champions".

Other Products

You saw the email I sent to Mike Kelley to try to get approval to sell the OID Trade. Hopefully, we will get it in time for our meeting in a little over 2 weeks.

Richard Shapiro has been approached by another boutique firm in NY that wants to have us sell a strategy of theirs. It has real potential and involves an S corp issue, so we will be consulting Laura MacDonough in NTD for her input. This one is more aggressive than CDS, but we understand that an opinion will be coming from Arnold & Porter, which should give it a great deal of credibility. We will keep you informed.

STOP has been hard to move along at the same time as everything else, and we are in need of our replacement for Howard Eisenberg to create the model to push that out.

Meanwhile, we have been witnessing a bit of a resurgence in SOAP transactions. Here is list of transactions in FY 2000 for which I have not previously counted the revenue (nor yet charged the areas for National's time). I don't have reliable fee information on all these yet, but will compile a better list as they are completed. Melinda and I will have to do all these opinion letters before we get paid. I have a bit of a backlog on some others that I am trying to get rid of this week. We don't begin work on the opinion letter until we have the final signed documents in a binder from Cheryl McIntire, who is the paralegal for Grady Dickens -- the Dallas attorney who does our SOAP documents.

SOAP Transactions

[REDACTED] (Hascher) -- completed in 1999, awaiting completion of opinion letter

Permanent Subcommittee on Investigations
EXHIBIT #139r

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May 3, 2004

Leland Erickson, Counsel
Permanent Subcommittee on Investigations
Committee on Government Affairs
U.S. Senate
Washington, DC 20510

Dear Leland,

The enclosed attachment discusses various Ernst & Young quality and compliance programs, policies and actions affecting the tax practice. We appreciate the opportunity to discuss these measures with you further during our meeting on May 4.

Sincerely,

A handwritten signature in black ink that reads 'Les Brorsen'.

Les Brorsen
National Director,
Government Relations

Permanent Subcommittee on Investigations
EXHIBIT #139s

Summary of Ernst & Young Quality Programs, Policies, and Actions Affecting the Tax Practice

The many programs, policies, and actions discussed in this document fall within the context of significant changes occurring in our firm as a whole. Ernst & Young's firmwide commitment to quality starts with the tone at the top, and it carries through to each individual's commitment to professionalism. The efforts discussed in this document are part of an ongoing process designed to provide for adherence to high professional standards.

Ernst & Young's policies and actions are designed to foster high standards of professionalism and compliance.

- E&Y has established the position of Americas Vice Chair of Quality and Risk Management, reporting to the firm's Chairman, with a broad mandate "to challenge every aspect of quality—in our people, our services, our procedures, and in the way we deal with clients and the public." The Vice Chair of Quality and Risk Management has undertaken an array of initiatives designed to enhance quality and compliance across all service lines, complementing efforts specific to our tax practice. Functions reporting directly to the Vice Chair of Quality and Risk Management include Independence, Compliance, and Consultation, as well as the Americas Directors of Quality for our Audit, Tax, and Transactions service lines.
- E&Y has established a new high-level, full-time position—Americas Director for Tax Quality—to help ensure that the firm maintains high standards of practice, policy, procedures, and processes. We have staffed this position with one of our senior partners, who reports to both the Vice Chair of Tax Services and the firmwide Vice Chair of Quality and Risk Management.
- E&Y has established the Tax Review Board, with members that include senior executives from outside the tax practice, to review policies and procedures, currently offered or proposed services, or other significant matters raised by members of the review board, other firm leadership, or any E&Y professional.
- E&Y has established Tax Technical Review Committees for each of our key functional areas in tax to provide detailed technical reviews of significant issues and help assure consistency in interpretation of the tax law.
- E&Y has established a toll-free ethics hotline that any Ernst & Young person in North America can call to report concerns about ethics, quality, or professional practice, including issues involving our tax services, on a confidential basis. Additionally, we encourage our people to openly discuss any concerns regarding our tax services via other established

channels, such as contacting a member of our National Tax Quality and Standards group, the Tax Technical Committees, or the Tax Review Board. The firmwide hotline provides the option of raising a concern in a totally anonymous manner.

- E&Y has implemented an ongoing Quality & Integrity Program to facilitate compliance with professional responsibilities related to tax shelter registration and list maintenance requirements, and to facilitate compliance with the terms of our settlement with the IRS.
- E&Y requires mandatory training by our tax executives on IRS tax shelter registration and list maintenance requirements.
- E&Y requires the annual certification by each of our partners, principals, directors, and senior managers with respect to their compliance with the tax shelter registration and list maintenance provisions of the Internal Revenue Code.
- E&Y provides ongoing guidance and oversight to our tax professionals with respect to our policies and standards.
- E&Y encourages the development of our tax professionals with respect to experience gained from client assignments and offers an educational curriculum with over 2,800 hours of professional instruction on the application of tax law and professional responsibilities.
- E&Y is updating our procedures so that our tax advice involves increased consultation and, in specified areas, independent review within the firm.
- E&Y has implemented an ongoing tax quality review program to help ensure that our professionals comply with the letter and the spirit of our procedures designed to achieve and maintain high quality standards.

Policies and actions are designed to meet or exceed the requirements of the Sarbanes-Oxley Act, SEC regulations, and the tax laws and regulations.

- E&Y requires each of our partners, principals, and directors to certify that they have complied with the audit committee pre-approval requirements in the Sarbanes-Oxley Act with respect to services provided to audit clients that are SEC registrants.
- E&Y does not provide any tax services to executives of our SEC-registrant clients, even if the executive is paying for the services, unless the client's audit committee has specifically approved the services.

- E&Y does not recommend or seek audit committee approval for any tax services, the sole business purpose of which may be tax avoidance and the tax treatment of which may not be supported in the Internal Revenue Code and related regulations.
- E&Y does not recommend a transaction that has been listed by the IRS as a potentially abusive tax shelter or is “substantially similar” to an IRS-listed transaction.
- E&Y will not enter into confidentiality agreements related to tax services.
- E&Y does not use proscribed contingent fee arrangements.

Summary of Specific Tax Practice Quality Programs, Policies, and Actions

Ernst & Young’s Tax Practice has instituted many policies, processes, and procedures and taken other actions to help ensure that the services we provide clients are appropriate, in compliance with applicable laws and regulations, and uphold high standards of quality and professionalism. While many changes have been made, the process of enhancing the quality of our services and activities is an ongoing commitment shared by all our professionals. Details on some of our significant changes follow.

I. Ernst & Young’s Quality & Integrity Program (QIP)

Introduction

The Internal Revenue Code (IRC) and related Treasury regulations provide three mechanisms for the Internal Revenue Service (IRS) to monitor potentially abusive transactions and tax shelters: registration, list maintenance, and disclosure of Reportable Transactions. Compliance by tax practitioners and taxpayers is essential to the objectives of the rules—visibility with regard to potentially abusive situations.

The E&Y Quality & Integrity Program (QIP) is an integrated process that helps E&Y tax professionals comply with their obligation to analyze all tax advice they provide clients in light of the registration, list maintenance, and reportable transaction disclosure requirements. It provides for national oversight and approval over the analysis of information required to properly assess our compliance obligations.

Initiated on October 1, 2003, QIP has quickly become embedded as part of our tax advisory processes. It is staffed by dedicated professionals and practice support personnel and is readily augmented with appropriately experienced tax professionals from a variety of technical backgrounds. The scope of our program is broad enough to address any situation in which our tax professionals would be required to determine their compliance with the rules.

Our centralized approach allows for consistency in the application of the rules across our practice so that our advice is appropriate with regard to these matters. It also allows for the validation of practice compliance through various control processes. QIP is now being expanded to encompass recently enacted California registration and list maintenance requirements.

Background

As part of our settlement with the Internal Revenue Service regarding tax shelter registration and list maintenance requirements, we proposed the development and implementation of our Quality & Integrity Program. This program is an important part of our commitment to enhance the standards of practice with respect to these issues. Internal Revenue Service Commissioner Everson commented on our settlement and our Quality & Integrity Program before the Senate Finance Committee in October of 2003:

“... on July 2, 2003, the IRS announced a closing agreement with Ernst & Young, LLP, resolving issues relating to an examination of Ernst & Young’s compliance with the registration and list maintenance requirements regarding the firm’s marketing of tax shelters. The agreement requires Ernst & Young to make a non-deductible payment of \$15 million.

“In addition to the payment, Ernst & Young agreed to work with the IRS to ensure ongoing compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. To this end, Ernst & Young agreed to implement a Quality and Integrity Program to ensure the highest standards of practice and ongoing compliance with the law and regulations. The IRS may, upon its request, review documents prepared as part of this program.

“Ernst & Young also agreed to our disclosure of its settlement and certain of the terms of the settlement. I mention this settlement last because I consider it important in spreading our message to other firms in the marketplace.

“We are pleased that Ernst & Young has cooperated fully with the IRS in resolving these matters. This represents a real breakthrough and is a good working model for agreements with practitioners.”

In its April 15 Tax Day Reminder, the Department of Treasury made similar mention of the settlement with Ernst & Young as a model for resolution with others:

“The IRS Has Entered into an Agreement with a Major Professional Firm to Ensure Compliance with the Disclosure Rules—As a result of the IRS’ audits of promoters of technical tax shelters, one large professional firm has agreed to work with the IRS to ensure ongoing compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. The IRS’ agreement with this firm will ensure the highest standards of practice

and future compliance with the law and regulations. The IRS expects to use this agreement as a model for agreements with other practitioners.”

We believe the course we have chosen is consistent with our commitment to high professional standards, represents a positive working relationship with the IRS, and is right for our people. We are confident that this program and the related policies and procedures are consistent with the intent of the statute and regulations and the objectives of the IRS with respect to its efforts to improve compliance with the rules.

Ernst & Young’s Quality & Integrity Program: In Application

As part of the QIP implementation, about 3,100 tax professionals were required to participate in training focused on:

- A comprehensive review of the technical rules and requirements related to registration and list maintenance.
- Our QIP processes, policies, and procedures necessary to make the program a component of our tax advisory practice.

Since the initiation of the program, our QIP review staff has assisted our tax professionals with respect to each tax advisory engagement for which determinations are required. The open dialogue regarding the application of the rules further reinforces their experience and education. The QIP staff helps the firm identify and meet its professional obligations and helps identify client obligations regarding disclosure.

Reflecting our commitment to this program and to high standards of practice, we have established processes to validate that:

- Information required for consideration is properly provided.
- Tax advisory assignments that should be evaluated are properly considered.
- Determinations are approved by the QIP review staff and not separately decided by each of our professionals.

As an important component of our program, E&Y requires an annual certification of compliance with QIP by all partners, principals, senior managers, and tax compliance engagement managers.

II. Ernst & Young Policies About Listed Transactions

E&Y has instituted a policy of not recommending tax-planning strategies if the IRS has “listed” the transaction as a potentially abusive transaction or if such strategies are “substantially similar” to listed transactions.

Background

Listed Transactions are those that the IRS has specifically identified as tax avoidance transactions in a notice, regulation, or other form of published guidance, as well as transactions that are “substantially similar” to such specifically identified transactions. “Listed Transaction” is a category of Reportable Transactions that are subject to both list maintenance by material advisors and disclosure by taxpayers. Federal laws currently do not require Listed Transaction to be registered.

The published guidance that identifies Listed Transactions describes the transaction, the tax strategy employed, and the legal challenges the government would raise to the transaction.

While the guidance may indicate that the IRS considers the described transactions abusive, the IRS has indicated that all substantially similar transactions are not necessarily abusive, and sometimes the guidance issued so indicates. However, the regulations and the IRS have clearly stated that all substantially similar transactions are to be disclosed, and the regulations specifically state that the term “substantially similar” must be broadly construed in favor of disclosure.

E&Y Procedures with Respect to Listed Transactions

While E&Y does not recommend Listed Transactions, the evaluation of whether a transaction might be considered a Listed Transaction is necessary to:

1. Internally enforce our policy.
2. Identify if any of our previously recommended tax planning is substantially similar to any transaction that is identified as “listed” in subsequently issued IRS guidance.
3. Advise clients on tax returns we prepare regarding proper disclosure that must be attached to those tax returns.
4. Respond to client needs regarding transactions other providers may have recommended.

E&Y National Tax Quality and Standards (Q&S) appoints tax professionals with appropriate technical experience from our National Tax office for all technical analysis as outlined above with respect to each of the designated Listed Transactions. They are involved with our tax professionals

on tax advisory assignments regarding determinations that may be applicable to a particular client. Q&S reviews the determinations and helps ensure that they are applied consistently across the firm.

E&Y has also instituted policies and procedures that require tax professionals to inform clients regarding Listed Transactions and the client's disclosure responsibilities with respect to their tax return filings. Every taxpayer for whom E&Y is preparing or reviewing a tax return receives a questionnaire that includes a summary of all Listed Transactions and that gathers information related to whether that taxpayer might have participated in the Listed Transaction or any substantially similar transaction. Our tax professionals then conduct appropriate due diligence to identify Listed Transactions and related disclosure obligations.

E&Y's policy is that it will not prepare or sign a tax return for which a Disclosure Statement of Reportable Transaction is required if the client refuses to attach the disclosure statement. E&Y also separately evaluates whether a particular transaction is listed or substantially similar to a listed transaction, and we will not rely on another advisor's determination to the contrary.

III. Confidentiality Agreements

E&Y has adopted a policy of not offering any tax advice under conditions of confidentiality. This policy was reemphasized in the mandatory QIP training last September and is a component of our client engagement protocol.

IV. Consultation and Oversight

E&Y's code of conduct emphasizes the responsibility of each individual with respect to quality technical advice and the use of appropriate judgment regarding services offered to our clients. E&Y's policies and procedures require that judgments regarding technical tax issues, professional responsibility, and the appropriateness of our services consistently reflect consultation and appropriate oversight by experienced and qualified professionals. In addition, the following processes instituted during the past year enhance the oversight and consultation within our tax practice.

Tax Technical Review Committees

We have established Tax Technical Review Committees in the functional areas where we offer tax advice (International Tax, Mergers and Acquisitions, Partnership, etc.). These committees provide high-quality, consistent, and timely resolution of technical tax issues, generally focusing on recurring issues and issues otherwise of key importance. They review tax issues and their resolution in client engagements, as well as issues of general application that may be worthy of consideration. Tax Technical Review Committees include senior partners and principals with extensive experience in the particular areas of tax. With respect to matters considered, consensus is required for approval

by the Tax Technical Review Committee. Unresolved matters are brought to the Americas Director of Tax Quality.

E&Y requires that all ideas communicated to our professionals for general use across the tax practice must receive a technical review by a member of a Tax Technical Review Committee or an appointed partner or principal. Q&S approval is also required for these ideas.

Tax Review Board

During 2003, E&Y formed a Tax Review Board to help the firm uphold high standards of professionalism in tax practice activities, including services, policies, practices, procedures, and client assignments.

The board is charged to review all tax practice service offerings annually in conjunction with tax leadership, and to periodically discuss any matter warranting interim consideration. Matters for interim consideration may be referred to the board by firm and tax leadership, the Tax Technical Review Committees, or any E&Y professional. The board is advisory to the Americas Vice Chair of Tax Services and, due to its composition, to other firm leadership.

The Tax Review Board comprises three permanent members and seven partners, representing the diversity of professional capabilities within our firm, who are appointed by the Americas Vice Chair of Tax in consultation with others. Permanent board members are: the Americas Director of Tax Quality, who serves as board chair; the Director of National Tax; and a representative of General Counsel's Office. Other members include the Americas Vice Chair of Quality and Risk Management, the Americas Chief Financial Officer, and an audit partner with client practice management responsibilities. All are senior partners with a perspective from outside the tax practice.

The Tax Review Board discharges its responsibilities with the support of subject matter professionals and other advisers as needed to properly evaluate the activities that are considered. The board may, at its discretion, assign an independent reviewer for any such activity.

Tax Quality Reviews

Ernst & Young has a series of quality programs that review the tax practice's compliance with professional standards and with E&Y policy.

Tax Advisory Practice. The Tax Quality Review program focuses on the tax advisory practice. The program has been revised so that every tax partner, principal, and senior manager providing tax advice will be reviewed at least once every three years. This program is in addition to E&Y's annual performance evaluation process that includes performance criteria relating to quality.

The Tax Quality Review program manager selects engagements for review by referencing our internal accounting systems and through consultations with the tax leadership for the offices, geographical areas, and functional practice areas. The review is coordinated and supervised by our Q&S group and is typically performed by a team of practitioners from a practice unit other than that of the individual being reviewed.

The review team applies tools and work plans developed by our Q&S group in conjunction with our global tax quality group. Each professional receives individual feedback concerning his or her compliance with firm and professional standards, including an assessment of performance from the quality perspective. Where appropriate, the advice rendered is also reviewed, and the reviewer may request that a National Tax professional with appropriate tax technical experience evaluate the technical quality of the advice provided to a client. In addition, the program evaluates each office and practice area, and presents an action plan to address any issues identified.

Tax Compliance. A separate review program focuses on our tax compliance practice. The program evaluates each engagement coordinator's performance with respect to specified quality control attributes critical to our tax return preparation processes.

Our Q&S group coordinates and supervises these assessments, which are performed by a centralized review staff drawn from our compliance practice. The process evaluates a sample of engagement files using criteria established by our Q&S control group. Although the specific attributes change with each review, the program is designed to provide individualized feedback to each engagement coordinator at least once every year.

In addition to these programs, members of our National Tax Quality and Standards group may perform compliance initiatives that evaluate the performance of specific practice areas, offices, or programs on an as-needed basis. At Ernst & Young, we recognize that the pursuit of quality is an ongoing process—and it is critical that we continuously leverage the insights that we gain from these assessments in the policies and actions that help guide our practice.

5/03/04



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May 3, 2004

Leland Erickson, Counsel
Permanent Subcommittee on Investigations
Committee on Government Affairs
U.S. Senate
Washington, DC 20510

Dear Leland,

This letter responds to topics one through eight of your e-mail of April 23, 2004, and specifically to the Subcommittee's request that we provide material regarding the topics outlined in that e-mail prior to our meeting with the staff, scheduled for May 4, 2004. We are making a separate submission regarding Ernst & Young's changes, reforms, and quality initiatives.

For ease of presentation we have used a slightly different order than that provided in the e-mail. The discussion below begins with background and then gives a description of the two tax strategies that are the subject of the e-mail, COBRA and CDS, including their origins, structure (and any third parties involved), and the decisions that were made regarding registration. Internal review is discussed in the context of these matters. We intend this discussion to respond to your topics two, four, five, and six. We then address marketing and fees. We intend this discussion to encompass topics one and three. Finally, we address the settlement entered into between Ernst & Young and the Internal Revenue Service in response to topics seven and eight.

Background

Tax strategies sold to multiple clients generally originated with an idea from an outside source. The ideas were reviewed and modified by the Strategic Individual Solutions Group ("SISG"), a small group of professionals from the Ernst & Young Personal Financial Counseling Group. The SISG group consisted of a handful (from five to seven) of core professionals. Typically a participant in that group would become aware of some variation of a tax strategy, would examine it to determine whether it was something that SISG would offer to its clients and, if it was, would usually take steps to restructure the strategy to enhance the likelihood that it would be sustained on the merits. The review process changed over time. Initially, technical experts in the SISG group reviewed the strategy, often consulting with subject matter experts within Ernst & Young. Later, the process became more formalized to require more-extensive and higher-level review.

Permanent Subcommittee on Investigations

EXHIBIT #139t

The persons primarily responsible for evaluating potential transactions were:

- Robert Coplan, head of the SISG group.
- Martin Nissenbaum, a tax partner in the SISG group with expertise in individual tax, compensation, and retirement planning.
- Richard Shapiro, a tax partner with expertise in the taxation of financial instruments.

It was also Ernst & Young's practice to require that any strategy be accompanied by a tax opinion issued to the client by a reputable law firm that was at least at a "more likely than not" level of assurance. The SISG group would frequently approach the Tax Quality and Standards group, under the direction of Ron Friedman, then the head of that group, to get their reaction to issues, risks to the clients, risks to the firm, and input on the registration requirements.

Typically the relationships with third parties, such as investment banks, who acted as transaction counterparties, lenders or traders, were established by general partners acting as promoters, rather than by Ernst & Young. Partners in the SISG group sometimes discussed with outside law firms whether those firms would be willing to issue an opinion to Ernst & Young clients who participated in the transaction that was at least at a "more likely than not" level of assurance. Ernst & Young did not itself issue tax opinions with respect to either the COBRA or CDS transaction.

Once an individual taxpayer had engaged the firm for assistance in implementing the strategies, the law firm or private promoter would assist the taxpayer in forming whatever legal entities may be necessary to implement the strategy. The law firm or firms would also draft and complete legal opinions for the individual taxpayers applicable to the circumstances of the particular strategy employed. Concurrently, the strategies would be implemented according to their terms, with the trading and investment activity conducted by the private promoter and/or financial-service professional according to the terms of the engagements.

COBRA

Origins

Initially, members of the SISG group were made aware of a "short option" strategy in the summer of 1999. Members of the SISG group discussed the strategy with Paul Dagerdas of Jenkens & Gilchrist, who advised that he could provide documents for implementation of the strategy as well as a legal opinion concerning the strategy. Ernst & Young also reviewed the transactions internally and suggested changes to the transaction structure to enhance the participants' ability to profit from the digital options. After that internal review, the decision was made to proceed in the fall of 1999.

Structure and roles of third parties

COBRA involved the application of a long-standing Tax Court case, *Helmer v. Commissioner*, 34 TCM 727 (1975), which concluded that an option to sell property is not a liability for tax purposes.

In the COBRA transaction, a taxpayer sold a short digital option (i.e., an option where the taxpayer agreed to sell property) to a financial institution through a single member LLC. The taxpayer also bought a long digital option (i.e., an option to buy the same type of property subject to short option). The option prices were set so that the taxpayer had the potential of making approximately a 30% profit after fees on his net premium (that is the difference between the premium received for writing the short option and the amount paid for the long option) on the movement of the value of the property subject to the option (usually currency). The taxpayer also stood to lose the entire net premium if the spot price of the currency had not moved beyond the set strike price as of the expiration date.

Both the long and the short options and some cash were contributed to a partnership. The taxpayer got basis for the cost of the long option, while the short option (contributed while out-of-the-money) was not considered an offsetting liability under *Helmer*. The two options were settled in the partnership for a gain or loss, depending on what happened to the price of the property subject to the option.

The partnership then used its cash (from settlement of the options and the original contribution) to buy property (usually foreign currency contracts), which would pay out in foreign currency (potentially at a small profit). Partnership investors would contribute their partnership interests to an S Corporation 100% owned by the investors, with a basis approximately equal to the cost of the long digital option. Upon a sale of the foreign currency by the S Corporation, a loss would be recognized. Currency was often used because dealing in currency results in an *ordinary* gain or loss.

Deutsche Bank AG, New York Branch acted as the counterparty on the long and short digital options. Jenkens & Gilchrist issued "more likely than not" tax opinions. Jenkens & Gilchrist had a prior relationship with Deutsche Bank. Ernst & Young did not play a role in introducing Deutsche Bank to the transaction.

Ernst & Young also asked if Brown & Wood would furnish a second opinion to Ernst & Young clients who requested such an opinion. Brown & Wood did issue a "more likely than not" opinion to individual COBRA participants. While Jenkens & Gilchrist was compensated based on a percentage of investment, Brown & Wood was compensated at a flat rate.

Registration

Registration with the Internal Revenue Service is required for certain types of transactions that are considered to be "tax shelters" pursuant to definitions contained in Internal Revenue Code (IRC) § 6111(c) and the regulations thereunder. In general, registration is required if the total deductions and credits exceed by a ratio of 2:1 the investment in the transaction and the transaction either is registered under federal or state securities laws, is sold pursuant to an exemption from registration, or is a substantial investment.

In making decisions regarding registration, senior members of the SISG staff, including Mr. Coplan and other partners, initially considered the registration requirements, conferring with Ron Friedman, the then Director of Tax Quality and Standards, and in some instances, with counsel issuing tax opinions on the transaction.

As discussed above, the COBRA transaction involved the purchase of a long option position and sale of a short option position. The determination whether to register the transaction was dependent upon whether the amount of the long option or the "net" amount of the long option and the short option constitutes the investment base. Based on judicial authority, E&Y concluded that the short position is not a liability which offsets the long option position (*see Helmer v. Commissioner*, 34 TCM 727 (1975)), and accordingly that the investment base was comprised solely of the amount of the long option position. Under this analysis, the recognized losses were equivalent to the price of the long option, and the tax shelter ratio was 1:1. Because the transaction did not exceed the 2:1 ratio, it was deemed that no registration was required. The IRS later disagreed with this method of computation. The disagreement was resolved by the settlement discussed below.

In January 2000, Ernst & Young reviewed the COBRA strategy at a meeting attended by, among others, Mike Kelley, then Managing Partner, Area Tax Practices; and Ron Friedman, head of the Tax Quality and Standards group. The group considered the risk of the transaction and the technical merits of the transaction and whether it was substantially similar to the BOSS transaction listed in IRS Notice 99-59.

While there was a consensus that COBRA was not factually similar to the BOSS transaction, the decision was made that Ernst & Young would no longer market COBRA (although one final transaction discussed in 1999 with eight family members was completed in 2000 with a "more likely than not" opinion from Proskauer Rose). A significant factor in that determination was the decision not to be associated with an income elimination strategy. It also was decided that in the future any tax strategy that was to be offered to multiple users would require independent partner review.

CDS

Origins

David Smith of Private Capital Management Group (PCMG) approached Richard Shapiro in 1998 with respect to a contingent deferred swap ("CDS") transaction that had been marketed by PricewaterhouseCoopers and others. Bob Coplan, Brian Vaughn, Martin Nissenbaum, and Richard Shapiro reviewed and modified the transaction structure. From time to time, they discussed the transaction with David Garlock. While Richard Shapiro reached a "more likely than not" level of comfort with the transaction, David Garlock was not at that level. He viewed the strategy as at least supported by "substantial authority." CDS transactions were first sold during 1999. After the January 5, 2000, meeting described above, the decision was reached that it was appropriate to proceed with the CDS strategies, in part because it was not an income elimination strategy. At that point, it was understood that the law firm of Locke, Liddell & Sapp agreed to be separately engaged by Ernst & Young clients to provide a "should" opinion with respect to the CDS strategy.

As discussed above, not all subject matter experts consulted were in complete accord about every strategy presented to clients. E&Y's professionals were encouraged to air their disagreements openly, and subject matter experts sometimes had different opinions as to the likelihood of the strategies' ultimate success and therefore had different levels of comfort with any given strategy.

Under Ernst & Young's current policies consensus by a technical Tax Committee would be required in similar circumstances.

Structure and roles of third parties

CDS partnerships ("Partnerships") were organized as limited partnerships in which the general partner held a 1% interest and the investor or investors ("Limited Partners") made initial capital contributions in exchange for 100% of the Limited Partner interest. The business activities of the Partnership included the use of a substantial portion of the Partnership's assets to collateralize one or more swaps or notional principal contracts for payments and receipts based upon the value or performance of designated equity, interest rate, and/or currency measures. The balance of the Partnership's funds was used to profit from active trading strategies involving various types of securities and derivative instruments. The Partnership used leverage to enhance its profit potential.

The general partner was responsible for the Partnership's investment, management activities, and business affairs.

The Partnership borrowed funds from a financial institution (the "Bank") and the proceeds of the loan along with a portion of the original capital contribution were deposited in a deposit account with the Bank.

The Partnership also entered into swap contracts (the "swap transaction") with the Bank, which required the Partnership to make scheduled payments to the Bank at floating LIBOR on a notional principal amount. The Bank was required to make a single payment for each swap contract at maturity based upon a contingent amount determined with respect to a fixed LIBOR rate and the applicable equity or currency measure. The Partnership limited the equity or currency risk and its interest rate risk in the swap transaction through the use of a cap and floor collar and other swap terms. The Partnership had the potential to earn a significant pre-tax return from the swap transaction, after taking into account all fees and expenses.

In addition to the swap transaction, the Partnership deposited funds for the purpose of actively trading in a variety of financial products and other futures in an effort to profit from short-term market movements. Trading in the accounts was active with a substantial number of trades made for relatively short time periods. The swap transaction permitted early termination by either the Partnership or the Bank on a fixed date. An election was made during 2000 for 1999 transactions, 2001 for 2000 transactions, and 2002 for the 2001 transactions, to terminate the swap transactions pursuant to this provision.

In 1999, the general partner in each Partnership was The Private Capital Management Group LLC (PCMG) and the counterparty on the swaps was UBS-London. The SISG group understood that PCMG had previously worked with UBS in connection with other transactions. In 2000 and 2001 the general partner of each Partnership was Bolton Capital Planning L.L.C. Bolton had been involved in the investment decisions made on the 1999 CDS transactions, having been brought in by PCMG. The counterparties on the 2000 and 2001 swaps were Bear Stearns and Refco. Bolton selected Bear Stearns and Refco.

The regulations under Internal Revenue Code ("I.R.C.") section 446 governing notional principal contracts provide rules for the timing of income and deductions associated with the payments made under the swap contract(s). Separate timing rules are provided in the regulations under I.R.C. section 446 depending upon whether payments are classified as periodic payments, nonperiodic payments, or termination payments. The swap transaction payments made by the Partnership to the Bank were at intervals of less than one year, thus conforming to the definition of periodic payments. Periodic payments, such as the swap payments by the Partnership to the Bank, are recognized ratably on a daily basis for the taxable year to which the payment relates. Accordingly, the swap transaction payments made by the Partnership, which were periodic payments, were treated as ordinary deductions for the Partnership as they accrued. Each Limited Partner deducted his or her allocable share of the ordinary deductions on his or her individual income tax return.

Because the scheduled swap payment from the Bank to the Partnership at the end of the swap term was neither a periodic payment nor a termination payment, it was treated as a nonperiodic payment. Nonperiodic payments are recognized over the term of a notional principal contract in a manner that reflects the economic substance of the contract. The payment due the Partnership under the swap

transaction was based upon both an interest and an equity or currency component, and the amount of such payment was determined by the value of the relevant equity or currency measure at the maturity of the swap. Based upon the historical volatility of that measure and the effect of such volatility on the payment amount due at the maturity of the swap, the economic effect of the swap was contingent and unable to be accurately determined until the conclusion of the swap. The inability to determine the economic result of the swap transaction until maturity due to the contingent nature of the Bank's payment obligation resulted in the treatment that no accrual over the term of the swap transaction should be required for the Bank's scheduled payment to the Partnership. The payment by the Bank upon the early termination of the swap contract(s) was a termination payment, and the gain recognized was treated as capital gain. Each Limited Partner was required to report his or her allocable share of such gain on his or her individual income tax return in the year of termination.

The law firm of Locke, Liddell & Sapp issued "should" opinions with respect to the CDS transactions.

CDS became a listed transaction covered by Notice 2002-35, issued in May 2002. At that time, the Internal Revenue Service also issued Rev. Rule 2002-30, which attempted to address the Section 446 issue not previously addressed by the IRS.

Registration

PCMG and Bolton Capital registered, respectively, the 1999 and 2000 CDS transactions. The Treasury regulations permit multiple promoters to designate one promoter as the party responsible for registration. See Temp. Treas. Reg. § 301.6111-1T, Q&A-38. There was an oral designation arrangement between PCMG and E&Y in 1999 and between Bolton Capital and E&Y in 2000 that the general partner was the party responsible for registration for the transaction. E&Y received confirmation of the registration by PCMG and by Bolton Capital, and E&Y included the registration numbers in the tax returns that it prepared relating to the transaction. As a result of these registrations approximately 60 of the CDS partnerships were registered and participating taxpayers were provided with registration numbers for their individual income tax returns.

With respect to the CDS transactions implemented in 2001, the transaction structure was modified to increase the investors' contribution of equity to the CDS partnership. Because this modification resulted in an increased investment base such that the transaction did not exceed the 2:1 ratio, E&Y concluded that no registration was required. Once again, the IRS differed with this determination and the matter was resolved by settlement.

We note that currently, the E&Y Tax Quality & Integrity Program described in our separate submission with respect to topic nine, requires that registration decisions now be made centrally rather than on an ad hoc basis, and that they are based on a systematic process involving submission of information in response to uniform and detailed questionnaires. Registration decisions are now made centrally, under the supervision of the firm's Director of Quality for Tax.

Marketing

Sales of COBRA and CDS were generally coordinated by the SISG group. That group had two (and later one) professionals dedicated to sales and marketing of its tax strategies. However, each of the three partners in the core SISG group assisted with sales of SISG products from time to time. In mid-1999, at least one tax professional from each geographic Area within Ernst & Young was designated to represent that Area in the process of coordinating sales. These Area professionals, numbering between 25 and 40 at any given time, were drawn from an existing nationwide universe of more than 6,000 tax professionals, and each contributed a fraction of their time to SISG strategies. This group was sometimes referred to as the Quick Strike Team.

As we have previously informed the Subcommittee, Ernst & Young disbanded the SISG group that had been involved in developing and marketing COBRA and CDS. And, as observed in our testimony last year, E&Y leadership recognizes that, while sales and marketing are an essential part of any business, Ernst & Young should not let any part of its tax practice be dominated by a "sales culture."

Fees

The COBRA transaction resulted in fees of \$14,718,250 from 16 transactions involving 51 taxpayers. The CDS transaction resulted in fees of \$27,886,375 from 70 transactions involving 132 taxpayers.

Fees to Ernst & Young were generally based on a percentage of investment. The investment usually equated to a loss amount, (although not directly to the ultimate tax savings to be realized, which would depend on multiple factors). For example, in the COBRA transactions, the payment to the counterparty for the long digital option equated to the "loss" amount. In CDS, the payments by the taxpayer to the swap counterparty equated to the deductions and thus the loss amount. In internal discussions of fees and, on occasion, in client discussions, SISG personnel sometimes referred to the fees as a percentage of the taxpayer's projected loss.

Fees were set forth in engagement letters in fixed dollar amounts.

In no cases did the terms of the engagement letter (or the agreement with the client) provide that the fee was dependent on actual tax benefits received. Such an agreement would have been proscribed as a contingent fee. The fee structure used was consistent with IRS Circular 230, governing fees in tax matters and with AICPA rules regarding fees.*

IRS Settlement

Ernst & Young's settlement with the IRS was an opportunity to resolve an uncertain and complex legal situation. The settlement also reflects our commitment to work constructively with the IRS. The terms of the settlement are contained in the Closing Agreement with the Internal Revenue Service dated July 2, 2003.

The \$15 million payment was a negotiated amount to resolve all issues and was only part of the agreement. The agreement process also included a focus on how best to limit potential disagreements in the future. As part of that, we proposed the development of, and have implemented, a "Quality & Integrity Program," discussed more fully in a separate submission.

Our understanding of the IRS view of the settlement is based on Commissioner Everson's comments and, more recently, on the Treasury's April 15 Tax Day Reminder.

From Commissioner Everson's remarks in an IRS press release upon our settlement (July 2, 2003):

"In addition to the payment, Ernst & Young has agreed to work with the IRS to ensure ongoing compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. To this end, Ernst & Young will implement a Quality and Integrity Program to ensure the highest standards of practice and ongoing compliance with the law and regulations. The IRS may, upon its request, review documents prepared as part of this program.

* Circular 230 provides in §10.27 (b)

Contingent fees. (1) For purposes of this section, a contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

Similarly AICPA Rule 302 defines contingent fee (with certain exceptions) as a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such services. In these instances the "result" would be the ultimate economic benefit and tax savings, if any.

“We are pleased that Ernst & Young has cooperated fully with the IRS in resolving these matters,” said IRS Commissioner Mark W. Everson. “In particular, the ability of the IRS to review the firm’s compliance on an ongoing basis will help to reduce the likelihood of future violations of the registration and list maintenance requirements. This represents a real breakthrough and is a good working model for agreements with practitioners.

“This agreement constitutes a significant development in our continuing efforts to identify potentially abusive tax transactions,” said Everson.

**From Commissioner Everson’s testimony before the Senate Finance Committee
(October 21, 2003):**

“[O]n July 2, 2003, the IRS announced a closing agreement with Ernst & Young, LLP, resolving issues relating to an examination of Ernst & Young’s compliance with the registration and list maintenance requirements regarding the firm’s marketing of tax shelters. The agreement requires Ernst & Young to make a non-deductible payment of \$15 million.

“In addition to the payment, Ernst & Young agreed to work with the IRS to ensure ongoing compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. To this end, Ernst & Young agreed to implement a Quality and Integrity Program to ensure the highest standards of practice and ongoing compliance with the law and regulations. The IRS may, upon its request, review documents prepared as part of this program.

“Ernst & Young also agreed to our disclosure of its settlement and certain of the terms of the settlement. I mention this settlement last because I consider it important in spreading our message to other firms in the marketplace.

“We are pleased that Ernst & Young has cooperated fully with the IRS in resolving these matters. This represents a real breakthrough and is a good working model for agreements with practitioners.”

**From the Department of the Treasury—April 15 Tax Day Reminder
(April 9, 2004):**

“The IRS Has Entered into an Agreement with a Major Professional Firm to Ensure Compliance with the Disclosure Rules—As a result of the IRS’ audits of promoters of technical tax shelters, one large professional firm has agreed to work with the IRS to ensure ongoing compliance with the registration and list maintenance provisions of the Internal Revenue Code and regulations. The IRS’ agreement with this firm will ensure the highest standards of practice and future compliance with the law and regulations. The IRS expects to use this agreement as a model for agreements with other practitioners.”

2802

Leland Erickson

Page 11
May 3, 2004

We look forward to meeting with you on Tuesday, May 4, 2004

A handwritten signature in black ink that reads "Les Brorsen". The signature is written in a cursive, slightly slanted style.

Les Brorsen
National Director, Government Relations



PricewaterhouseCoopers LLP
1301 Avenue of the Americas
New York NY 10019-6013
Telephone (212) 259 1000
Facsimile (212) 259 1301

February 17, 1999

Ms. Diane Stanford
Senior Vice President
First Union National Bank
NC1150
Two First Union Center
301 South Tryon street, M-12
Charlotte NC 28288-1150

Dear Ms. Stanford

We have previously given oral advice concerning your clients' participation in the Foreign Leveraged Investment Program and our ability to write an opinion letter concerning the relative merits of the program results under the Internal Revenue Code and Regulations. Based on proposals put forth by the Clinton Administration, these opinions would be drastically altered after the effective date of the new legislation. We have determined with the help of our Washington National office that the effective date should occur well after any transactions currently contemplated have been completed. As well we have taken precautions that will allow us to accelerate the completion should we learn that the effective date could occur in advance of our expectations.

In light of the above, I can guarantee that we will be able to write an opinion letter for any of your clients that engage in this transaction.

If you have any questions or need further amplification on this issue please call me at 212-259-3025

Very truly yours,

Michael N. Schwartz

A handwritten signature in cursive script that reads "Michael Schwartz".

Permanent Subcommittee on Investigations
EXHIBIT #140a

SEN-014602

Capital BOSS Attributes

- Involves four parties: The Private Capital Management Group ("TPCMG") (promoter), Bolton Asset Management (manager of speculative trading account), UBS Bank or Refco (lender) and PricewaterhouseCoopers LLP (tax opinion). Fees to these parties total 4.0%, plus an incentive return based on investment performance in the speculative investment account:
 - TPCMGM will be compensated in the amount of 1.5% of target income and will receive any economic return associated with its preferred stock investment in Newco.
 - Bolton Asset Management will be compensated based on the performance of the speculative investment account (generally, when the total return exceeds 12%).
 - The lender (UBS Bank or Refco) will have 1% of target income as a swap fee (not separately stated in the documents but implicit in the transaction). They may also earn a spread on the borrowings involved in the transaction.
 - PricewaterhouseCoopers LLP will receive 1.5% of target income for its tax opinion letter. The Firm may also be compensated for the preparation of required tax returns.
- **Speculative investment opportunity (ability to incur a significant risk of loss in an effort to earn an economic return).**
 - 8.5% of target income is the required investment by you in Newco stock, all of this amount is "at risk"⁵ and can be lost.
 - Economic upside is based on performance of speculative trading account. Past history of the model suggests that it is reasonable to assume that the performance in this account can more than cover the costs associated with the transaction such that the transaction will produce an overall economic profit. (TPCMG can provide further information on the historical performance of the speculative trading account.)
 - **Highly leveraged opportunity.** In addition to the 8.5% of target income required investment, a recourse bank loan (you are fully liable) exists for 100% of target income. Further, the bank will lend Newco 100% of target income (you are not personally liable on the Newco debt, but an asset you will receive from Newco will be subject to the bank's creditor interest in the loan made to Newco). Finally, Bolton Asset Management may "leverage up" the speculative trading account, which involves additional risk. (TPCMG can further describe the expected activities and leverage associated with the speculative trading account.) Based on an economic model, it is expected that all debt can be repaid without the advance by you of additional personal funds.

⁵ The amount "at risk" consists of fees (4% of target income) to PricewaterhouseCoopers, TPCMGM and the lender and the amount in the speculative futures trading account (4.5% of target income).

- **Tax opinion is at a "more likely than not" level (greater than 50% certainty level).** If it is reasonable (based on your due diligence of the transaction) for you to rely on the tax opinion, the "more likely than not" level is sufficiently high for you to avoid penalties from the IRS if the courts determine that the transaction does not work. (You would have to repay the tax and interest (at a floating rate currently approximating 8%, but no penalties.) PwC's Finance and Treasury Products Group will defend the transaction at 50% of its standard rates up to a fee cap of \$20,000 (on a per partnership basis) through the Appeals level within the Internal Revenue Service. They would then assist your attorney (under the same continuing fee arrangement) if the dispute with the Internal Revenue Service went into the court system (either federal district court or the Tax Court).
- **The transaction is expected to produce capital losses in 1999 that approximate 100% of target income.**
- **The timeframe of the transaction is expected to be at least twenty-four months (2years) from the beginning of the transaction until its conclusion. Thus, the 8.5% capital contribution will be tied up for that period of time.**
- **The transaction is a registered tax shelter with the Internal Revenue Service.** The practical result of the registration is that if the IRS wishes to audit those individuals who have entered into it, they have the ability to easily track them via the registration number that is included in each participating individual's tax return (an additional form is added to the 1040 package.) Generally, any transaction providing tax benefits with more than 50% leverage is required to be registered with the IRS as a tax shelter.
- **Time frame to move forward with the transaction for 1999:** Generally, a go-ahead decision to proceed should be made on or before September 15, 1999. The required cash investment will need to be made on or about the third week of September (somewhere near September 23 or 24).

Financial Advisory Services
Enhanced Investment Strategies
Risk Management Process/Due Diligence Committee Meeting

Meeting Held April 22 - 23, 1999

The following summarizes the Due Diligence Committee meeting held on Thursday April 22 through Friday April 23, 1999.

Present for the meeting were: Diane Stanford (Friday), Vic Albrecht (Thursday), Jeff Martin, Tom Newman, John Castrucci, Roger Scheffel, Ted Beringer (sitting in for Barry Levin) and Lisa Feathergill.

The primary purpose of the meeting was to hear presentations by KPMG (Thursday) and PricewaterhouseCoopers (Friday) regarding strategies for Committee consideration. A copy of the agenda is attached.

KPMG

Present from KPMG were Sandy Spitz and Jeff Eischeid. Sandy answered questions regarding their proposal to be a strategy provider, specifically regarding fee sharing and internal overlap. Regarding a fee sharing arrangement, Sandy stressed that KPMG and FUNB can never appear to be involved in a joint venture. The two organizations must always be independent, due to the audit relationship. Thus, we cannot receive a fee based on a percentage of assets nor can KPMG pay FUNB as fee when involved with a mutual strategy client.

Sandy explained that KPMG's Department of Professional Practice will support an arrangement with FUNB in which the fee KPMG would have charged if working without FUNB is divided between the organizations based upon the amount of work each party will provide in order to effect the strategy. Each organization must provide the client with a separate engagement letter delineating their roles and responsibilities as well as respective fees. Sandy feels that this arrangement should be more amenable to local partners since the portion of the fee taken by FUNB reflects work done by FUNB (rather than their staff). Sandy gave an example of a fee split 80% of KPMG and 20% to FUNB, based on respective work.

Sandy presented three proprietary strategies and two techniques that do not carry tax opinion letters. The proprietary strategies were: TRACT (Taxpayer Relief Act Charitable Trust), a diversification strategy; CREW (Corporate Retained Earnings Withdrawal), an ordinary income strategy and IDV (Investment Diversification Vehicle), a diversification strategy. Sandy also mentioned that KPMG should have a replacement for FLIP/OPUS in the near term, hopefully being approved that day.

Regarding 3rd party due diligence, Sandy indicated that KPMG conducts a FBI-like investigation of the organization. In addition, KPMG evaluates the size of their relationship with the 3rd party as compared to the size of the organization's other relationships. Their goal is to be a primary relationship in order to receive timely service.

Jeff explained that the marketing of strategies depends of the type of structure, particularly whether it is a tier 1, 2 or 3 structure. Tier 1 strategies are fairly common and do not require confidentiality agreements. Tier 2 strategies provide more value and exposure of the white paper is limited to PFC partners. KPMG will typically close 20 to 50 transactions of a tier 2 strategy. Tier 3 strategies are very aggressive and very high value. The firm limits exposure of these

strategies to a very limited number of partners and clients. Jeff indicated that we should call him directly if we have tier 3 prospects (specifically for an advanced CREW strategy).

With regard to audit support, Jeff indicated that he would be flexible. If audit support is a significant issue, he may concede to a number of hours or other arrangement.

After Sandy and Jeff left, the committee (ex-Vic who left after KPMG) discussed several issues. First, Ted explained that FBA has done several of the TCLAT/ICLAT structures. Further, since these techniques do not carry opinion letters, we agreed they do not meet the criteria of a "strategy". Second, we discussed the fee arrangements with KPMG. All agreed that flexibility needs to be available to determine the split between FUNB and KPMG. A range of 20% to 40% to FUNB should be agreed to with Sandy. Also discussed was that clients which have engaged FBA or PFC will probably rely more heavily on FUNB, thus the fee should be higher in these situations. Finally, the committee hopes to see better local office cooperation within KPMG when approaching mutual clients. The local partners should recognize that FUNB brings KPMG into a meeting with a prospect and receives no referral fee. Yet, KPMG has no requirement to bring FUNB to a meeting with the mutual client.

PWC

Present from PWC were Michael Schwartz, Bill Pepper and Kevin Kops. Michael indicated that the strategies being presented were 99% through internal review and should be approved shortly.

The Basis Offset Strip Strategy ("BOSS") strategy minimizes ordinary income and/or capital gains. Bill walked us through a sample client presentation. The minimum size is \$20 million. The strategy should be in place by July to give as much time as possible between the steps of the strategy. This strategy will be a tax shelter due to the high level of leverage.

The BOSS strategy requires significant participation from The Private Capital Management Group (TPCMG). This is the entity created by Ralph Lovejoy and David Smith. A lengthy conversation ensued due to the Senior Advisors' lack of comfort with Ralph's history for follow through. Michael agreed to talk to Ralph/David regarding back office support. He also indicated that he could provide an alternative firm for the bond management if we could not get comfortable with the capabilities of TPCMG.

The Private Annuity Company Transaction ("FACT") is an estate freezing technique. The minimum size is \$20 million. Kevin walked us through a sample client presentation and answered questions. This strategy requires several parties for implementation, including an insurance company, which is yet to be identified. Michael indicated that they were in the midst of discussions with a couple of large insurance companies with offshore subsidiaries. This strategy also provides deferral of income tax. The total fee is 4% of the amount contributed to the PAC.

We briefly discussed fees. PWC cannot pay us directly. Rather, our fee is paid by one of the 3rd parties involved in the strategy (e.g., Quadra, UBS, and TPCMG). We decided to continue pricing strategies in which we are working with PWC as 50 basis points of the amount the client is offsetting. We questioned whether we should place a cap on our fees. The Senior Advisors would like to lift the \$100,000 cap. This was tabled until the phone call on April 27.

Diane L. Stanford
Senior Vice President and Manager of FAS
Due Diligence Committee Chair

BOSS – Basis Offset Strip Strategy

Critical Issues
May, 1999

1. Applicable Code Sections
 - §475(f): deduction of ordinary loss by the partnership due to election made to mark-to-market the partnership's position in SPV.
 - §311(b): distributions made to partners from the partnership portfolio will not cause SPV to recognize gain under this code section.
 - §301(b): determination of the amount distributed to the partners of securities held by SPV.
 - §357(c): requires recognition of gain when property that is exchanged has liabilities which exceed the basis in property.

2. Applicable Principles of Law
 - Active Trade or Business: given trading activity, the partnership should qualify as active T or B, allowing partners to deduct losses on Schedule E.
 - Dividend distributions: under IRC §301, the FMV of property received by partners is reduced by any liabilities assumed or taken "subject to". As a result, partners who receive highly liquid Treasury notes/bonds will receive a high FMV relative to the actual distribution amount determined under IRC §301 (because the securities were collateralized with debt while held by the SPV and the debt follows the securities). In other words, an investor will receive an amount of securities which have a FMV of several million \$, but the amount of the "distribution" under IRC §301 will actual be zero. (Because the portfolio of securities distributed is *subject to* a loan liability at SPV).
 - The PWC tax opinion readily admits that "there exists no statutory or regulatory authority under Section 301 that illustrates a 'reduction for liabilities' in this context". However, the opinion goes on to discuss certain examples in the Treasury Regulations which are used to support the lowered distribution amount to the investor.

3. Debt Liability and the impact to the investor client.
 - It should be noted (and disclosed to the investor) that when a distribution is made to him of securities held by the SPV, the investor now becomes secondarily liable for the debt originally borrowed by the SPV. The SPV is still primarily liable for this debt, but since the loan amount to the SPV was perfected using the portfolio securities as the security, these securities, when distributed, are distributed *subject to* the debt. The bank (lender) will still look primarily to SPV for repayment; if not paid, the securities which are now held by investor would be used to satisfy the debt. PWC states in their presentation that it is the SPV's intent to pay off the loan.
 - Definition of "subject to". The PWC tax opinion discusses the definition of "subject to" in the context that is applicable here (ie. The investor taking securities "subject to" a liability). The opinion provides legal cites which define the term, as well as Tax Court cites which provide clarity as to how courts have interpreted the term in a tax law context. There appears to be no case which is directly on point with respect to this strategy. However, there is evidence that the IRS would apply a "facts and circumstances" test to determine whether the investor had a "real risk of loss" by taking property subject to a liability. Based on my reading of the PWC tax opinion, the strategy appears to be structured such that the investor does have a real risk of loss. The risk of loss is the fact that if SPV does not satisfy the liability, the lender will look to the portfolio of securities as repayment of the liability.

4. Proposed Tax Legislation
 - Apparently there are efforts underway in Congress to clarify the definition of "subject to a liability" as opposed to "assumption of" a liability. PWC's opinion actually includes information with respect to the Clinton Administration's Revenue Proposals as well as a bill introduced by Chairman Archer which seeks to distinguish these two definitions of debt. PWC's view of these

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SEN-014599

legislative efforts is that these clarifications primarily are aimed at transfers of property *to* a corporation. (Contrast with IRC§301 which discusses distributions *to* a shareholder). As a result, PWC views the current strategy, with its distribution under § 301, as being outside the scope of legislation currently proposed. I would anticipate that this section of the opinion will be rewritten at year end.

Internal Revenue bulletin

Bulletin No. 1999-52
December 27, 1999



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 99-58, page 701.

Continuity of interest on repurchase of issuer's shares. This ruling holds that an open market repurchase of shares through a broker, following a potential reorganization, has no effect on continuity of interest in a potential reorganization.

T.D. 8847, page 701.

Final regulations under section 743, 755, and 1017 of the Code provide guidance to partnerships and their partners concerning the optional adjustments to the basis of partnership property, the allocation of basis adjustments among partnership assets, and the computation of a partner's share of the adjusted basis of depreciable partnership property.

Rev. Proc. 99-50, page 757.

Combined information reporting. Combined information reporting by a successor business entity following a merger or acquisition is permitted in certain situations. Rev. Proc. 90-57 and Rev. Rul. 69-556 modified and superseded.

EMPLOYEE PLANS

Notice 99-61, page 762.

Weighted average interest rate update. The weighted average interest rate for December 1999 and the resulting permissible range of interest rates used to calculate current liabilities for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

EXEMPT ORGANIZATIONS

Announcement 99-115, page 763.

A list is given of organizations now classified as private foundations.

ADMINISTRATIVE

T.D. 8848, page 723.

This rule establishes the procedures under which the Ser-

vice may use penalty mail to aid in the location and recovery of missing children.

Rev. Proc. 99-49, page 725.

Methods of accounting; automatic consent. Procedures are provided under which a taxpayer may obtain automatic consent of the Commissioner to change certain methods of accounting. Rev. Proc. 98-60 modified and superseded.

Rev. Proc. 99-51, page 760.

This procedure amplifies section 5 of Rev. Proc. 99-3, which sets forth areas of the Code under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Service will not issue advance rulings or determination letters. The following issue is added to those listed in section 5: Whether a state law limited partnership electing under section 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of section 1361(b)(1)(D). Rev. Proc. 99-3 amplified.

Notice 99-59, page 761.

Tax avoidance using distributions of encumbered property. Taxpayers and their representatives are alerted that the purported losses arising from certain types of transactions are not properly allowable for federal income tax purposes. Also, the Service may impose penalties on participants in these transactions or, as applicable on persons who participate in the promotion or reporting of these transactions.

Notice 99-60, page 762.

Information reporting; royalty payments; Indians. Taxpayers are informed that the information reporting requirements of section 6050N of the Code do not apply to payments of royalties that are not subject to income tax because they are derived directly by a noncompetent Indian from allotted and restricted land under the General Allotment Act of similar acts.

Announcement 99-116, page 763.

This document corrects the Actions on Decisions published in 1999-35 I.R.B. 314. All 7 footnotes describing the "Acquiescence" or "Nonacquiescence" in each decision included the words "in result only," which were erroneous. The correct footnotes are printed in this announcement.

Social Security Contribution and Benefit Base for 2000 on page 763.
Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

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interest includes rights and obligations not included in a limited partnership interest. If these obligations and rights result in general and limited partnership interests in a limited partnership having non-pro rata distribution rights, such interests are different classes of stock for purposes of § 1361(b)(1)(D).

Given the factual difficulties involved in determining whether the differences between the rights and obligations of general and limited partnership interests give rise to a second class of stock, the issue of whether a state law limited partnership complies with the single class of stock requirement is under extensive study. Accordingly, advanced rulings will not be provided on the issue until the Service resolves it through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

SECTION 3. PROCEDURE

Rev. Proc. 99-3 is amplified by adding the following to section 5.01:

Section 1361. — Definition of a Small Business Corporation. — Whether a state law limited partnership electing under § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the National Office and any submitted after the date of this publication.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99-3 is amplified.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard Castanon of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Richard Castanon at 202-622-3070 (not a toll free call).

Tax Avoidance Using Distributions of Encumbered Property

Notice 99-59

The Internal Revenue Service and Treasury Department have become aware of certain types of transactions, as described below, that are being marketed to taxpayers for the purpose of generating tax losses. This notice is being issued to alert taxpayers and their representatives that the purported losses arising from such transactions are not properly allowable for federal income tax purposes.

The transactions are cast in a variety of forms. In one typical arrangement, taxpayers act through a partnership to contribute cash to a foreign corporation, which has been formed for the purpose of carrying out the transaction, in exchange for the common stock of that corporation. Another party contributes additional capital to the corporation in exchange for the preferred stock of that corporation. The foreign corporation then acquires additional capital by borrowing from a bank and grants the bank a security interest in securities acquired by the foreign corporation that have a value equal to the amount of the borrowing. Thereafter, the foreign corporation makes a distribution of the encumbered securities to the partnership that holds its common stock. The effect of the distribution, combined with fees and other transaction costs incurred at the corporate level, is to reduce the remaining value of the foreign corporation's common stock to zero or a minimal amount. Although the distributed securities are encumbered by the bank debt (and the taxpayers or their partnership may be secondarily liable for the debt as guarantors), the foreign corporation has sufficient other assets to repay the debt, and it is the understanding of all parties that the foreign corporation will repay the debt with such other assets.

For example, if the taxpayers' partnership had contributed \$100x for the common stock of the foreign corporation, the partnership might receive a distribution of securities with a fair market value of approximately \$100x, and that distribution would have the economic effect of reducing the remaining value of the foreign

corporation's common stock to zero. Nonetheless, because the distribution to the partnership is subject to the bank debt, the parties take the position, pursuant to § 301(b)(2) of the Internal Revenue Code, that the amount of the distribution is zero for purposes of § 301. On that theory, no part of the distribution is treated either as a dividend or as a reduction of stock basis under § 301(c).

The partnership is treated as having subsequently disposed of the stock of the foreign corporation, giving rise to a tax loss equal to the excess of the partnership's original basis in the stock (\$100x in the example) over the fair market value of the common stock after the distribution of securities (zero). The deemed disposition of the stock may be based upon an election under § 301.7701-3(c) of the regulations to change the federal income tax classification of the foreign corporation from a corporation to a partnership, giving rise to a deemed liquidation of the foreign corporation, or by treating the partnership as a trader in securities which elects under § 475(f) to treat the securities that it holds, including the stock of the foreign corporation, as having been sold for their fair market value on the last business day of the taxable year.

Thereafter, typically in a later taxable year, the bank debt is repaid out of other assets held by the foreign corporation. Although the parties previously treated the debt as reducing the amount of the earlier distribution from the foreign corporation, promoters advise taxpayers to take the position that the foreign corporation's repayment of the debt is not treated as a distribution on its common stock.

A loss is allowable as a deduction for federal income tax purposes only if it is bona fide and reflects actual economic consequences. An artificial loss lacking economic substance is not allowable. See *ACM Partnership v. Commissioner*, 157 F.3d 231, 252 (3d Cir. 1998), cert. denied, 119 S. Ct. 1251 (1999) ("Tax losses such as these . . . which do not correspond to any actual economic losses, do not constitute the type of 'bona fide' losses that are deductible under the Internal Revenue Code and regulations."); *Scully v. United States*, 840 F.2d 478, 486 (7th Cir. 1988) (to be deductible, a loss must be a "genuine economic loss"); *Shoenberg v. Com-*

missioner, 77 F.2d 446, 448 (8th Cir. 1935) (to be deductible, a loss must be "actual and real"); § 1.165-1(b) ("Only a bona fide loss is allowable. Substance and not mere form shall govern in determining a deductible loss.")

In the view of the Service and the Treasury Department, the arrangement described above (or any similar arrangement) does not produce an allowable loss. Through a series of contrived steps, taxpayers claim tax losses for capital outlays that they have in fact recovered. Such artificial losses are not allowable for federal income tax purposes.

The purported tax benefits from these transactions may also be subject to challenge under other provisions of the Code and regulations, including but not limited to §§ 269, 301, 331, 446, 475, 482, 752, and 1001 of the Code.

Additionally, the Service may impose penalties on participants in these transactions or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

The principal author of this notice is Ken Cohen of the Office of Assistant Chief Counsel (Corporate). For further information regarding this notice, contact Mr. Cohen on (202) 622-7790 (not

a toll-free call).

Information Reporting – Royalty Payments

Notice 99-60

Section 6050N(a)(1) requires that every person who makes payments of royalties (or similar amounts) aggregating \$10 or more to any other person during the calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid. Section 6050N(a)(2) imposes this requirement on every person who receives payments of royalties (or similar amounts) as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the royalties (or similar amounts) so received.

However, the reporting requirement of § 6050N does not apply to payments of royalties that are not subject to income tax because the royalties are derived directly by a noncompetent Indian from allotted and restricted land under the General Allotment Act, 25 U.S.C. §§ 331-358, or from land held under acts or treaties containing an exception provision similar to the General Allotment

Act. See Rev. Rul. 67-284, 1967-2 C.B. 55, modified on another issue by Rev. Rul. 74-13, 1974-1 C.B. 14, and amplified on another issue by Rev. Rul. 94-16, 1994-1 C.B. 19.

The principal author of this notice is Eric Lucas of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Mr. Lucas at (202) 622-4920 (not a toll-free call).

Weighted Average Interest Rate Update

Notice 99-61

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for November 1999 is 6.15 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
December	1999	6.00	5.40 to 6.30	5.40 to 6.60

Drafting Information

The principal author of Notice 99-61 is Todd Newman of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, call the Employee Plans Actuarial hotline, (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number is (202) 622-8458 (also not a toll-free number).



NC1150
401 South Tryon Street TH2D
Three First Union Center
Charlotte, NC 28288
Tel 704 383-9096
don.mcmullen1@firstunion.com

Vice Chairman
Capital Management Group Head
Capital Management Group

September 28, 2000

BOSS
STRATEGY

Mr. James Schiro
Chief Executive Officer
Price Waterhouse Coopers
1301 Avenue of the Americas
New York, New York 10019

Dear Jim:

We have not had the pleasure of meeting, but I need to request your help on a serious matter that I feel needs your personal attention. The issue is between First Union Corporation ("First Union") and Price Waterhouse Coopers ("PwC") involving PwC's Boss Strategy. I hope that by bringing this to your attention, First Union and PwC can reach a satisfactory conclusion. Our organizations have done business in the past, and I fully intend for us to continue a positive working relationship in the future.

I am sure you are not aware that in 1999, PwC representatives marketed BOSS to First Union and First Union customers as a tax-advantaged investment based on PwC's expert reading of the Internal Revenue Code. The lynchpin of the BOSS strategy was the issuance of a PwC opinion, reflecting PwC's interpretation, on which customers could rely. PwC representatives promised to deliver that tax opinion before year-end, unless the tax law changed. Relying on PwC's reputation and assurances, First Union made a number of its customers aware of the strategy and introduced those customers to PwC. First Union customers and their tax advisors also relied on the firm's reputation and those representations and chose BOSS over other investment options.

The tax law did not change. The IRS and Congress, however, learned of PwC's interpretation and publicly announced that they considered PwC's reading of the tax law to be mistaken. Faced with this, PwC thought better of its position and in December 1999 declined to give its promised opinion. First Union's customers were placed in a very difficult position.

First Union's only fault was relying on PwC's expertise and promises. PwC represented to First Union, as it did to all BOSS investors, that it had a strong and viable interpretation of tax law. In reliance on PwC's representations, First Union made some of its customers with relevant tax needs aware of BOSS. First Union put those who expressed interest in touch with PwC representatives. PwC representatives then explained the details of BOSS to the customers and their tax advisors. If customers decided to invest in BOSS, First Union served as the selling agent.

Mr. James Schiro
September 19, 2000
Page 2

Despite First Union's lack of fault, we were not inclined to profit from a transaction in which our customers' basic and legitimate expectations were not met. Promptly after learning of PwC's turnabout, First Union voluntarily refunded all of its selling agent fees to the investors. Nonetheless, several of these customers have sought relief against First Union as somehow being associated with PwC's wrongdoing.

Given the ongoing relationships that exist between First Union and PwC in other contexts, our preference would be to reach an amicable agreement satisfactory to First Union, which addresses at least some of the losses of time and money that First Union has suffered as well as the embarrassment. To this end, we ask for PwC to repay to First Union the fees refunded by First Union to BOSS customers and fully indemnify First Union and its customers against all other losses suffered as a result of PwC's failure to deliver the tax opinion promised as a party to the BOSS Strategy.

Thank you for your time and effort in this matter. We believe we did the right thing for our clients in refunding their fees. We ask that PwC do the right thing and treat us like a good client. Please advise me the next steps you feel appropriate, and let's once again return to more successful ventures together with this issue behind us.

Sincerely,



DAM/jb

Cc: Gail Fagan

THE WALL STREET JOURNAL
INTERACTIVE EDITION
FROM THE ARCHIVES

December 10, 1999

IRS Moves to Disallow Tax Shelter That Generates Losses on Paper

By JOHN D. MCKINNON
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- The Internal Revenue Service said it will disallow a tax shelter that generates apparent investment losses for tax purposes.

The technique, one version of which is known as the bond-and-option sales strategy, or BOSS, poses no financial risk to the taxpayer, IRS officials said. One such shelter was being marketed by PricewaterhouseCoopers, among other firms, people familiar with the matter said.

Jonathan Talisman, acting assistant Treasury secretary for tax policy, said the shelter was "extremely aggressive," with the potential for widespread use. The IRS will disallow it even for taxpayers already relying on it, a spokesman said.

Clinton administration officials say that in recent years accounting firms and other tax professionals have become more active in developing and marketing tax shelters for businesses. IRS officials have tried to crack down on such tactics as they are discovered and a loophole similar to the BOSS strategy was closed by legislation earlier this year.

Under the BOSS-type scenario, officials said, an individual or business helps to create a corporation that invests in securities. The corporation then borrows money using the securities as collateral, a process that ends with shares in the corporation becoming valueless and creating a loss for tax purposes. Later, the debt for which the securities have been used as collateral is repaid from other funds that belong to the corporation, restoring the value of the investment securities.

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Permanent Subcommittee on Investigations

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SEN-020853

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Officials estimate the shelter has been in use only since the beginning of the year and they don't know how widespread it has become.

Marc Eiger, a spokesman for PricewaterhouseCoopers, the New York accounting firm, said in a prepared statement that the company provides "advice to our clients with regard to legitimate tax-saving opportunities" and that the firm was reviewing the IRS announcement.

He said the company hadn't issued any opinions to clients about the banned transactions, but declined to comment on whether the firm in fact marketed the transactions.

Write to John D. McKinnon at john.mckinnon@wsj.com



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A6 THE WALL STREET JOURNAL FRIDAY, DECEMBER 10, 1999

IRS Moves to Disallow a Tax Shelter That Generates Paper Investment Loss

By JOHN D. MCKINNON

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Under the BOSS-type scenario, officials said, an individual or business helps to create a corporation that invests in securities.

Eleven Regional Banks Join Online-Bills Effort Of Three Big Banks

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Eleven regional banks agreed to join an effort launched by three bigger banks in June to steer electronic bills to consumers and businesses.

The addition of the 11 banks is an important step forward for Spectrum LLC, a company formed by Chase Manhattan Corp., of New York, First Union Corp., of Charlotte, N.C., and Wells Fargo & Co., of San Francisco, to grab a big chunk of the

The corporation then borrows money using the securities as collateral, a process that ends with shares in the corporation becoming valueless and creating a loss for tax purposes. Later, the debt for which the securities have been used as collateral is repaid from other funds that belong to the corporation, restoring the value of the investment securities.

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SEN-020013

Permanent Subcommittee on Investigations

EXHIBIT #140h

PRICEWATERHOUSECOOPERS John
1 page
Charles

PricewaterhouseCoopers LLP
1301 Avenue of the Americas
New York NY 10019-6013
Telephone (212) 239 1000
Facsimile (212) 239 1301

January 5, 2000

Dear Investor:

Re: *Bond & Option Sales Strategy Investment*

Since the time that PricewaterhouseCoopers LLP ("PwC") communicated its decision that it would be unable to issue a "more likely than not opinion" that the losses associated with the Bond Option & Sales Strategy investments would ultimately be held to be tax deductible, we have heard from many of you that you would like to rescind your investments and receive back the cash you invested. While we are not in control of the funds paid in or the investments into which some of those funds have been placed (other than the partial payment of our fees), we have been working very hard over the last few weeks and through the holidays to achieve a return of as great a percentage of the cash you invested as possible as quickly as possible.

We have had numerous discussions with representatives of The Private Capital Management Group ("TPCMG") and with Refco Capital Markets ("Refco"). Moreover, we have monitored, and indeed discussed with many of you, your responses to offers made to you to sell shares in your investment vehicles to WISC Financial, Ltd. We have observed that many, if not most of you, have determined not to sell your shares, and that those few who determined to sell your shares have apparently been unable to accomplish that objective.

As a result of these developments, Refco Capital Markets has determined that the outstanding loans and swaps are in default. Refco has therefore liquidated all investments, loans and swaps, at a very small loss.

We are pleased to be able to advise you that one or more wire transfers or checks representing (with limited exceptions due to unique individual circumstances) the return of approximately 82%-88% of the cash you invested in one or more Bond Option & Sales Strategy investment vehicles has been sent from Refco, and in some cases PwC, to your account. In addition to being funded by the liquidation of all investments, loans and swaps, this represents the voluntary return of all of the fees PwC was paid or was to be paid and 75% of the total interest income that Refco Capital Markets was to earn on the swaps and loans (Refco having already earned a portion of this interest income and having incurred significant expenses in connection with these investments). It also includes the return of other undisbursed amounts held by Refco when the default was declared, including sums as to which TPCMGM or WISC Financial may claim an interest. We wish we were able to return 100% of the amounts invested, but we are told that some of the fees paid out may not be recoverable.

We know that we have not been able to tell you much over these last few weeks or to give you much comfort that your funds would be returned, and for that we apologize. We have been engaged in very time-consuming and delicate negotiations that have fortunately borne fruit. We appreciate your patience and forbearance.

Very truly yours,

PricewaterhouseCoopers

Permanent Subcommittee on Investigations

EXHIBIT #140i

SEN-020060

*Bond & Option Sales Strategy
“Boss”*

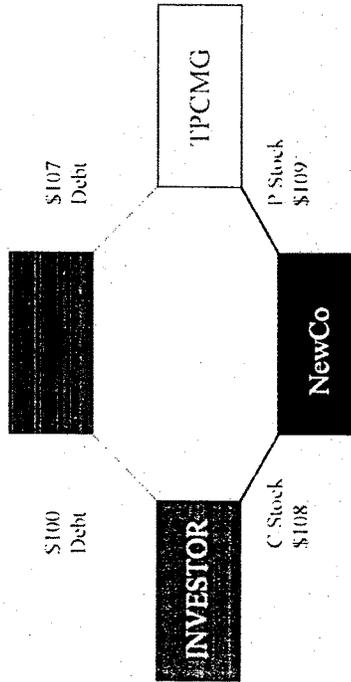
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EXHIBIT #140j

SEN-020904

BOSS

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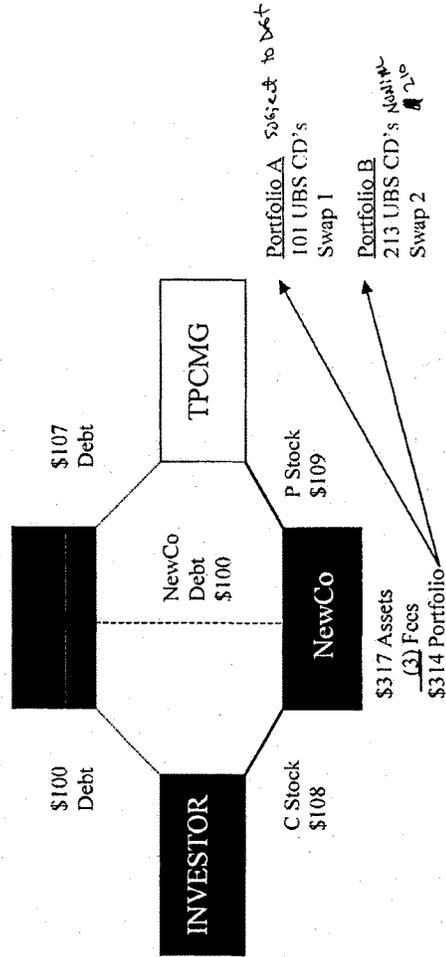


Investor purchases all of the Common Stock in NewCo in a highly leveraged transaction.
TPCMG purchases all of the Preferred Stock in NewCo in a highly leveraged transaction.
Preferred Stock has a preferred return and preferred rights upon liquidation.

PRICEWATERHOUSECOOPERS 

SEN-020905

BOSS



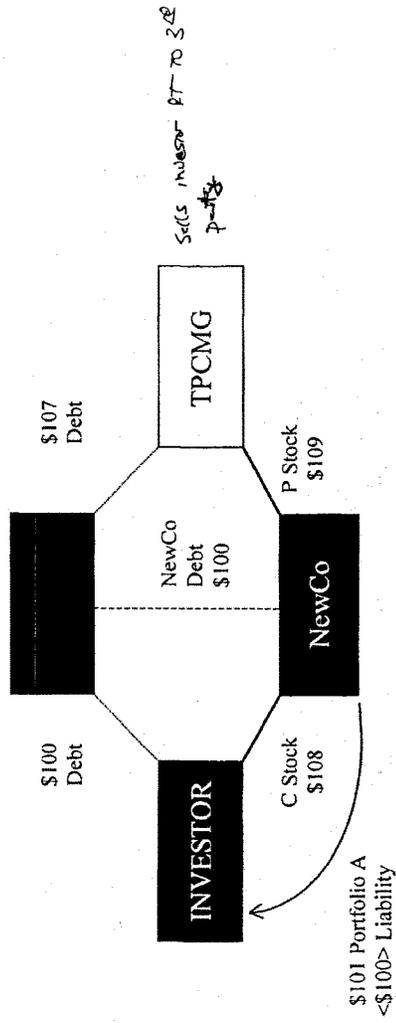
2821

NewCo borrows \$100 from Bank; NewCo is primarily liable for NewCo Debt at all times relevant hereto.
 NewCo Debt is secured by Portfolio A; alienation of Portfolio A is restricted.
 NewCo enters into a swap with significant economics.

$$\begin{array}{r} (100) \\ (101) \\ \hline 1 \\ (101) \\ \hline 100 \end{array}$$

PRICEMATERHOUSECOOPERS

BOSS



2822

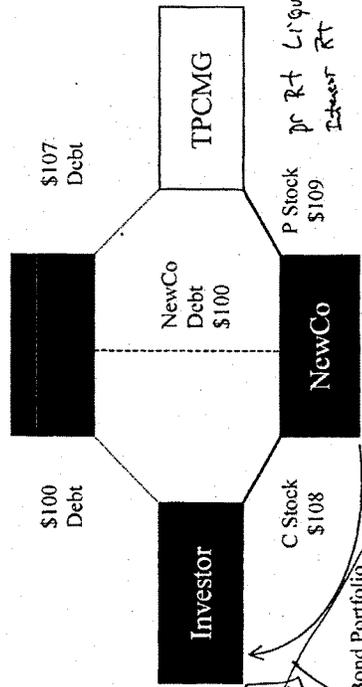
NewCo distributes Portfolio A to Investor; Bank's security interest in Portfolio A survives.

30 (G)(2)

30 (D) Reduce AV by Liability



BOSS



*Own money
not security
\$104 Bond Portfolio
<\$100> Liability*

NewCo distributes Bond Portfolio to Investor; Bank's security interest in Bond Portfolio survives.
 In connection with the distribution, Investor becomes secondarily liable for NewCo Debt.
 In Year 2, NewCo will pay down the Liability

QUESTIONS → check the Book

*1/3 NewCo Stock
2/3 Bond debt
same thing for
investor*



**An Overview of the Bond & Option Sales Strategy ("BOSS")
(Capital Version)**

The strategy involves a large investment in options and future trading, and also has the potential for a large tax benefit.

The strategy is financially structured by an individual making an investment of 108.5% of his target income amount. 8.5% of the 108.5% is from the investor's personal funds, the balance will be financed by a financial institution.

- Example: The target income amount is \$10 million. \$10.85 million is invested by the individual (\$0.85 million from personal funds and a \$10 million recourse bank loan (the individual is fully liable on the note) from the bank.

The investor will purchase the common shares of Newco (a newly-created offshore entity¹) for \$10.85 million. The Private Capital Management Group² will purchase the preferred shares of Newco for \$10.90 million.

Newco will borrow \$10.0 million from the bank³. Newco will invest its \$31.35 million of assets (\$10.85 million from the individual, \$10.90 million from TPCMG, \$10.0 million from the bank loan to Newco less \$0.4 million of fees) in secure investments (e.g., 2-year money market obligations of the bank).

Newco will have a segregated account that will be collateral for a \$10.25 million investment. Newco will enter into 2 swaps.

The first swap will have a \$10.25 million notional principal amount and will pay interest at the 2-year money market rate and receive floating interest on \$9.90 million and a hedge fund return on \$0.35 million.

The second swap will have a \$21.1 million notional principal amount and will pay interest at the 2-year money market rate and receive floating rate interest on \$20.8 million and a hedge fund return on \$0.3 million.

The hedge fund (with total assets of \$0.45 million⁴) will be a diversified futures trading fund. This fund is a high-risk strategy that is not available to normal investors, has the potential for very high returns, but can result in the loss of the entire investment (\$0.45 million).

¹ The use of an offshore entity is for U.S. tax purposes.

² ("TPCMG"), a business organization based in Charlotte, North Carolina, specializes in investment advisory services and the economic structuring of transactions that have important tax consequences to them. Our Finance and Treasury Products Group (based in New York City) has a working relationship with this organization.

³ This loan will be secured by \$10.25 million in money market accounts ("Portfolio A").

⁴ This amount may be leveraged by the manager of the hedge fund strategy, Bolton Asset Management (based in Memphis, Tennessee). TPCMG can provide more detailed information on this topic.

The interest rate portion of the swaps gives the Newco the potential to make additional income if interest rates go up, but exposes Newco to the risk of loss if rates go down.

It is within Newco's authority to distribute the collateralized assets to the common shareholder as a distribution. If Newco desires, it can distribute the \$10.25 million money market account and the \$10.25 million swap that collateralize the \$10.0 million bank debt. Newco will retain the primary liability on the bank loan, but as a consequence of the distribution the shareholder's assets (Portfolio A) will become subject to the bank debt if Newco defaults on its loan to the bank.

As a result of the shareholder receiving assets subject to the debt, the distribution is not taxable as a dividend to the extent of the amount of the debt. On a liquidation basis, the value of the common shares is diminished (Newco has to pay back the bank and satisfy the rights of the preferred shares before any assets can be distributed to the holder of the common shares).

The investor may choose to sell a portion of his investment in Newco at year end. As a result of the sale the investor will recognize about a \$10 million capital loss (the difference between the fair market value of the common stock of Newco compared to his cost basis in the common stock). (The investor has not suffered an economic loss, because he has received Portfolio A with a value of \$10.25 million at little or no tax cost. Portfolio A will ultimately be used by the individual to repay his bank loan of \$10 million.)

Meanwhile, Newco will determine the financial results of its swaps including the options and futures trading strategy. Depending on the aggressiveness and risk tolerance levels, it is possible for the trading strategies inherent in the swaps, when combined with earnings of Newco on its interest based investments, to produce a yield great enough to return a profit to the common shareholders.

An examination of a sample portfolio on an annual basis from January, 1996 produced sufficient profits in 28 out of 29 rolling monthly periods (e.g., January 1, 1996, February 1, 1996, March 1, 1996, etc.) for an investor to make sufficient money from the swaps to return a profit to the common shareholder. By investing over a two-year period, past performance suggests a 100% chance of making a profit. The above returns are on a pretax basis and after paying all fees. They presume interest rates stay flat.

Summary of Capital BOSS Key Aspects

Level of tax opinion: "More likely than not" (greater than 50% comfort level)

Cash investment: 8.5% of target income amount

Leverage: 100% of target income amount, recourse debt.

Maximum expected economic downside: 8.5% of target income amount, (4% fees, 4.5% allocated to aggressive trading strategy)

Maximum economic upside: Unlimited return* + return of capital invested

AMT issues: It is highly unlikely that AMT issues arise in connection with this transaction.

Time deadline for participation: September 15 for initial decision and background paperwork, about September 23 for wire transfer of cash investment to TPCMG (may change)

Target income amount minimums: \$10 million, \$20 million + preferred, (individuals at less than \$20 million of target income will be combined with others to reach a \$20 million minimum partnership size)

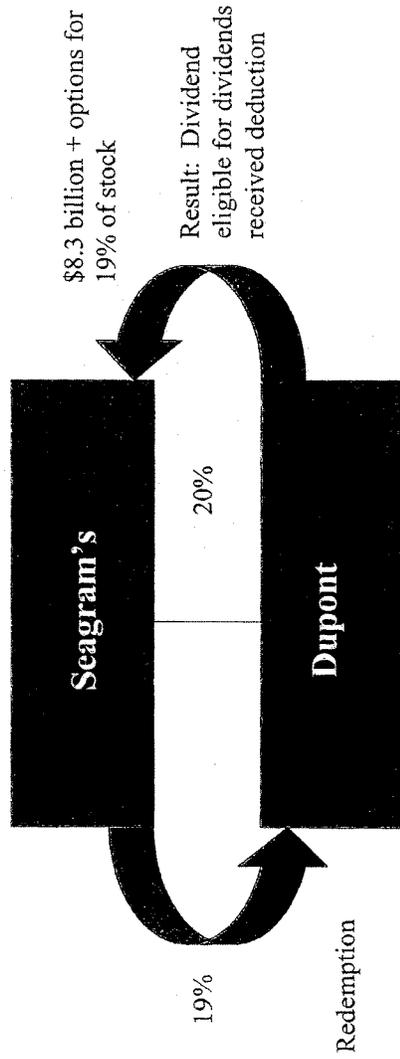
Time horizon of investment: 2 years minimum

* Return based on performance of aggressive trading strategy which can involve as high as 6:1 leverage.

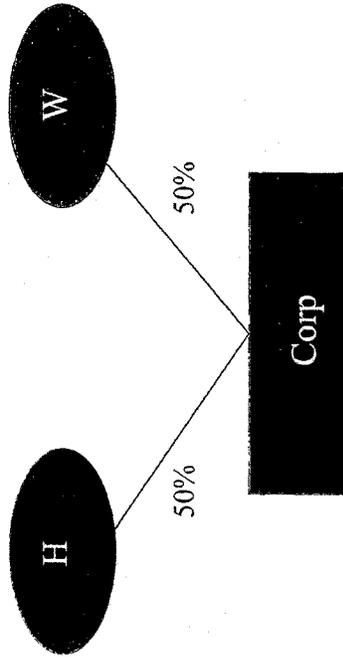


Foreign Leveraged
Investment Program

Permanent Subcommittee on Investigations
EXHIBIT #140m

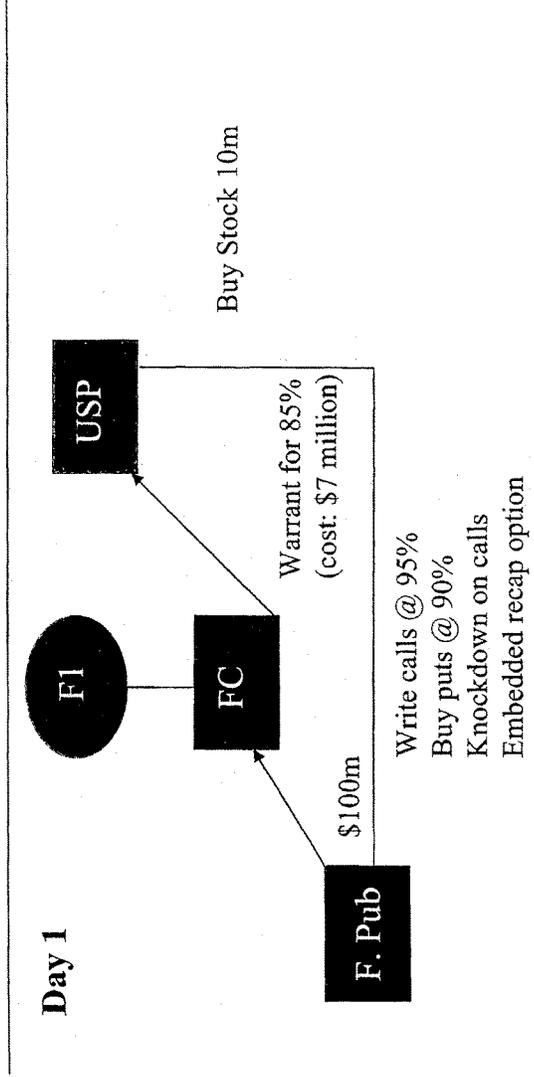


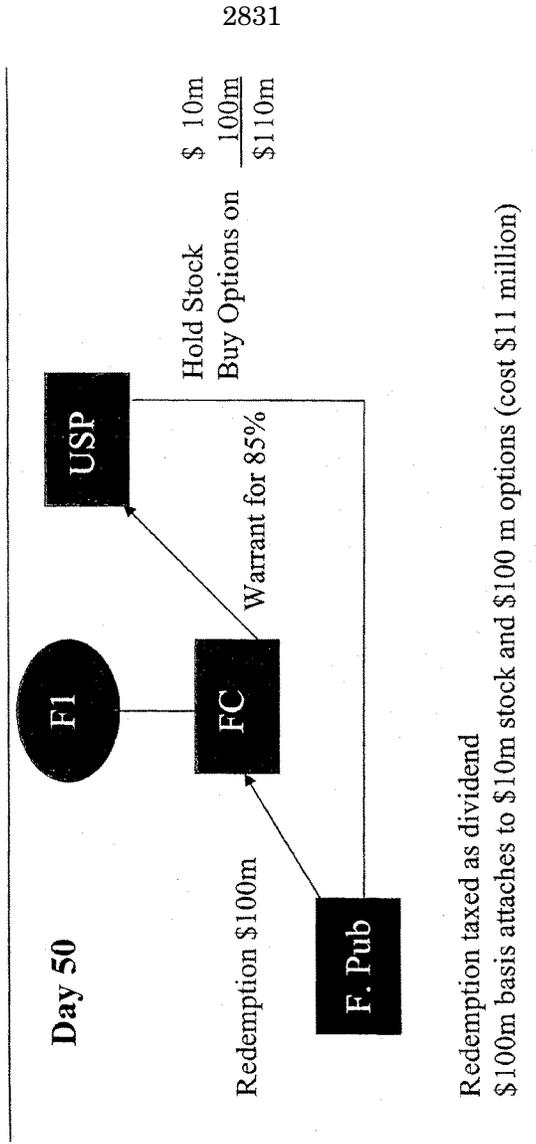
Reg. Sec. 1.302-2(c)



2829

If H redeems shares, redemption is dividend due to family attribution.
Basis in H shares is added to W - "proper adjustment rule".





Redemption taxed as dividend
\$100m basis attaches to \$10m stock and \$100 m options (cost \$11 million)



Business Purpose

Recap Options	50	Chance of Profit ACM Analysis
Week 1	102.5% 51.25	ACM Analysis 12%
Week 2 & 3	105% 52.5	Last 6 1/2 years 12%
Week 4 & 5	107.5% 53.75	1997 39.7%
Week 6 & 7	110% 55	
<u>Profit In Excess of all Costs</u>		

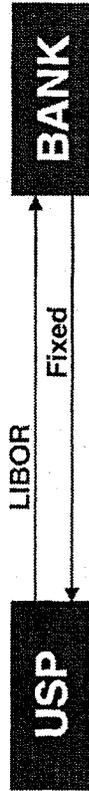
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Permanent Subcommittee on Investigations
EXHIBIT #140n

SEN-022115

Two-Year Interest Rate Swap



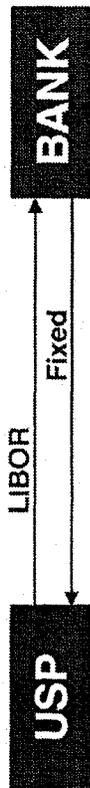
\$100 million Notional Principal Contract

6% LIBOR		6.5% Fixed
6% x \$100 million/4	=	\$1.5 million payable quarterly
6.5% x \$100 million/4	=	\$1.625 million receivable quarterly
		<u>\$125,000 net receivable</u>

PRICED BY WATERHOUSE COOPERS

Quadra Capital Management, L.P.

Deferred Interest Rate Swap

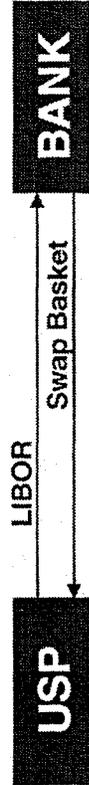


\$100 million Notional Principal Contract			
6% LIBOR	=	6.5% Fixed	
6% x \$100 million/4	=	\$12 million (\$1.5 million payable quarterly)	
6.5% x \$100 million	=	\$13 million receivable at termination	
		\$1 million Accumulated Receivable	

PRICEWATERHOUSECOOPERS 

Quadra Capital Management, L.P.

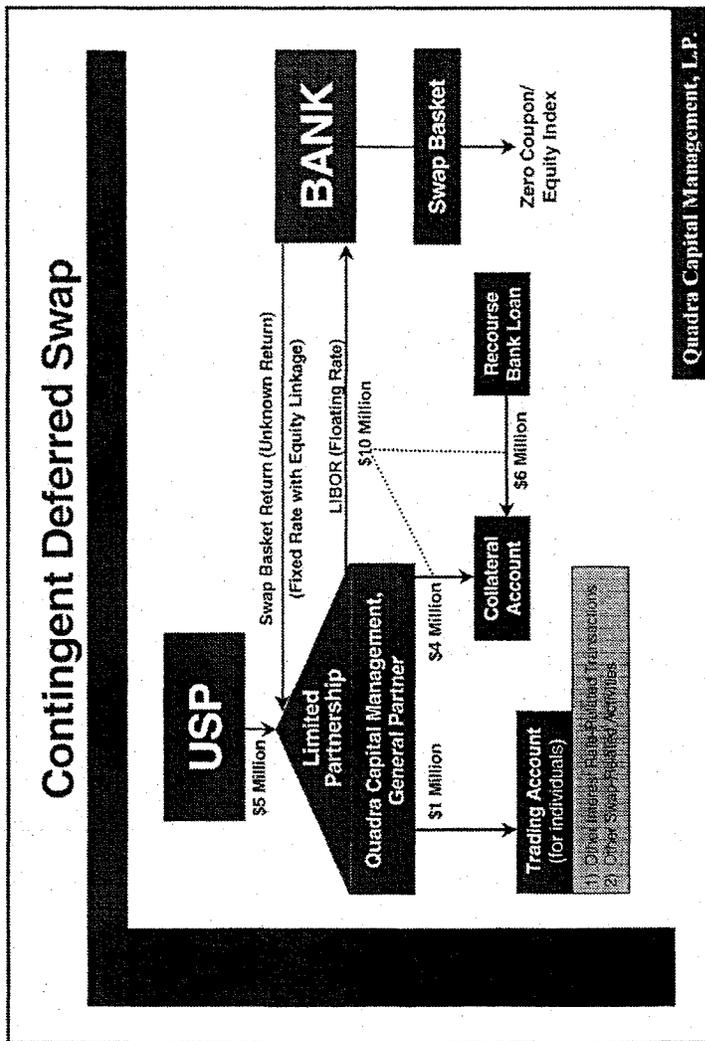
Contingent Deferred Interest Rate Swap



\$100 million Notional Principal Contract
6% LIBOR = ?% Swap Basket Return
6% x \$100 million/4 = \$1.5 million payable quarterly
\$? Receivable for the Swap Basket Return

PRICewaterhouseCOOPERS

Quadra Capital Management, L.P.





PricewaterhouseCoopers LLP
1301 K Street NW, Suite 800W
Washington DC 20005-3333
Telephone (202) 414 1000

May 10, 2004

Leland B. Erickson, Esq.
Counsel
Senate Permanent Subcommittee on Investigations
199 Senate Russell Building
Washington, DC 20510

Dear Mr. Erickson:

I enclose our responses to the questions you raised in your E-mail dated April 23, 2004. I hope this information will facilitate your report's preparation.

If there is additional information you require prior to our meeting on May 26, 2004, please contact me.

Your very truly,

A handwritten signature in cursive script that reads "Bob Shapiro".

Bernard M. (Bob) Shapiro

Enc.

cc. Robert L. Roach, Esq.

Permanent Subcommittee on Investigations

EXHIBIT #140o

PricewaterhouseCoopers LLP Responses to Questions from the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs

1) The group(s) responsible for the sale of FLIP and BOSS, number of tax professionals charged with the sale of these products to clients.

We had a group of approximately ten professionals who were responsible for the development and marketing of these transactions. In late 1999, we got out of the business and disbanded the group.

2) Description of the design, review, and approval process, including compliance with the law and regulations of the Internal Revenue Code and AICPA. This should include a discussion of the name, titles, and responsibilities of individuals involved with these processes.

We have extensive quality control measures directed at complying with the tax law, Treasury regulations, and AICPA and other professional standards of conduct. Our procedures have recently been reviewed by the IRS and we were told that our procedures are comprehensive, thorough, and effective.

Organization

We have committed significant resources to a quality and risk management group that is independent of any business unit and reports directly to the leader of the tax practice. This group is tasked with developing quality and review procedures to ensure that we do not get involved in aggressive tax shelter transactions. The group is led by one of our most experienced partners, Dennis Lubozynski.

This group is centralized with representatives embedded throughout our organizational levels (national, regional, and business unit). The function includes six full-time partners, supporting professional staff and an additional eight partners spending significant amounts of time in this activity. Under the procedures established by this group, all of our tax related services must go through a quality review. (A list of the partners involved in this group appears at Appendix A.)

Review and Approval

Our risk management measures emphasize proactive procedures to meet applicable IRS and AICPA standards and go beyond those standards.

The quality review process is comprehensive and has differing levels of review depending upon the complexity of the issues involved. Even the most routine of our tax services are reviewed, often by a second partner. In many instances, the second partner is required to be a technical expert in the subject matter in question. When multiple tax issues are involved, there will be participation by multiple subject matter experts. If the advice to be rendered is considered a third party opinion, then an additional review is undertaken by a national quality and risk management partner.

If a tax planning idea has potential applicability to more than one client, the idea will undergo a significant review under procedures in place since 2000. The procedures begin with a required description and technical analysis, review and support by appropriate specialists, and a qualification review by a quality and risk management partner and a member of the tax leadership. If these conditions are satisfied, the idea must be unanimously approved by a committee of experts. Finally, if the committee approves the idea, it will be resubmitted to the tax leadership for a final assessment as to whether it should be disseminated to the practice. Similar procedures are followed with respect to our issuance of tax opinions.

Please also see responses to Questions 9, 10 and 11 and Appendix A.

3) Provide the number of transactions sold for FLIP and BOSS, and the amount of revenue associated with the selling of these products.

Foreign Leveraged Investment Program (FLIP): In 1997 and 1998, we participated in 12 and 38 FLIP transactions, respectively. We earned approximately \$16 million with respect to these transactions. In 1999, we withdrew from seven transactions then in progress, issued no opinions and refunded our fees (approximately \$1 million). Since then, we have not done any of these transactions.

Bond and Options Sales Strategy (BOSS): In 1999, there were approximately 120 of these transactions in progress. In late 1999, our firm shut down all transactions, issued no opinions, and refunded all of our fees (approximately \$12 million). None of these transactions were ever completed. Since then, we have not done any of these transactions, or any of its successors (e.g., Son of BOSS.).

4) A discussion of the referral arrangement with First Union National Bank, describing how this relationship started, individuals involved, the nature of the arrangement, and the duties of each firm associated with this relationship. A discussion on the number of tax products sold as a result of this arrangement. In addition, this should include a discussion of the fee arrangements with respect to this arrangement.

While at PwC, Michael Schwartz was introduced to First Union by David L. Smith, who was then employed by Quadra. This was an informal relationship. There was no fee sharing agreement between PwC and First Union and, in fact, PwC did not pay First Union any referral fees. First Union referred 25 investors with respect to BOSS.

5) A discussion with respect to registration obligations. This should include a description of the reasons not to register, the process in which that decision was made, the rationale for not registering and who was responsible for this decision. This should include a discussion on PwC's determination on whether the investment advisor was the proper entity for registration.

The 1998 and 1999 FLIP transactions were registered by the promoter, Quadra/Quellos based on PwC's advice. The 1997 FLIP transactions were not registered. The parties involved in that

decision are no longer with the firm. We understand that the decision was reached by Michael Schwartz after consultation with a subject matter expert. In 1998, PwC reevaluated the issue and insisted that Quadra/Quellos register the transactions.

One BOSS transaction was not required to be registered because it did not meet the tax shelter leverage ratio of at least 2:1, as set forth in Treas. Reg. § 301.6111-1T, Q&A-4. All other BOSS transactions were registered based on PwC advice to the promoter, The Private Capital Management Group (“TPCMG”).

In these cases, we believed that the most appropriate party to register the transactions was the promoter.

6) A description of the FLIP and BOSS transactions, including how they worked, intended benefits, parties involved (banks, law firms, investment manager).

FLIP

FLIP was a transaction structured to shift basis from a tax-indifferent party to a U.S. tax party, thereby enabling an investor to shelter income or claim a significant loss. In FLIP, a U.S. taxpayer and a tax-indifferent party (i.e., a person not subject to US tax) acquired stock in a US corporation. The tax-indifferent party’s interest in the US corporation is subsequently redeemed. Through the use of options or other security interests and the special attribution rules of IRC section 318, the parties qualify the redemption as a dividend within the meaning of section IRC 301 (because the options, etc. purportedly prevent the redemption from reducing the tax-indifferent party’s interest in the US corporation). Because the redemption is treated as a dividend, the basis previously held by the tax-indifferent party is shifted to the US taxpayer (pursuant to Regulation section 1.302-2(c)). The US taxpayer subsequently sells its stock, often claiming significant losses (or in some cases, reducing other income or gains).

For additional information, please see IRS Notice 2001-45, 2001-33 I.R.B. 129.

Parties:

1997 FLIP Transactions:
 Promoter/Organizer: Quadra/Quellos
 Bank: UBS
 Investment Manager: Quadra/Quellos

1998 FLIP Transactions:
 Promoter/Organizer: Quadra/Quellos
 Bank: UBS
 Investment Manager: Quadra/Quellos

In 1997 and 1998, we gave the first opinions on 34 transactions. Investors also sought second opinions from Pillsbury Madison, other law firms and a law professor from Kentucky. In 16 1998 transactions, in which KPMG and/or First Union referred investors, PwC provided second opinions. In 1999, we withdrew from 7 transactions and did not issue any opinions.

BOSS

BOSS was a transaction structured to shelter gains through a series of sale, loan and dividend arrangements. There were 120 transactions in progress at the time we shut the transaction down. In a typical BOSS transaction, partners would, through a partnership, contribute cash to a foreign corporation, one receiving common stock and the other receiving preferred stock. The foreign corporation would then borrow money from a bank, buy securities and grant the lender a security interest in the securities acquired with the borrowed funds. The foreign corporation would then distribute the encumbered securities to the partnership in a transaction that, after factoring in corporate level fees and transaction costs, reduces the value of the common stock to zero (or to a minimal amount). Although the securities are encumbered (and the partners or the partnership may be secondarily liable), it is understood by the parties that the foreign corporation will repay the loan.

Because the securities distributed to the partners are theoretically encumbered by the bank debt, the partners argue (relying on IRC section 301(b)(2)) that the value of the distribution is zero. As a result, no part of the distribution would be taxed as a dividend nor reduce the partners' basis in the stock of the foreign corporation.

Subsequently, the partnership would dispose of its stock in the foreign corporation without recognizing gain (either through a check the box election to treat the foreign corporation as a partnership or by treating the partnership as a trader in securities and making the IRC section 475(f) election to treat all securities it holds as having been sold for FMV on the last business day of the taxable year).

In a later taxable year, the foreign corporation would repay the debt out of its assets. The repayment is not treated by the partners or the partnership as a distribution even though (i) the partners and/or partnership are thus relieved of any secondary obligation to pay such debt, and (ii) such debt was previously used to reduce the value of the earlier distribution.

BOSS is generally described in IRS Notice 99-59, 1999-52 I.R.B. 761.

Parties:

Promoter/Organizer: TPCMG
 Tax Opinion: PwC
 Bank: Refco
 Investment Manager: Bolton Asset Management
 Other: First Union Investment Division referred investors in 25
 BOSS transactions

7) A discussion on how these relationships with various third parties - banks, law firms, investment advisors - came about, and the roles for each of the third parties.

FLIP was marketed by Quadra/Quellos. BOSS was marketed by TPCMG. Our connection to both firms was David L. Smith, whom Michael Schwartz knew from both of them having worked at KPMG.

Quadra/Quellos arranged the financing of FLIP with UBS. TPCMG arranged the financing for BOSS with Refco.

Quadra/Quellos conducted any required trading activities in connection with FLIP.

Bolton Asset Management conducted trading activities for BOSS. Michael Schwartz was introduced to Bolton. Schwartz then introduced Bolton to David Smith of TPCMG. Smith was responsible for choosing the investment manager, and decided to use Bolton.

Investors obtained tax opinions from Brown & Woods, Pillsbury Madison and other law firms.

8) A discussion on the reasons for the refunding PwC fees with respect to BOSS.

The factors leading to our decision included the changing regulatory environment, desire among our partners to focus on our core tax business, embarrassment caused to our clients, people and firm, and damage to our business reputation. Those factors also resulted in our decision to leave this business.

In addition to refunding our fees, we worked with Refco to refund all available invested money to investors.

9) A discussion on PwC's reasons for the settlement, conditions of the settlement, and settlement amount.

PwC was examined by the IRS on our compliance with the registration and list maintenance requirements. We cooperated with the IRS during the exam and we ultimately settled the matter to put it behind us.

In June 2002, PwC and the IRS entered into a settlement agreement to resolve all potential penalties under the IRS examination of PwC relating to registration and list maintenance. The settlement covers the period of 1995 through the present and includes PwC and its predecessor firms.

The settlement agreement addressed past and future conduct. Its key elements included:

- A settlement payment by PwC
- Open and cooperative disclosure to the IRS of all of PwC's nationally marketed tax solutions (in excess of 130 ideas), plus other tax ideas of interest to the IRS. (None of these were determined by the IRS to require registration.)

- Our agreement to comply with IRS summonses involving registration and list maintenance matters, including the process to be followed in responding, and
- IRS review of our quality control procedures which has been completed.

We continue to cooperate with the IRS and fully abide by our agreement. To our knowledge we were the first accounting firm to settle.

We have previously provided a copy of the agreement and disclosed the amount of the settlement to the Subcommittee.

10) Description of the IRS' assessment of the settlement, if known. For example, at the hearing, Richard Berry testified that the IRS indicated that PwC's quality controls were comprehensive, thorough, and effective.

Mr. Berry's statement accurately reflects oral conversations with the IRS examination team assigned to the PwC review.

11) Description of the changes PwC has made with respect to tax products, both as part of the settlement, and independent of the settlement.

A positive consequence of this unfortunate experience was our development of a comprehensive quality review program and its implementation in 2000. The purpose of this program is to prevent our participation in abusive tax shelters and ensure that we provide the highest quality advice to our clients. Significant resources have been committed to a quality and risk management group that is independent of any business unit and reports directly to the leader of the tax practice. This group is tasked with developing quality and review procedures to ensure that we do not get involved in the types of transactions previously described. Since 2000, we have implemented the following key quality functions:

- Risk management measures that emphasize proactive procedures to meet applicable IRS and AICPA standards and exceed those standards
- Significant attention to both client acceptance and engagement acceptance to ensure that we do not proceed with a project that carries extensive risk
- Quality review of all tax related services; even the most routine of our tax services are reviewed, often by a second partner; in more complex matters, the review is typically performed by a subject matter expert
- Additional review by a national quality and risk management partner if the advice to be rendered is considered a third party opinion
- If the strategy involves a tax planning idea with potential applicability to more than one client, the strategy will undergo a significant review supported by appropriate specialists, and a qualification review by a quality and risk management partner and a member of the tax leadership. The idea must be unanimously approved by a committee of experts and resubmitted to the tax leadership for a final assessment as to whether it should be disseminated to the practice
- Additions of tax quality courses to our Learning and Education programs including mandatory training on reportable transactions

2845

- Office reviews of compliance with policies and procedures
- Communication to the practice of the role of our Tax Quality and Risk Management group, including the fact that the firm has a formal policy of no retribution when matters are properly reported

**PricewaterhouseCoopers LLP Responses to Senate Committee on Governmental
Affairs, Permanent Subcommittee on Investigations Questions
Appendix A**

National Quality & Risk Management Team*:

Dennis Lubozynski (Leader)	Hartford New York
Ed Abahoonie	New York
Gary Cesnik	New York
Paul Eldridge	New York
Dan L. Mendelson	Washington, DC
Dan Noakes	Washington, DC

Regional Quality & Risk Management Partners*:

Northeast	David M. Green – Boston
NY-Metro	Vince Burns – Florham Park
Southeast	Tony Notarfrancesco – Philadelphia
Southeast	Dennis Goginsky – Atlanta
Central	David Anders – Houston
Central	Ron Padgett – Cleveland
West	Ken Rem – LA
West	Meg Baron – San Jose

Responsibilities

Regional Q&RM Partners:

- Review and approve contingent fee and value billing engagements to ensure compliance with applicable tax law, regulatory and professional standards;
- Review client requests for changes to our engagement terms; and
- Administer the global PwC Engagement Reviews quality control review program in the regions

National Q&RM Team: Members of the National Q&RM will respond to any of the matters designated for the Regional Q&RM Partners and any other risk or quality questions or issues, such as:

- Firm policy
- Confidentiality privileges
- Conflicts
- Independence
- Tax opinions

- Taxpayer & preparer penalties
- Tax shelter disclosure
- New tax products and solutions
- Practice before the IRS under Circular 230
- AICPA & PwC ethics
- Expert testimony or litigation support in tax matters
- Unauthorized practice of law
- Special situations
- Threatened litigation
- Other engagement management matters

Due Diligence Committee
Minutes – April 27, 1999

The committee met on April 27, 1999 to review strategies presented on April 22, 1999 and April 23, 1999 by KPMG and PWC, respectively for possible approval.

Prior to reviewing each strategy in detail and "scoring" each strategy using the strategy evaluation scoring form (see attached), the following points were discussed and approved by the committee:

1. Any technique presented to the committee by an approved strategy provider must be supported by a Tax Opinion Letter in order to be considered a strategy and therefore available for committee approval.
2. Any strategy scored by the group, which falls below a score of 3.0 (out of a total of 5.0), will be disqualified for final consideration by the committee.
3. Any new techniques presented where a Tax Opinion Letter is expected to be issued; may be approved, subject to a "more likely than not" Tax Opinion however, it will require a final approval by the committee once the Opinion Letter is issued and reviewed by the committee.

The committee reviewed 5 strategies and scored each strategy as a committee (see attached evaluation form on each):

<u>KPMG</u>		<u>PWC</u>	
<u>Name</u>	<u>Score</u>	<u>Name</u>	<u>Score</u>
- TRACT	3.85	- BOSS	3.66
- CREW	3.52	- PACT	3.64
- IDV	2.825		

Because IDV did not score a 3.0 or higher, it was eliminated for further consideration. Reasons for the low score included (a) long term time frame of the transaction causes a high economic risk to the client and bank, (b) projected low demand of the product mostly due to economic risk.

The following are some highlights on the remaining four strategies to complement the scoring form. All four strategies were approved subject to a final review:

TRACT: - Diversification Strategy

- Understandable to client
- Strategy itself is very viable
- Good for individuals with large blocks of stock with charitable intent and a willingness to sell their stock within 3 years

Permanent Subcommittee on Investigations

EXHIBIT #141a

SEN-014577

Page Two

Regarding TRACT, the committee agreed that any clients executing this strategy will need to sign an acknowledgement statement that they were offered a choice of investment firm for the Prepaid Forward contract used in the strategy other than FUNB.

CREW – Ordinary Income Strategy

- Expected strong demand for FBA clients
- Long term implementation timeline takes 8-12 months to implement strategy
- Client demand may be limited, but clients who use strategy will find it valuable

BOSS – Capital Gain and Ordinary Income

- High projected demand for this strategy by clients
- Economic risk to strategy is well managed – very viable

PACT – Estate Planning Strategy

- Low demand, but those who use it will find it extremely valuable
- For highly affluent individuals we've been trying to target our sources toward
- Subject to building our fee in as a % of total transaction

The committee also scored the CDS Strategy to memorialize the committee's comments on this strategy and ensure that a consistent review process is used for all strategies.

The committee discussed Ralph Lovejoy's departure from Quadra to form TPCMG. Given this situation, the committee agreed that we will not work with Ralph as an intermediary on the closing of any CDS strategies. Norm Bontje at Quadra does not intend to use Ralph as an agent for Quadra either. Therefore, any CDS strategies should be, of course, worked on through PWC and Scott Butterfield from Quadra may be involved.

The committee agreed that the next step was to assign each strategy to a Senior Advisor to review the details of the strategy and present any findings to the committee at its next meeting schedule for May 13th from 9:00am-11:00am. Additionally, Diane Stanford will contact PWC & KPMG to discuss further their fee arrangements

Diane L. Stanford
Senior Vice President and Manager of FAS
Due Diligence Committee Chair

SEN-014578

MEMORANDUM

To: CMG Risk Review Oversight Committee
 Cc: CMG Risk Review Subcommittee
 FROM: Karen Chovan, Financial Advisory Services *KC*
 DATE: September 3, 1999
 SUBJECT: Meeting Minutes of September 1

The CMG Risk Review Oversight Committee ("committee" or "OC") met on Wednesday, September 1. All seven members — Vic Albrecht, David deGorter, Ed Glass, David Hebner, Greg Jardine, Dan Prickett and Diane Stanford — attended.

The meeting's agenda was discussed and the committee approved the minutes of the July 29 meeting. Afterwards, Senior PFC Advisor and CMG Risk Review Subcommittee ("sub-committee" or "SC") member Tom Newman presented an overview of an enhanced investment strategy for OC vote to be able to present it to selected First Union clients. KPMG brought the BLIPS strategy (referred to hereafter as the "Alpha" strategy) to First Union and has proprietary rights to the strategy. Alpha had been evaluated at the August 12 subcommittee meeting and approved at its August 26 meeting.

Before the Alpha strategy was discussed, each member of the committee signed a confidentiality agreement at KPMG's request. In general, signing the agreement confirmed the understanding that committee members would hold information about the strategy in the strictest of confidence and specific details of Alpha would not be discussed outside of the meeting.

Tom presented a detailed analysis of Alpha and the committee discussed specific features of the strategy at length. *(Please refer to the packet of information prepared by Tom Newman and presented at the meeting for a list of critical points regarding Alpha.)* The majority of OC questions surrounded understanding the tax code and the three-tiered investment process of Alpha.

Highlights of the Alpha discussion:

- The Alpha strategy is a highly leveraged investment strategy that could be used to generate either a capital gain offset or an ordinary income offset.
- The strategy is to be considered only for individuals with more than \$20 million in capital gains or ordinary income in either 1999 or future year. It is not suitable for use by partnerships.
- Tom described the financial and investment risks that would be associated with a client's initial investment.
- The strategy is supported by a tax opinion of "more likely than not" written by KPMG.
- First Union's fees would be determined and outlined in an engagement letter entered into directly with the client and would approximate 50 basis points for non-KPMG clients who implement the strategy (minimum fee amount of \$100,000) and 25 basis points for existing KPMG clients (minimum fee amount of \$50,000). An exact fee for each client would be detailed in each engagement letter.

Page 2 of 3

- Deutsche Bank provides the nonrecourse loan to the investor in the strategy and Presidio serves as the investment advisor.

When discussion concluded, members of the committee immediately and unanimously approved the strategy.

- Tom reiterated that KPMG and First Union do not want to overexpose this strategy and it was agreed that written information about the strategy should not be distributed widely. The OC agreed that the number of clients shall be limited and the number of senior advisors within Financial Advisory Services who can present the strategy to clients shall remain limited. Approved CMG contacts authorized to discuss the strategy include: Ted Beringer, John Castrucci, Lisa Featherngill, Barry Levin, Bob Lipsey, Jeff Martin, Tom Newman, Al Pierce, Teri Sallwasser, Roger Scheffel, Diane Stanford and Rick Simonetti.
- The committee agreed that the strategy would be referred to as Alpha internally.
- The committee discussed that an individual might want to borrow the amount that he or she would invest in the transaction, and that the PCG credit underwriters might request information about the strategy before approving the loan. It was agreed that without disclosing specific details of the strategy, Greg Jardine will serve as a contact for the credit underwriters in order to give them comfort that he has seen and understands the strategy. The borrower would need to stand on his or her own merits for the loan.

As the subcommittee representative, Tom then reported on the August 26 SC meeting where Joel Bunkley presented two strategies for voting consideration — the IRA and ATT strategies. Both strategies are internal strategies designed by Joel (as opposed to external strategies such as KPMG's Alpha strategy).

It was decided by the SC that though near completion, the IRA strategy is not a final product and is not ready to be presented to the OC. The strategy carries a tax opinion letter from the law firm of Foley Lardner; however, specific third-party participants are yet to be arranged. Once these parties are agreed upon, Joel will bring the strategy back to the SC for approval and move to proceed to the OC for final vote.

Tom approached the OC for general clarification and guidance on SC responsibilities regarding issues brought up in discussion of the ATT strategy.

Discussion points included:

- If a First Union individual, in this case Joel Bunkley, conceives a strategy on his own and brings it to the committee, what due diligence responsibility does the SC have in lieu of a third-party originator not being involved? If the SC feels it does not have the expertise on the committee to render an opinion or recommendation, who should bear the cost of obtaining more information — the individual proponent's business unit, subcommittee budget monies, the business unit that's going to benefit from the implemented strategy?
- Specific to ATT, the strategy carries an opinion letter from the law firm of Franklin Montgomery. However, the SC determined there was insufficient detail from a due diligence perspective to support the opinion letter (e.g. no outlined analysis, judicial citing or tax cases to back up the opinion). Joel is familiar with the strategy, is comfortable with the opinion letter, and said it would be costly to engage the law firm to provide detail supporting the opinion letter. Without resolving who would ultimately bear the cost of the attorney's bill, the SC asked Joel to investigate the cost and report back to the committee given that members did not feel comfortable voting on the strategy without the supporting documentation.

Page 3 of 3

- The OC confirmed that Joel should obtain an estimate on the cost of providing a detailed opinion letter and analysis to present to the SC. It also was agreed that Ed Glass would speak to Joel about the necessity to expedite this request from Franklin Montgomery and present the strategy to the SC and ultimately the OC for decision and resolution.
- Discussion revolved around whether Joel should be presenting the ATT strategy to clients and prospects before it is an approved First Union strategy. It was agreed that he can continue as usual for the short-term (30 days) given that the strategy was conceived before the committee approval process had been implemented. However, it also was agreed that information needs to be obtained quickly and in a reasonable timeframe in order for the SC and OC to measure risk, form an opinion and take a vote on the strategy. It was agreed that the strategy can not continue to be presented on an indefinite basis. If the necessary information is not obtained within the 30-day time parameter, the OC will discuss further whether to suspend its recommendation to continue to offer the ATT strategy.

David deGortier raised the issue of how the committee is defining a strategy and what parameters surround which strategies need to be presented to the committee process for review. (i.e. What's a fee? Is a commission a fee?)

- The OC agreed that if a tax preparer would request a tax opinion letter regarding a particular strategy before he or she would sign the tax return, then the strategy would be deemed one that needs to be presented to the committee. This guideline defines a strategy from an income tax perspective.
- It was agreed that this topic merits further discussion from an estate tax perspective.

The committee will not meet again until the subcommittee reports that additional information has been provided for the IRA and ATT strategies and that the SC is ready to present the strategies to the OC for review. However, if no further information about the strategies has been reported back to the SC within 30 days, an OC meeting will be called to address the status of continuing to sell the ATT strategy.



MEMORANDUM

TO: CMG Risk Review Oversight Committee
 CC: CMG Risk Review Subcommittee
 FROM: Karen Chovan, Private Capital Management *KC*
 DATE: June 12, 2000
 SUBJECT: Meeting Minutes of June 2

The CMG Risk Review Oversight Committee ("committee" or "OC") met on Friday, June 2. Vic Albrecht, Greg Jardine, Dan Prickett and Peter Welber attended. Tom Newman from the Risk Review Subcommittee ("subcommittee" or "SC") joined the meeting as well as Mitch Barbee and Joel Bunkley from Private Capital Management.

Agenda discussion items included:

- A. IRA/Qualified Plan Strategy
 - B. Charitable FLP Strategy
 - C. S-Corporation Charitable Contribution Strategy
 - D. Custom Adjustable Rate Debt Strategy
 - E. Miscellaneous Administrative Items
- A. Joel Bunkley provided an overview of the IRA/Qualified Plan Strategy. The subcommittee had approved the strategy to submit to the OC under two conditions — 1) that the tax opinion letter be expanded to include all qualified plans and 2) that Joel/the committees receive the Legal Division's position and guidance whether First Union can act in any capacity other than custodian of the account under ERISA rules. Preliminary indications are that FTU would not be able to present the strategy to clients of IRA accounts where FTU acts in a fiduciary capacity (i.e. makes investment decisions in the account).

Please refer to the handout Joel provided at the meeting for specific technical detail regarding the strategy.

- Both Franklin Montgomery and Foley & Lardner have written a "more likely than not" opinion on the strategy. Joel is working with Foley & Lardner to obtain an updated opinion that is inclusive of all qualified plans.
- Dan asked about the various roles First Union could serve for the client in addition to being the proponent of the strategy. Other than providing planning services for the client, the company could receive additional investment management and insurance business (investment management inside the insurance component as well) and might serve as trustee.
- Fees generated for the planning side are in the \$20,000 net range (\$30,000 charged to the client, with about \$10,000-\$12,000 of built-in costs). Target plans are in the \$1 million-\$2 million range.

When discussion concluded, all voting members in attendance approved the strategy under the same conditions as the subcommittee.

Permanent Subcommittee on Investigations

EXHIBIT #141c

SEN-008637

Page 2 of 3

Joel will follow up with First Union's Legal Division to solicit its ERISA position. Vic Albrecht will review Legal's response and OC approval to offer the strategy to First Union's IRA clients where FTU is acting in a fiduciary capacity is conditioned on Vic's final okay after review of Legal's position. Joel can start working with clients who have IRA balances held by other institutions now, as well as FTU IRA custodial accounts.

The committee requested for Joel to come back to the committee meeting in three months with an update on the strategy.

B. Secondly, Tom presented the Charitable Family Limited Partnership for the OC's consideration. The strategy carries a "more likely than not" opinion by KPMG. *Please refer to the handout Tom provided at the meeting for specific technical detail regarding the strategy.*

- The strategy has both income and estate tax benefits and allows clients to fulfill their charitable intent.
- Tom pointed out that First Union is not making any economic representations to the client. KPMG handles all presentations of that nature.
- An independent third-party appraiser should perform valuations of the limited partnership interests and KPMG will not serve as the appraiser for clients implementing the technique through them. The OC discussed whether First Union's valuation group could perform the appraisals and ultimately agreed that given such a small revenue potential for the risk involved, that the internal valuation group cannot be involved.
- First Union fees typically are \$20,000-\$50,000 on the minimum \$10 million deal.
- Upon approval, the strategy would be offered through PCM's Senior Financial Planners.

At the end of discussion, the OC unanimously approved the strategy to offer to First Union clients with the stipulation that the internal valuation group cannot perform the valuations.

C. The next strategy Tom presented was the S-Corporation Charitable Contribution Strategy. *Please refer to the handout Tom provided at the meeting for specific technical detail regarding the strategy.*

- The strategy is suitable for closely held S-Corps., which preferably have only one or two investors. The S-Corp. must generate at least \$5 million in ordinary income on an annual basis.
- This is a KPMG strategy and it would like to do 50 deals, then shut down the strategy in July. The strategy may be resurrected later in the year.
- First Union's fees would be a minimum of \$100,000 (20% of the total fees to client).
- Upon approval, the strategy would be offered through PCM's Senior Financial Planners.
- The committee discussed that the Commercial segment might have a high interest in this strategy and that it potentially could be a good partnering arrangement between Commercial Banking and CMG. Greg Jardine and Tom Newman will arrange a meeting with Tom Pacer to explain the strategy at a broad level.

Page 3 of 3

The OC voted unanimously to approve offering the strategy to First Union clients.

D. The last strategy Tom presented was the Custom Adjustable Rate Debt strategy (CARD). *Please refer to the handout Tom provided at the meeting for specific technical detail regarding the strategy.*

- The strategy is offered through a "new" provider, meaning not one with which the financial planners in PCM have ever worked. David LaDow from Capital Enhancement Advisors and Roy Hahn from Chenery Associates are the parties involved.
- The strategy is supported by a tax opinion of "more likely than not" written by the firm of Brown & Wood.
- The tax benefit of the strategy is to generate an ordinary loss or capital loss.
- The strategy involves a credit facility and the committee discussed whether First Union could act as lender. Ultimately, the committee decided that more information is needed before First Union could decide on the lending decision with respect to this strategy.
- Upon approval, the strategy would be offered through PCM's Senior Financial Planners.

After assessing the various risks associated with the CARD strategy, the committee voted to delay a decision on the strategy until David LaDow and/or Roy Helms can attend a future OC meeting to present the strategy and answer questions. Everyone agreed that a face-to-face meeting with these new providers would be worthwhile and Tom will try to coordinate.

E. Lastly, a motion was made to schedule monthly OC meetings to avoid too many agenda items at any one meeting. The committee voted in favor of the monthly meetings. Tom will speak with Caroline Upton about coordinating and setting the dates for the next several meetings.

2856

First Union National Bank
NC1220
301 South Tryon Street, M-2
Charlotte, North Carolina 28288-1220
704 374-2848
Fax 704 374-3119

Thomas D. Newman
Vice President
Senior Advisor
Personal Financial Consulting

December 29, 1999

VIA FAX 704 [Redacted by Permanent Subcommittee on Investigations]

Redacted by
Permanent Subcommittee
on Investigations

Dear [Redacted by Permanent Subcommittee on Investigations]

Earlier this year, we brought to your attention a transaction referred to as the Bond & Option Sales Strategy ("Boss"), developed by Pricewaterhouse Coopers LLP ("PwC") and The Private Capital Management Group, LLC ("TPCMG"). PwC indicated that the BOSS structure might provide certain tax benefits that would be attractive to individuals like you. We understood that, unless a change in the law occurred, PwC would provide you with an opinion after closing with "more likely than not" assurance on substantive tax issues related to BOSS and "will not" assurance on the issue of penalties.

After reviewing BOSS with your personal advisors, you entered into a BOSS transaction. In connection with that transaction, First Union earned a fee as a selling agent.

Since the transaction, the IRS has issued U.S. Treasury Notice 99-59. We understand that PwC has not issued to you the opinion that you and we anticipated. We also understand that PwC will not be issuing the opinion. Although we have had conversations with PwC and TPCM, we cannot predict the ultimate resolution of this matter. Once again, if you have not already done so, we strongly urge you to consult your personal tax advisor so that you consider your options and take any steps that you feel are appropriate.

Because you a valued customer of First Union, we wanted to give you this update and to let you know that today we are voluntarily returning all fees as selling agent that First Union earned on your BOSS transaction. We will do so by directly depositing those fees into your personal CAP account no. 4000371848.

Sincerely,

Thomas D. Newman
Senior Advisor

Permanent Subcommittee on Investigations
EXHIBIT #141d

SEN-021020

Redacted by Permanent
Subcommittee on Investigations

April 6, 2001

Mr. Thomas D. Newman
Managing Director, Financial Planning
Capital Management Group
First Union National Bank
401 South Tryon Street, Second Floor, NC 1220
Charlotte, North Carolina 28288-1220

Re: Engagement of First Union National Bank to provide financial advisory services.

Dear Tom:

I am confirming our conversation with Sandy Spitz of last Friday. Sandy is a past partner with KPMG Peat Marwick, LLP ("KPMG") which firm has been previously employed for the purpose of providing tax advice regarding the subject matter of this letter. Mr. Spitz is now in the employment of First Union National Bank (the "Bank"). The subject of the conversation was to once again inquire regarding the Legal Opinion of the Investment Strategy as set forth in the Engagement Letter between R.B.R.& S.T. Partnership (the "Partnership") and the Bank dated July 7, 1998 (the "Engagement Date").

The Bank prior to the Engagement Date introduced the Partnership to the investment-counseling firm of QA Investments of Seattle Washington ("Quadra"). The Bank and Quadra together presented an Investment Strategy (the "Strategy") to the Partnership which involved the organization of an off shore partnership with a foreign entity for the purpose of making investments in foreign corporations. The Bank and Quadra represented the Strategy as having a foremost potential to make a significant profit while having in a circumstance or situation of an investment loss a significant income tax advantage. The Bank and Quadra represented that they would assist the Partnership in its later efforts to engage the services of an independent accounting firm to provide the Partnership with tax advice and opinion which would address the Partnership's concerns pertaining to Internal Revenue Code Section 6662.

The Bank and Quadra represented that they would cause to have issued in a timely manner to the Partnership a Legal Opinion of the Strategy which could provide the Partnership with a defense in the event that the whole or certain aspects of the Strategy were ever challenged by

Permanent Subcommittee on Investigations
EXHIBIT #141e

SEN-008750

April 6, 2001

Page 2.

the Internal Revenue Service (the "IRS") or in the event that the tax returns of the Partnership were examined as regards the transactions of the Strategy. The Legal Opinion was to be issued by the law firm of Pillsbury, Madison & Sutro, LLP, its successor being: Pillsbury, Winthrop, LLP. The Bank and Quadra even supplied Partnership council with a sample draft opinion. Needless to say the Partnership does rely upon its receipt of the reference Legal Opinion and did rely upon the representations made regarding receipt of same in arriving at its decision to engage the services of both the Bank and Quadra. The Partnership would most likely not have invested in the Strategy in the absence of these representations. To the best of its knowledge at no time has the Partnership ever received a Legal Opinion from the law firm referenced nor does the Partnership have any knowledge of the existence of such a Legal Opinion.

The Partnership did receive an unsolicited tax opinion dated October 8, 1999 from PricewaterhouseCoppers ("PWC"). The Partnership considers the PWC opinion to be damaging and has taken exception to same in that it makes statements and asserts facts which are grossly false and which would mislead the IRS regarding the purposeful intentions of the Partnership. The Partnership has repeatedly failed in its attempts to open a dialogue with PWC regarding this opinion and has been otherwise unable to discover any information regarding its engagement. The PWC document does, however, make reference to certain information (the content of which is unknown to the Partnership) that it claims was received from both the Bank and Quadra and used in the formulation of its opinion. The Partnership has not engaged PWC on its own behalf or otherwise agreed to accept the PWC opinion as a substitution of the Legal Opinion that the Partnership was to be provided by Pillsbury, Winthrop, LLP.

At this time the IRS is examining the tax returns for the year 1998 of the Partnership. The Partnership has been requested in the latest Information of Document Request to furnish the IRS with any legal opinions or tax advice, which it has been provided regarding the Strategy transactions. While the Partnership may decide to claim privilege as to the tax advice it received from its engagement of KPMG and the opinion of PWC, the Bank cannot conclude that it would likewise claim privilege of a Legal Opinion designed to assert a defense if such were in its possession.

The Partnership is informed and believes that the statement in the PWC opinion letter pertaining to the involvement of the Bank and Quadra in the formulation of its opinion would extend the rights of privilege as provided by Internal Revenue Code Section 7525 to include both of these parties along with Mr. Spitz being a previous employee of KPMG.

Best Personal regards.

Sincerely,
Yours

Redacted by Permanent Subcommittee on Investigations

SEN-008751

2859

April 6, 2001

Page 3

Redacted by Permanent Subcommittee on Investigations

Cc: Sandy Spitz
Steve McCord
Sheldon Fay
Norman Bontji

SEN-008752

2860

Inte. Office
Memorandum

**FIRST
UNION**

Date:
May 25, 1998

From:
Diane Stanford, SVP and Manager
Financial Advisory Services
Charlotte NC1150



To:
Ted Beringer, MidAtlantic

Re:
KPMG Tax Strategies

Ted, I thought I'd write to confirm our discussions by phone on Friday regarding the alliance that FUNB has with KPMG/Peat Marwick on offering Enhanced Investment Strategies (Tax Strategies) to selected clients and MidAtlantic's role in that process since there was some confusion regarding the role of MidAtlantic when FUNB clients are involved.

FUNB clients:

As we discussed, whenever a FUNB client is involved, whether by referral to MidAtlantic from an internal FUNB referral source (ie: Commercial Banker, Trust Specialist, etc) or from a cold call by MidAtlantic on a FUNB client, the MidAtlantic Advisor MUST ALWAYS introduce one of the Personal Financial Consulting (PFC) Senior Advisors (Rudolph, Castrucci, Martin, Newman) to the client first. The PFC Senior Advisor will then involve KPMG and the outside investment advisor (such as Quadra or Presidio) and will stay involved in the transaction through closure. We will take our planning fee on the transaction and will pay MidAtlantic a referral fee in accordance with the November 1997 Referral Agreement guidelines.

In a rare situation you may identify a client that does not want to either work with FUNB or with KPMG. On a case by case basis, you and I will talk through each situation to arrive at the best way to handle the transaction. No PFC Sr. Advisor or KPMG point of contact will be excluded until both parties have agreed to the proper approach.

Non FUNB clients:

When MidAtlantic identifies an Enhanced Investment Strategy prospect for any Non FUNB clients, we strongly suggest that the MidAtlantic Advisor always use Sandy Spitz in the Charlotte, KPMG office as the first point of contact for the strategy opportunity, rather than go directly to the outside investment advisor or to another KPMG office. In these situations, no PFC Senior Advisor is required to be involved.

Ted, I hope this clarifies any confusion that may have arisen on previous transactions.



SEN-014862

2861

Please be sure to share this information with your staff. I will do the same. As always, do not hesitate to contact me with any questions at 704-383-6800.

Cc: Dan Prickett, FUNB, Charlotte, NC
Sandy Spitz, KPMG, Charlotte, NC
John Castrucci, FUNB, Summit, NJ
Lisa Rudolph, FUNB, Jacksonville, FLA
Jeff Martin, FUNB, Charlotte, NC
Tom Newman, FUNB, Charlotte, NC

SEN-014863

Capital Management Group
Enhanced Investment Strategy Series
Overview

What? CMG has entered into agreements with outside investment advisors in order to bring leading edge investment techniques to First Union customers (and prospects). In many cases the investments are "tax advantaged;" **in all cases the investments are of a proprietary nature that demand complete confidentiality on the part of all parties involved, especially First Union employees participating in any aspect of the investment strategy.** In order to maintain this relationship and protect the interests of First Union and its customers and all other parties affiliated with these transactions, CMG has developed a strict policy for taking these investment strategies to First Union customers.

Through this relationship CMG expects to release several different investment strategies each year. Due to the unique, leading edge, and often aggressive nature of these investment strategies, each investment strategy will be released as a special package and its utilization by First Union customers will be closely controlled. It is expected that many of the investment strategies will have a limited life; CMG will communicate when investment strategies are "turned on," by distributing an information package, and CMG will communicate when investment strategies are "turned off," in writing with applicable effective dates.

Who? As part of this relationship, KPMG Peat Marwick LLP will serve as the "Tax Strategist and Consultant" with respect to all the investment strategies to protect the interests of First Union and its customers. In addition to KPMG there are several outside investment advisors that specialize in developing investment strategies. These investment advisors will develop new investment strategies, present them to KPMG and upon approval and packaging, will be distributed to First Union personnel for release to customers. For some investment strategies, outside counsel may be involved in providing "tax opinion letters" depending upon the facts and circumstances. You have the opportunity to participate in marketing these investment strategies to First Union customers based on the appropriate information package.

How? Release of these new enhanced investment strategies will proceed as follows. **First**, you will receive an information package that describes an investment strategy, when you can market it, and how you can market it. **Second**, you can meet with customers to determine their interest in the investment strategy. **Third**, to the extent you believe you have an interested, qualified candidate, you must then contact a Senior Consultant of the CMG Personal Financial Consulting Group who will meet with the customer to further explore applicability of the investment strategy and prequalify them for further meetings with KPMG and if applicable, the outside investment group. Prior to involvement of KPMG, there will be no detailed descriptions or explanations of the investment strategy to the customer. When detailed explanations begin, the attendance of such meetings will be

limited to the customer, the CMG Personal Financial Consultant, KPMG, and if applicable the outside investment advisor. As a lead-in to the detailed explanation of the investment strategy, the customer will be questioned about their knowledge of the transaction (which should not differ from your information package) and asked to sign a confidentiality agreement. To the extent that the investment strategy is "entered into" with the customer, you are eligible for a commission as described in your information package. To the extent your disclosure to the customer or anyone else with the respect to the investment strategy exceeds the information contained in your package, your commission will be forfeited and you will be precluded from participating in any other enhanced investment strategies.

When? Enhanced Investment Strategies # 1 (named Alpha) and # 2 (named Beta) are ready for the market now; information packages for each are attached to this overview.

Before you are eligible to review the enclosed information packages (or discuss them with anyone) you must sign the enclosed confidentiality agreement and return it to Terry Hesselting of the CMG Personal Financial Consulting Group. If you are unwilling to sign the agreement, the package should be returned to her as well.

If you have any questions with respect to this program, you are requested to direct them to Dan Prickett of the CMG Personal Banking Group.

2864

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SEN-014702

Financial Advisory Services
Enhanced Investment Strategies
Risk Management Process/Due Diligence Committee Meeting

Meeting Held April 22 - 23, 1999

The following summarizes the Due Diligence Committee meeting held on Thursday April 22 through Friday April 23, 1999.

Present for the meeting were: Diane Stanford (Friday), Vic Albrecht (Thursday), Jeff Martin, Tom Newman, John Castrucci, Roger Scheffel, Ted Beringer (sitting in for Barry Levin) and Lisa Feathermill.

The primary purpose of the meeting was to hear presentations by KPMG (Thursday) and PricewaterhouseCoopers (Friday) regarding strategies for Committee consideration. A copy of the agenda is attached.

KPMG

Present from KPMG were Sandy Spitz and Jeff Eischeid. Sandy answered questions regarding their proposal to be a strategy provider, specifically regarding fee sharing and internal overlap. Regarding a fee sharing arrangement, Sandy stressed that KPMG and FUNB can never appear to be involved in a joint venture. The two organizations must always be independent, due to the audit relationship. Thus, we cannot receive a fee based on a percentage of assets nor can KPMG pay FUNB as fee when involved with a mutual strategy client.

Sandy explained that KPMG's Department of Professional Practice will support an arrangement with FUNB in which the fee KPMG would have charged if working without FUNB is divided between the organizations based upon the amount of work each party will provide in order to effect the strategy. Each organization must provide the client with a separate engagement letter delineating their roles and responsibilities as well as respective fees. Sandy feels that this arrangement should be more amenable to local partners since the portion of the fee taken by FUNB reflects work done by FUNB (rather than their staff). Sandy gave an example of a fee split 80% of KPMG and 20% to FUNB, based on respective work.

Sandy presented three proprietary strategies and two techniques that do not carry tax opinion letters. The proprietary strategies were: TRACT (Taxpayer Relief Act Charitable Trust), a diversification strategy; CREW (Corporate Retained Earnings Withdrawal), an ordinary income strategy and IDV (Investment Diversification Vehicle), a diversification strategy. Sandy also mentioned that KPMG should have a replacement for FLIP/OPUS in the near term, hopefully being approved that day.

Regarding 3rd party due diligence, Sandy indicated that KPMG conducts a FBI-like investigation of the organization. In addition, KPMG evaluates the size of their relationship with the 3rd party as compared to the size of the organization's other relationships. Their goal is to be a primary relationship in order to receive timely service.

Jeff explained that the marketing of strategies depends of the type of structure, particularly whether it is a tier 1, 2 or 3 structure. Tier 1 strategies are fairly common and do not require confidentiality agreements. Tier 2 strategies provide more value and exposure of the white paper is limited to PFC partners. KPMG will typically close 20 to 50 transactions of a tier 2 strategy. Tier 3 strategies are very aggressive and very high value. The firm limits exposure of these

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EXHIBIT #141h

SEN-014588

strategies to a very limited number of partners and clients. Jeff indicated that we should call him directly if we have tier 3 prospects (specifically for an advanced CREW strategy).

With regard to audit support, Jeff indicated that he would be flexible. If audit support is a significant issue, he may concede to a number of hours or other arrangement.

After Sandy and Jeff left, the committee (ex-Vic who left after KPMG) discussed several issues. First, Ted explained that FBA has done several of the TCLAT/CLAT structures. Further, since these techniques do not carry opinion letters, we agreed they do not meet the criteria of a "strategy". Second, we discussed the fee arrangements with KPMG. All agreed that flexibility needs to be available to determine the split between FUNB and KPMG. A range of 20% to 40% to FUNB should be agreed to with Sandy. Also discussed was that clients which have engaged FBA or PFC will probably rely more heavily on FUNB, thus the fee should be higher in these situations. Finally, the committee hopes to see better local office cooperation within KPMG when approaching mutual clients. The local partners should recognize that FUNB brings KPMG into a meeting with a prospect and receives no referral fee. Yet, KPMG has no requirement to bring FUNB to a meeting with the mutual client.

PWC

Present from PWC were Michael Schwartz, Bill Pepper and Kevin Kops. Michael indicated that the strategies being presented were 99% through internal review and should be approved shortly.

The Basis Offset Strip Strategy ("BOSS") strategy minimizes ordinary income and/or capital gains. Bill walked us through a sample client presentation. The minimum size is \$20 million. The strategy should be in place by July to give as much time as possible between the steps of the strategy. This strategy will be a tax shelter due to the high level of leverage.

The BOSS strategy requires significant participation from The Private Capital Management Group (TPCMG). This is the entity created by Ralph Lovejoy and David Smith. A lengthy conversation ensued due to the Senior Advisors' lack of comfort with Ralph's history for follow through. Michael agreed to talk to Ralph/David regarding back office support. He also indicated that he could provide an alternative firm for the bond management if we could not get comfortable with the capabilities of TPCMG.

The Private Annuity Company Transaction ("PACT") is an estate freezing technique. The minimum size is \$20 million. Kevin walked us through a sample client presentation and answered questions. This strategy requires several parties for implementation, including an insurance company, which is yet to be identified. Michael indicated that they were in the midst of discussions with a couple of large insurance companies with offshore subsidiaries. This strategy also provides deferral of income tax. The total fee is 4% of the amount contributed to the PAC.

We briefly discussed fees. PWC cannot pay us directly. Rather, our fee is paid by one of the 3rd parties involved in the strategy (e.g., Quadra, UBS, and TPCMG). We decided to continue pricing strategies in which we are working with PWC as 50 basis points of the amount the client is offsetting. We questioned whether we should place a cap on our fees. The Senior Advisors would like to lift the \$100,000 cap. This was tabled until the phone call on April 27.

Diane L. Stanford
Senior Vice President and Manager of FAS
Due Diligence Committee Chair

2867

Date: Tuesday, 19 May 1998 12:52pm ET
To: Ed.Glass, Jack.McCarthy
Cc: Dan.Prickett, LISA.RUDOLPH, JOHN.CASTRUCCI, Jeff.Martin, TOM.NEWMAN,
HAL.CLARKE
From: DIANE.STANFORD
Subject: IMPORTANT UPDATE- TAX STRATEGIES

As you know, on a case by case and fairly confidential basis, we've entered into an agreement with KPMG to offer proprietary tax strategies to selected, qualified clients. We have agreed to a process that requires that our Personal Financial Consultant Sr. Advisors (Castrucci, Rudolph, Newman and Martin) be introduced to the client FIRST and then after making a further assessment of the client's qualification, will bring in KPMG. It is our understanding that our ability to be paid a planning fee (which is generally in the range of \$100,000) is dependent upon this agreement with KPMG. We have been made aware of some instances where Trust Specialists and/or Trust admin are going directly to Quadra, cutting out KPMG AND our planners. PLEASE COMMUNICATE TO YOUR SENIOR PEOPLE THAT A PLANNER MUST BE INVOLVED IN THIS PROCESS TO ENSURE THAT OUR ONGOING RELATIONSHIP AND AGREEMENT WITH KPMG IS PRESERVED. This also cuts down significantly on our liability as our planners use an engagement letter, with specific language that limits FUNB's exposure on any transaction. We want to ensure that we are uniformly mitigating our risk. Please communicate this to your team. This process does NOT impact their incentive compensation, in fact guarantees that FUNB will be paid for the transaction and will ensure their IC as well... Thanks
----- (end of letter) -----

Permanent Subcommittee on Investigations
EXHIBIT #141i

SEN-014864

2868



CAPITAL MANAGEMENT GROUP

TO: Gail Fagan

DATE: December 17, 1999

FROM: Diane Stanford

RE: BOSS

The purpose of this memo is to provide some background on First Union's involvement with Enhanced Investment Strategies which could possibly help First Union's position in the recovery of any fees which may potentially be rebated to clients as a result of PWC's failure to follow through on its commitment to provide a tax opinion letter on BOSS.

The Financial Advisory Services Group (FAS), specifically the Personal Financial Consulting Group within FAS began introducing Enhanced Investment Strategies ("Strategies") to qualified First Union clients under the direction of my predecessor, Ralph Lovejoy in 1997. Ralph left First Union in April 1998 to join Quadra Investments and later TPCMG. Both firms have been heavily involved in the creation of leading edge strategies.

When I was appointed manager of FAS in April 1998, Personal Financial Consulting was in the process of being introduced to certain strategies offered by KPMG. KPMG was offering these strategies through Quadra Investments. The law firm of Pillsbury Madison had written a tax opinion letter on both, but we wanted a Big 5 firm to write one if we were going to consider introduction of these strategies to any of our clients. As the year progressed, KPMG could not reach a decision as to whether or not to write the tax opinion letter on each strategy so Quadra (Ralph Lovejoy) introduced us to PriceWaterhouseCoopers, who was also familiar with both strategies and had been writing a tax opinion on them.

As I learned more and more about these strategies, it was evident that a due diligence process needed to be established to more formally evaluate and select which strategies and/or strategy providers should be considered before introducing any strategies to future clients. As a result, in early 1999 we established a Due Diligence Committee (see attached) and sent an RFP to contacts we or our internal partners with First Union had with four of the five Big 5 firms. (see attached). We met with these firms (KPMG, PWC, Deloitte & Touche and Arthur Andersen) and received formal responses from KPMG and PWC indicating their interest in presenting their strategies to the newly formed Due Diligence Committee. After review of each strategy and

Permanent Subcommittee on Investigations

EXHIBIT #141j

SEN-016895

Page Two

strategy provider (including review of both financial and non-financial facts), the committee approved KPMG and PWC as strategy providers on April 9, 1999 and, the use of three strategies for 1999, one of which included BOSS. For each strategy reviewed and approved by the committee, the strategy provider agreed to write a tax opinion of at least "More likely than not".

The BOSS strategy was presented to the Due Diligence committee on April 23, 1999 and was approved by the committee on April 27, 1999. From the onset, PWC agreed to write a tax opinion letter on the strategy and in accordance with guidelines established by the Due Diligence Committee, agreed to be present at every client meeting, which they have done. Mike Schwartz, the partner in charge of PWC's strategy group had verbally guaranteed to provide every client a tax opinion letter, from PWC on BOSS. The structure of the transaction changed several times (with a focus on increasing the economic value of the transaction) since it was first introduced to the Due Diligence Committee so that Mike Schwartz could receive approval from PWC's strategy committee to write a tax opinion letter on it. For all First Union client introduced to the transaction, the roles for FUNB, PWC and TPCMG in the sales process were defined as follows:

FUNB: Careful screening of clients referred to us by internal partners to ensure they are qualified before introducing PWC and TPCMG.
PWC: Fully explaining the tax implications of the transaction to the client.
TPCMG: Fully explaining the economics of the transaction to the client and manage the ongoing transaction after closing.

There are 18 clients with a value notional value of \$485,500,000. Our fees totaled \$2,427,500.

Cc: Dan Prickett

SEN-016896

2870

First Union - South Carolina
SC8000
Post Office Box 1329
Greenville, South Carolina 29602-1329
864 255-8280

Sidney B. Tate
President

November 12, 1998

Redacted by Permanent Subcommittee
on Investigations

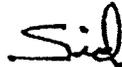
Dear Redacted by Permanent Subcommittee on Investigations

You've been a friend and a good customer of ours for years, and for that I am always thankful. However, in talking with Mauldin recently, I was pleased to hear that our relationship has grown even more with your participation in our Capital Gains Investment Strategy -- thank you, my friend!

Walt, I also want to thank you for serving on our Board here in Greenville -- this means a lot to me personally, and I know that Bill Boswell also appreciates the support you give us.

Hope you are doing well! We are past due for a "catch up" session -- I'll be in touch to see if we can find a time to get together.

Best personal regards,



Permanent Subcommittee on Investigations

EXHIBIT #141k

**This report is grouped first by the solution's Primary Functional Group, then by development status, then by revenue. Within that structure, the solutions are sorted by the projected technical completion date, then by approval status and finally by the solution name.*

Accounting Methods
 Tuesday, November 26, 2002

	<u>Total</u>	<u>Revenue More</u> <u>\$5 Million</u>	<u>Revenue \$1</u> <u>Million - \$5</u> <u>Million</u>	<u>Revenue Less</u> <u>\$1 Million</u>
Solutions in Development	66	2	1	63
Solutions Approved	42	6	0	36
Solutions Not Approved	9	0	0	9
Total Number of Solutions	116	8	1	107
Active and Due Complete In < 30 Days	63	1	1	61

STATEMENT FOR THE HEARING RECORD**AVI-YONAH TESTIMONY FOR HEARING ON TAX SHELTERS
US SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
NOVEMBER 18, 2003**

My name is Reuven S. Avi-Yonah. I am the Irwin I. Cohn Professor of Law and Director of the International Tax Master of Law Program at the University of Michigan Law School. I hold a JD (magna cum laude) from Harvard Law School and a PhD in History from Harvard University. I have 15 years of full and part time experience in the tax area, and have been associated with or consultant to leading law firms like Cravath, Swaine & Moore and Wachtell, Lipton, Rosen & Katz. I have also served as consultant to the US Treasury Office of Tax Policy and as member of the executive committee of the NY State Bar Tax Section. I have published eight books and 40 articles on various aspects of US domestic and international taxation, and have ten years of teaching experience in the tax area (including basic tax, corporate tax, partnership tax, and international tax) at Harvard, Michigan, NYU and Penn Law Schools.

For preparing this testimony, I have examined materials on the so-called "SC2" transaction prepared and marketed by the "big four" accounting firm KPMG. In my opinion, the SC2 transaction is an abusive tax shelter.

The essence of the SC2 transaction is as follows: KPMG identified an individual owner of an S corporation that earned at least \$3 million per year. In the transaction, the S corporation first issued the shareholder non-voting stock amounting to 90% of its total outstanding shares (e.g., 900 shares if the shareholder had 100 shares of voting stock). The corporation also issued the individual warrants entitling him to receive in the future a very large number of additional voting stock.

Thereafter, the individual shareholder contributed the non-voting stock to a tax-exempt entity that is exempt from the unrelated business income tax ("UBIT"), such as a municipal pension plan. The tax-exempt would hold the stock for a period of 2-3 years, during which no distributions would be made on the stock. Thereafter, the tax-exempt was entitled to require the S corporation to redeem its stock at its then fair market value. If the fair market value of the stock declined, however, the individual made a pledge to make up the difference through an additional contribution to the tax-exempt.

The intended tax consequences were as follows: The individual would take a charitable contribution deduction for the donation of the stock on his tax return. Thereafter, during the period the tax-exempt held the stock, 90% of the income of the S corporation would be allocated to the tax-exempt (and thus be subject to no tax, since UBIT does not apply). After the redemption, the individual could have the S corporation distribute the accumulated income to him and be taxable on it at the 15% capital gains rate (to the extent it exceeded his basis in the stock).

In my opinion, this transaction does not work, for one principal reason: The tax-exempt entity never owns the stock contributed to it (or at most owns only a small percentage of

Permanent Subcommittee on Investigations

EXHIBIT #146

it). Under well-established US tax principles, to be considered an owner for Federal income tax purposes, the tax-exempt must have the benefits and burdens of ownership. In this transaction, it is clear that the tax-exempt does not bear the risk that the stock would decline in value, since the individual pledges to make up any difference. In addition, while in theory the tax-exempt benefits if the stock goes up in value (since the redemption price goes up as well), the potential upside is capped at 12.5% of the total value of the company by the terms of the warrants. Moreover, as a practical matter, the non-voting stock contributed to the tax-exempt is heavily discounted because it is non-voting, and its value at redemption is expected to equal its value at contribution (in the examples used by KPMG these two values are always the same). Only in rare circumstances would the value go up (e.g., because the company was to be sold at a premium), and it is my understanding that in those cases the tax-exempt would agree to have the stock redeemed at the original valuation.

Thus, the tax-exempt has none of the burdens and at most 12.5% of the benefits of ownership, and should not be considered the owner of the stock for tax purposes. Instead, all that really happens is that the S corporation makes a charitable contribution of the redemption amount to the tax-exempt.

More broadly, the transaction lacks any non-tax economic substance. The tax-exempt acts as an accommodation party to enable the shareholder to avoid tax on the income accumulation for a period of time, and gets paid for its services by receiving the redemption amount. From this perspective, even the charitable contribution deduction should not be allowed because the shareholder receives a quid pro quo from the tax-exempt.

This transaction is quite similar in essence to transactions that were struck down by the courts as lacking in economic substance. In the Colgate-Palmolive transaction, for example, a US corporation with a capital gain would enter into a partnership with a foreign entity (the accommodation party, just like the tax-exempt in SC2). The partnership would then enter into transactions that generated a gain up front and a precisely offsetting loss later. The gain would be allocated to the foreign (tax-exempt) partner; the foreign partner would then exit the partnership (just like the tax-exempt in SC2 is redeemed), and the loss would be allocated to the US partner to offset its capital gain. See *ACM Partnership vs. Commissioner*, 157 F.3d 231 (3rd Cir. 1998); *Boca Investorings Partnership vs. United States*, 314 F.3d 625 (D.C. Cir. 2003).

In addition, the transaction has several other characteristics that are typical of abusive tax shelters:

1. It was heavily marketed by “cold-calling”, i.e., it was not adapted to the business needs of any particular client;
2. KPMG supplied the identity of the tax-exempt, i.e., it was not an entity to which the shareholder would normally make a charitable contribution;
3. The opinions given by KPMG covered the technical aspects of the transaction (e.g., whether the S corporation had more than one class of stock) but assumed

away the crucial question whether the tax-exempt ever owned the non-voting stock;

4. The transaction depended on the IRS not discovering it on audit (KPMG advised clients to reduce the size of the charitable contribution deduction to avoid increased audit risk, and one KPMG partner worried about increasing the risk of discovery by over-marketing).

What can be done about such abusive tax shelters? Clearly, it is futile to simply wait until the IRS discovers the transaction- the promoters would simply move on to the next one (as KPMG did when it abandoned SC2 in 2001). Instead, we need to change the structure of incentives facing promoters like KPMG by drastically increasing penalties for transactions determined by the IRS to be abusive, and in particularly egregious cases, by imposing criminal liability on the promoters. Otherwise, the tax shelter culture will continue to flourish, and further undermine the public's confidence in our tax system.

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR CARL LEVIN
for
RICHARD H. SMITH, JR.
KPMG LLP

1. What is the date on which the Tax Innovation Center was closed? Please provide copies of any documentation related to the closure or the decision to close this center.

Answer: See attached letter response.

2. What is the date on which Stratecon and Innovative Strategies, also known as "Innovative Solutions," practices were closed or disbanded? Please provide copies of any documentation related to the closure or disbanding or the decision to close or disband these units.

Answer: See attached letter response.

3. Please indicate whether Stratecon currently exists within the KPMG structure outside the United States. If so, please provide information on where it exists, what services it performs and an organizational chart. In addition, if Stratecon exists elsewhere, does it handle any transactions that take place in the United States and does it provide services for U.S. taxpayers? If so, please describe the transaction and services provided.

Answer: See attached letter response.

4. Are there any groups within KPMG that perform the same or similar functions as those performed by the Tax Innovation Center, Stratecon, or the Innovation Strategies practices? If so, please provide the name of any such group, a description of its responsibilities and activities and the time period during which it has been operational.

Answer: See attached letter response.

5. Does KPMG continue to use business development managers? If so, how many are currently employed by KPMG? Please provide the number of BDMs employed annually by KPMG between 1998 and December 2003.

Answer: See attached letter response.

6. Please provide the following information with respect to the telemarketing center in Fort Wayne, Indiana:
- a) the dates when the Fort Wayne center began telemarketing operations for KPMG products and when it ceased telemarketing operations for KPMG products;

- b) the date on which the telemarketing center in Fort Wayne, Indiana was closed;
- c) the maximum number of employees who worked at the center at any one time;
- d) copies of any document related to the closure or the decision to close this center; and
- e) whether, since the center was closed, KPMG has employed, or entered into any contract or arrangement with, an outside entity to perform telemarketing calls and, if so, the name, address, and telephone number of each such entity, a description of the services performed and the dates during which these services were performed.

Answer: See attached letter response.

7. Please provide an accurate organizational chart for the KPMG Tax Services Practice as of February 10, 2003, the response date for the PSI subpoena issued on January 3, 2003; as of June 30, 2002; and as of December 31, 2002.

Answer: See attached letter response.

8. Please provide copies of insurance policies or insurance policy templates from AIG, Hartford and any other insurance company which agreed to provide insurance related to the S-Corporation Charitable Contribution Strategy (SC2), BLIPS, FLIP or OPIS tax products.

Answer: See attached letter response.

9. With respect to S-Corporations whose shareholders utilized KPMG's SC2 product, in how many instances did the S-Corporations reduce, limit or suspend, or adopt resolutions to reduce, limit or suspend, distributions after the shareholders decided to implement the SC2 products?

Answer: See attached letter response.

10. With respect to the SC2 product, identify the valuation firms used to assess the value of the non-voting shares of S-Corporation stock. Please indicate whether they were identified by KPMG or independently identified and selected by the client and which valuation firms, if any, were audit clients of KPMG.

Answer: See attached letter response.

11. With respect to the SC2 product, how many Beta tests were conducted by KPMG and for each Beta test, identify the entity that performed the valuation of the non-voting shares of S-Corporation stock.

Answer: See attached letter response.



2001 M Street, NW
Washington, DC 20036

January 15, 2004

Honorable Norm Coleman, Chairman
Honorable Carl Levin, Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
199 Russell Senate Office Building
Washington, D.C. 20510

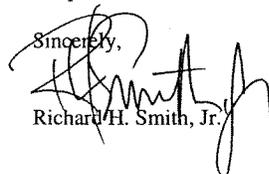
ATTN: Mary D. Robertson, Chief Clerk

Dear Chairman Coleman and Senator Levin:

This responds to your letter of December 9, 2003 enclosing supplemental questions for the hearing record in connection with the Subcommittee's November 18, 2003 hearing. My responses to your questions are enclosed.

Please note that I am responding to the best of my knowledge and belief following a reasonable and diligent inquiry into the firm's records and into the knowledge and recollections of current and former KPMG personnel. The documents provided with this response are those that have been found after focused searches of KPMG file locations where we would reasonably expect to find information of the types requested. The limited amount of information redacted from these documents is tax return information, including the identity of individual taxpayers, the disclosure of which is prohibited by law and punishable by statutory criminal sanction. Where we were not able to find the precise documentation or information requested, we have attempted to reconstruct that information or otherwise to develop a good faith response to the question.

I request that this letter also be made part of the hearing record.

Sincerely,

Richard H. Smith, Jr.



KPMG LLP, KPMG LLP a U.S. limited liability partnership, is a member of KPMG International, a Swiss association.

1. What is the date on which the Tax Innovation Center was closed? Please provide copies of any documentation related to the closure or the decision to close this center.

To the best of my knowledge and belief, after reasonable inquiry, the Tax Innovation Center ("TIC") activities were phased out between November 2002 and April 2003. The partner who was the leader of the TIC left the firm on March 1, 2003. On March 6, 2003, the Partner in Charge of Washington National Tax ("WNT") wrote in an email that "...now is the time to eliminate the TIC as an entity and as a designation for any personnel." Following this date, the other TIC personnel either left KPMG or were transferred to other practice areas. Of the nine professionals assigned to the TIC in early 2002, six (including the two partners in the group) have since left the firm, and the other three have been reassigned to other groups within the firm. During March 2003, WNT initiated a process to remove references to the TIC from the firm's documents and databases, although there may be certain instances in which such references have been overlooked.

A copy of the March 6, 2003 email is attached.

McCoy, Carol A

From: Brockway, David H
Sent: Friday, December 19, 2003 4:32 PM
To: McCoy, Carol A
Subject: FW: TIC

-----Original Message-----

From: Brockway, David H
Sent: Thursday, March 06, 2003 7:38 PM
To: Madden, Lisa A.
Subject: RE: TIC

I'd rather not have a separate identity -- that is a large part of the problem. She should just be a Fed tax partner reporting to you. Let's talk about it tomorrow.

-----Original Message-----

From: Madden, Lisa A.
Sent: Thursday, March 06, 2003 4:11 PM
To: Brockway, David H
Subject: RE: TIC

I'm meeting with Marsha on Monday. I have already mentioned this to her before. I'll tell her that we are going final with the decision. She will undoubtedly prepare a list of 40 things to do to remove the designation from everything (e.g., eliminate the Tax Innovation Center website, eliminate the name Tax Innovation Center from docs on the web), etc., but we'll get going on it immediately. When discussed in the past, she asked if there was some type internal designation she could use to refer to the part of WNT that she and her co-workers work in and asked if 'solution support group' was okay.

-----Original Message-----

From: Brockway, David H
Sent: Thursday, March 06, 2003 3:09 PM
To: Madden, Lisa A.
Subject: TIC

I think that now is the time to eliminate the TIC as an entity and as a designation for any personnel. How do we go forward with that?

2. What is the date on which Stratecon and Innovative Strategies, also known as "Innovative Solutions," practices were closed or disbanded? Please provide copies of any documentation related to the closure or disbanding or the decision to close or disband these units.

The Stratecon and Innovative Strategies (or Innovative Solutions) practices were not disbanded on a specific date but rather over a period of time. Shortly after becoming Vice Chair, Tax Services in April 2002, I discussed with senior partners and others in KPMG's leadership my intention to continue to shift the focus of KPMG's tax practice away from broadly marketed aggressive tax strategies, and my intention, in furtherance of that goal, to disband those two practice groups and, to the extent possible, redeploy their personnel elsewhere in the firm. The discussions of how best to disband these groups and redeploy their personnel continued over several months.

During the spring and early summer of 2002 most, if not all, of the Stratecon partners and professionals were informed of this intention to restructure the practice. To assist in an orderly transition, these structural changes were implemented informally over the balance of the year in the normal course of KPMG planning and organization. To the best of my knowledge and belief, after reasonable inquiry and as indicated in the attached documents and described below, it appears that as of November 30, 2002, all of the tax professionals who had previously been part of the Stratecon practice were either no longer with KPMG or were transferred to other practice groups within the firm.

Of the approximately 115 total Stratecon professionals at the beginning of 2002, 50 partners and professionals in the Stratecon practice have since left the firm. The other 65 have been reassigned to other practice groups within the firm.

The decision to disband the Innovative Strategies group was implemented over the course of the first year after I became Vice Chair, Tax Services. In the first six months of my tenure, I had a number of discussions with the leadership and members of this practice group in which I communicated my intention to restructure and refocus the group. As in the case of Stratecon, this decision was implemented informally over a period of months either through terminations or transfers to other practice groups (principally the Personal Financial Planning ("PFP") practice). Consistent with this decision to discontinue the group, Innovative Strategies had only nominal revenue between April 2002 and September 30, 2002, the end of that fiscal year. Thereafter, Innovative Strategies ceased to be accounted for as a separate practice group. To the best of my knowledge and belief, after reasonable inquiry, by early 2003 the Innovative Strategies partners and other personnel had either left the firm or had been reassigned to other practice groups. Of the 13 partners and professionals assigned to the Innovative Strategies practice in early 2002, five have since left the firm, six have been transferred to the PFP practice, and two have been transferred to other practices within the firm.

When I testified on November 18, in response to questions as to when the Stratecon and Innovative Strategies practice groups were eliminated by KPMG, I stated that they were eliminated as I became Vice Chair, Tax Services in April 2002, and I further stated that upon becoming Vice Chair, I made it very clear that KPMG was going to make changes in our structure in terms of the organization, focused on these two groups in particular. As set forth in

detail above, that process commenced at that time and was essentially completed within the following year.

My response is in part based on the following attached documentation:

1. June 28, 2002 email from Hunter Lyle to Joseph Arena showing redeployment of Stratecon personnel to date.
2. September 17, 2002 email from Hunter Lyle to Walter Duer, attaching the "final Stratecon plan for FY '03," which states that "every employee will be recoded to a new product effective 10-1-02." Please note that in this context the term "new product" refers to a new practice group.
3. September 30, 2002 email from Hunter Lyle to P. Scott Ozanus and others, discussing further re-deployments from Stratecon.
4. October 10, 2002 email from Hunter Lyle to Laura Stelter making "[M]ore changes to ex-Stratecon FTE's," again indicating a deadline of 10-1-02.
5. October 30, 2002 email from Hunter Lyle to Laura Stelter attaching "final Stratecon redeployments for FY '03." Please note that the reference to "the earliest we can make these changes effective now is November 1, 2003" has been confirmed to be a typographical error, and that the correct date was November 1, 2002.
6. October 31, 2002 emails from Hunter Lyle to the leaders of the Western, Mid-Atlantic, Southeast, Northeast, Midwest, and Southwest area practices discussing effects of redeployment of former Stratecon personnel.
7. October 31, 2002 email announcing the new Business Integration and Divestiture Services joint venture between Assurance and Tax, indicating that its new leader "has played an integral role in growing the former Stratecon practice within Tax."

At this time, after requesting that firm files be searched and reasonable inquiry made, I have not been able to locate any specific documentation relating to the closure or the decision to close Innovative Strategies.

2885

McCoy, Carol A

From: Lyle, Hunter
Sent: Friday, June 28, 2002 4:20 PM
To: Arena, Joseph L
Cc: Duer, Walter M
Subject: Stratecon Redeployments - Confidential

Joe,

I think the attached details all the transfers that have gone into other functional groups (other than WNT), as well as noting those that Walter is planning on redeploying for Fy03.



Stratecon FTE
Movements v3.xls...

Call me if you have any questions.

Hunter
404-222-3317

2886

**Redacted by the
Permanent Subcommittee
on Investigations**

2887

McCoy, Carol A

From: Lyle Hunter
Sent: Tuesday, September 17, 2002 7:15 PM
To: Duer, Walter M
Cc: Arena, Joseph L
Subject: Final FY'03 Stratecon Plan
Importance: High

Walter,

Attached is what I believe represents the final Stratecon plan for FY'03. I have already loaded this plan into the system as reflected in the attached.

Some minor changes were made to how we account for the national "WNT" group so that the full \$34 million in revenue and \$18 million in O.I. is reflected in the total tax operations plan. The primary change is that all sold time revenue and all expenses of the national group will be allocated back to the areas (as opposed to just the excess of revenue over expenses). The net result for the firm is the same, but now all revenue and costs will be allocated to the 6 areas.

As an FYI, we are using the product 200305 (formerly Captive Services) as the new home for the national group in BU 290. We also need to come up with new product names for the 200259 in the areas, as well as for the new 200305 national group.

The main issue now is to get this plan out to each of the AMPs (as an FYI more than as a point of further discussion) and speak with Crawford, Colley, Brasher, and Chopack regarding the re-deployment of the 17 FTE's that were included in the original plan of 52 FTE's but who are now being re-deployed into ESP/TP in the NE, SE, MA, & MW.

The details of these re-deployments are included in the attached, along with the financial impact and incremental amounts that need to be picked up into the ESP/TP plans in the 4 areas.

After we go through this, I think the last remaining, but critical step, is to finalize a schedule that shows all if the current Stratecon FTE's and where they will be "moved" to effective 10-1-02. This is critical because every employee will be re-coded to a new product effective 10-1-02.

As you know, time is very short, and I will be out on vacation all next week

Call as soon as you can tomorrow. I'm in Montvale, so you try me on my cell @ 404-915-0935.



Stratecon v2.xls

Hunter

2888

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on Investigations**

2889

McCoy, Carol A

From: Lyle, Hunter
Sent: Wednesday, October 30, 2002 10:12 AM
To: Stelter, Laura L
Cc: Green, Douglas J; Arena, Joseph L
Subject: Final Stratecon Re-Deployments

Laura,

As we discussed, attached are the final Stratecon re-deployments for FY'03.

These changes have been approved by Richard Smith, Bill Hibbit and Joe Arena.

I have been told that the earliest we can make these changes effective now is November 1st, 2003, and the cut off date for submission of changes to be effective November 1st is November 5th, so please make sure we get these changes into PEAT by that date.



Stratecon Final
Re-Deployments...

Please call me if you have any questions.

Thanks.

Hunter
404-222-3317

McCoy, Carol A

From: Lyle, Hunter
Sent: Thursday, October 31, 2002 2:35 PM
To: Burke, Michael (US/AMP WEST)
Cc: Lyon, Cathy; Arena, Joseph L
Subject: Changes to Western Solution Services Plan

Mike,

As you may know, there have been some last minute changes to the FY'03 Solution Services (formerly Stratecon) plan. Please note that the product code 200259, renamed Solution Services, is being rolled up as part of ESP. This is not a new practice. We are setting it up to simplify identifying and tracking the results.

The original Solution Services plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Western plan for Solution Services has changed as follows:

The net revenue plan is reduced by just under \$1.2 million (due primarily to a lower base of allocated WNT revenue) and a resulting \$568K reduction in O.I.

The overall impact to the Western Solution Services plan is as follows:

Western FY'03 Plan			
Solution Services (200259)			
	Previous	Revised	Changes
Revenue	\$3,739,106	\$2,553,317	(\$1,185,789)
Oper Exp	\$1,510,238	\$892,383	(\$617,855)
Oper Inc	\$2,228,868	\$1,660,934	(\$567,934)
O.I. Margin	59.6%	65.1%	5.4%

Please feel free to call me if you have any questions.

Hunter
 404-222-3317

McCoy, Carol A

From: Lyle, Hunter
Sent: Thursday, October 31, 2002 1:45 PM
To: Chopack, John J
Cc: Hricik, Cindy (Mayne); Arena, Joseph L
Subject: Changes to Mid-Atlantic Solution Services Plan

John,

As you may know, there have been some last minute changes to the FY'03 Solution Services (formerly Stratecon) plan.

The original plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Mid-Atlantic plan for Solution Services has changed as follows:

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Permanent Subcommittee
on Investigations [Redacted]

The net result is only a small change in revenue and operating income for the Mid-Atlantic.

The overall impact to the Mid-Atlantic Solution Services plan is as follows:

	Mid-Atlantic FY'03 Plan		
	Solution Services (200259)		
	Previous	Revised	Changes
Revenue	\$1,333,833	\$1,391,689	\$57,856
Oper Exp	\$562,887	\$633,312	\$70,425
Oper Inc	\$770,946	\$758,377	(\$12,569)
O.I. Margin	57.8%	54.5%	-3.3%

Please feel free to call me if you have any questions.

Hunter
404-222-3317

McCoy, Carol A

From: Lyle, Hunter
 Sent: Thursday, October 31, 2002 1:39 PM
 To: Colley, Peter M
 Cc: Barbour, Chris; Arena, Joseph L
 Subject: Changes to Southeast Solution Services Plan

Pete,

As you may know, there have been some last minute changes to the FY03 Solution Services (formerly Stratecon) plan.

The original plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Southeast plan for Solution Services has changed as follows:

[Redacted]

Redacted by
 Permanent Subcommittee
 on Investigations

As a result of lower total costs being allocated from WNT, operating expenses have dropped while revenue has remained basically flat.

The overall impact to the Southeast Solution Services plan is as follows:

Southeast FY'03 Plan			
Solution Services (200259)			
	Previous	Revised	Changes
Revenue	\$5,160,404	\$5,148,630	(\$11,774)
Oper Exp	\$2,174,008	\$1,891,445	(\$282,562)
Oper Inc	\$2,986,396	\$3,257,184	\$270,788
O.I. Margin	57.9%	63.3%	5.4%

Chris Barbour is currently in the process of breaking the revised and final plan out by business unit.

Please feel free to call me if you have any questions.

Hunter
 404-222-3317

McCoy, Carol A

From: Lyle, Hunter
Sent: Thursday, October 31, 2002 1:52 PM
To: Crawford, Thomas W
Cc: Patta, Elio T; Arena, Joseph L
Subject: Changes to Northeast Solution Services Plan

Tom,

As you may know, there have been some last minute changes to the FY'03 Solution Services (formerly Stratecon) plan.

The original plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Northeast plan for Solution Services has changed as follows:

Five professionals will be re-coded to ICS in the Northeast effective November 1st, and there will be no professionals in product 200259 (now called Solution Services).

The net result is sizable reduction in both revenue and operating income for Northeast Solution Services (Fed Tax).

The overall impact to the Northeast Solution Services plan is as follows:

	Northeast FY'03 Plan		
	Solution Services (200259)		
	Previous	Revised	Changes
Revenue	\$6,035,048	\$4,586,609	(\$1,448,439)
Oper Exp	\$2,701,890	\$1,440,696	(\$1,261,194)
Oper Inc	\$3,333,159	\$3,145,913	(\$187,245)
O.I. Margin	55.2%	68.6%	13.4%

Please feel free to call me if you have any questions.

Hunter
 404-222-3317

McCoy, Carol A

From: Lyle, Hunter
Sent: Thursday, October 31, 2002 2:23 PM
To: Brasher, James J (US/Chicago AMP)
Cc: Kavanaugh, Thomas; Arena, Joseph L
Subject: Changes to Midwest Solution Services Plan

Jim,

As you may know, there have been some last minute changes to the FY03 Solution Services (formerly Stratecon) plan. Please note that the product code 200259, renamed Solution Services, is being rolled up as part of ESP. This is not a new practice. We are setting it up to simplify identifying and tracking the results.

The original Solution Services plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Midwest plan for Solution Services has changed as follows:



The net result is \$844K increase to revenue and a \$335K increase in O.I. as a result of the direct impact of the 5 area dedicated professionals above.

The overall impact to the Midwest Solution Services plan is as follows:

	Midwest FY'03 Plan		
	Solution Services (200259)		
	Previous	Revised	Changes
Revenue	\$4,285,759	\$5,129,990	\$844,231
Oper Exp	\$1,683,967	\$2,193,628	\$509,660
Oper Inc	\$2,601,791	\$2,936,362	\$334,571
O.I. Margin	60.7%	57.2%	-3.5%

Please feel free to call me if you have any questions.

Hunter
 404-222-3317

McCoy, Carol A

From: Lyle, Hunter
Sent: Thursday, October 31, 2002 2:30 PM
To: Ozanus, P. Scott
Cc: Lindholm, Larry R; Arena, Joseph L
Subject: Changes to Southwest Solution Services Plan

Scott,

As you may know, there have been some last minute changes to the FY03 Solution Services (formerly Stratecon) plan. Please note that the product code 200259, renamed Solution Services, is being rolled up as part of ESP. This is not a new practice. We are setting it up to simplify identifying and tracking the results.

The original Solution Services plan had all 29 FTE's coded into a group in WNT. All premiums were included in the area plans and the WNT sold time to the areas was going to be allocated back to each area along with a pro rata share of their overall expenses.

After many discussions and careful review, tax leadership has made some final changes to the structure and deployment of the 29 professional FTE's that were previously included in the overall plan. Some FTE's will be re-deployed into ICS and some will be re-deployed back into the areas as part of overall Fed Tax. There still remains a smaller group of professionals (primarily TAARP, Banking, and SPS) coded to WNT who will be allocating their sold time and much smaller base of expenses back to the areas on a quarterly basis.

As a result, the Southwest plan for Solution Services has changed as follows:

[Redacted] Redacted by
Permanent Subcommittee
on Investigations [Redacted]

The net result is \$175K reduction to revenue (due primarily to a lower base of allocated WNT revenue) and a resulting \$249K reduction in O.I.

The overall impact to the Southwest Solution Services plan is as follows:

Southwest FY'03 Plan			
Solution Services (200259)			
	Previous	Revised	Changes
Revenue	\$2,350,608	\$2,175,764	(\$174,844)
Oper Exp	\$971,276	\$1,045,150	\$73,875
Oper Inc	\$1,379,332	\$1,130,613	(\$248,718)
O.I. Margin	58.7%	52.0%	-6.7%

Please feel free to call me if you have any questions.

Hunter
404-222-3317

McCoy, Carol A

From: Rosenthal, Joan
Sent: Wednesday, December 17, 2003 12:07 PM
To: McCoy, Carol A
Subject: FW: Business Integration and Divestiture: Assurance-Tax Joint Venture

-----Original Message-----

From: POSTMASTER-US
Sent: Thursday, October 31, 2002 4:52 PM
Subject: Business Integration and Divestiture: Assurance-Tax Joint Venture

Date: October 31, 2002
To: All U.S. Assurance and Tax Partners
From: Timothy P. Flynn - NSS/345 Park Avenue
 Richard H. Smith - NSS/345 Park Avenue
cc: Business Integration Team
 ASPs - Assurance
 AMPs - Tax

Subject: Business Integration and Divestiture: Assurance-Tax Joint Venture

These are times of unprecedented regulatory transformation and dramatic change in the professional services industry. KPMG remains committed to delivering the best assurance and tax services to meet the needs and expectations of our clients.

In an effort to differentiate KPMG and proactively address the changing market conditions, we are pleased to announce the formation of the first Assurance-Tax joint venture - Business Integration and Divestiture Services. Nationally, this practice will be led by Walter Duer (Houston). Walter has been with the firm for more than 34 years and has played an integral role in growing the former Stratecon practice within Tax.

A key element to the formation of this new joint venture is to utilize our considerable assurance and tax capabilities with a unified, client-centric approach. The Joint Venture will leverage:

- the Business Integration team, a segment of Transaction Services, which focuses on the operations aspects of merger integration, divestitures, joint ventures, asset dispositions, and assessment and comprehensive restructuring for under-performing mergers, and
- a diverse team of Area and Washington National Tax professionals with skill sets in acquisition planning, asset disposition, corporate restructuring, structured finance, international taxation, state taxation, and compensation and benefits

This "solutions based" team will focus on the strategic business needs of our clients and approach the highest levels of our clients' organizations. Past fees for its services have ranged from \$500K to \$15 million involving a \$10.5 billion acquisition. The Joint Venture will focus on the KPMG 1400 and will have a three-part mission:

- Position KPMG's Business Integration and Divestiture services as a *Preferred Provider of Choice*
- Develop a strategic tax planning component to Business Integration and Divestiture

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offerings for both bundled and unbundled tax services

- Create a dynamic platform to leverage the vast array of service offerings that currently reside in both the Assurance and Tax practices, thus resulting in a significantly stronger value proposition for our clients and enhanced revenue for the firm.

It is anticipated that this team will develop stronger connectivity to other Assurance services such as Transaction Services, Corporate Recovery, and Risk & Advisory. These Assurance services often are involved in client events that may need the Joint Venture's services, whether bundled or unbundled.

This Joint Venture is the first of what we anticipate will be many opportunities designed to strengthen the working relationship between Assurance and Tax and help further distinguish KPMG as the preferred provider of choice - an imperative in the post Sarbanes-Oxley era.

You will hear more specifics about this key offering and team; and are urged to support Walter and the Business Integration and Divestiture team, particularly in driving services to your key clients and KPMG 1400 target clients. In the meantime, if you have any questions or identify opportunities for this offering, you should contact Walter Duer at 713/319-2106.

3. Please indicate whether Stratecon currently exists within the KPMG structure outside the United States. If so, please provide information on where it exists, what services it performs and an organizational chart. In addition, if Stratecon exists elsewhere, does it handle any transactions that take place in the United States and does it provide services for U.S. taxpayers. If so please describe the transaction and services provided.

To the best of my knowledge and belief, after reasonable inquiry, Stratecon does not currently exist within the KPMG structure outside the United States.

4. Are there any groups within KPMG that perform the same or similar functions as those performed by the Tax Innovation Center, Stratecon, or the Innovation Strategies practices? If so, please provide the name of any such group, a description of its responsibilities and activities, and the time period during which it has been operational.

To the best of my knowledge and belief, after reasonable inquiry, there is no group that currently performs the same or similar functions as those previously performed by the TIC, Stratecon, or Innovative Strategies (or Innovative Solutions) groups, except as discussed below.

The core former functions of the TIC, such as drafting Tax Solution Alerts, developing solution toolkit items, coordinating deployment champions and teams, and coordinating the Innovative Tax Solutions distance learning sessions, ceased during the November 2002-April 2003 phase-out period. WNT currently hosts a distance learning session, led by tax professionals responsible for tax training. That session focuses on technical training and recent regulatory and legislative developments.

KPMG continues to focus on knowledge sharing among professionals to assist its professionals in advising particular clients on specific tax compliance and tax planning matters. Toward that end, as in most large professional service organizations, KPMG invests significant firm resources in the analysis of various tax issues and technical developments, and shares that research with its professionals to assist them in advising their clients. To some extent, this role includes activities previously performed by the TIC or by the Stratecon or the Innovative Strategies practices.

Two of the three former TIC professionals that remain with the firm were reassigned to the Federal Tax Group within WNT. In addition to their work on other tax matters, these two professionals continue to perform a variety of support functions, such as assisting other WNT professionals who have identified new developments and client service opportunities and writing them up in documents called "Tax Service Ideas." These activities are similar to activities they performed while they were assigned to the TIC.

While the weekly Monday Night Call that had been hosted by the TIC was discontinued in November 2002, beginning in February 2003, the tax practice initiated a new format for a Tax Partner Call, held generally twice a month. The primary purposes of the new Tax Partner Call are (1) to provide a forum for tax leadership to communicate with partners on a variety of administrative matters, and (2) to provide a forum for WNT professionals to share important technical developments and client service opportunities. The Partner in Charge of WNT hosts the technical portion of the call.

Firm professionals, including former members of the Innovative Strategies practice group, continue to provide tax consulting services to high income individual taxpayers through the PFP practice, but they are not authorized to advise these clients with respect to the implementation of aggressive loss generation transactions such as FLIP, OPIS, and BLIPS.

As discussed in my response to Question 2 above, a number of former Stratecon partners and professionals were reassigned to other tax groups within KPMG. In their reassigned roles, the majority of these partners and professionals serve as traditional client-service professionals, although some former Stratecon partners and professionals have been assigned to specialized

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practices. Three groups of professionals fall into this latter category. One group, referred to as the Tax Account Management services group, offers a specialized service to taxpayers identifying refunds of money available from the correction of IRS computational and conceptual errors in the calculation of interest on taxpayers' IRS accounts. A second group, referred to as the Banking Transaction Services group, focuses on tax issues and transactions involving banks. The third group, now part of the International Corporate Services group, focuses on leasing and other transactions arising in the international context.

2901

5. Does KPMG continue to use business development managers? If so, how many are currently employed by KPMG? Please provide the number of BDMs employed annually by KPMG between 1998 and December 2003.

KPMG does continue to use BDMs. Annual employment as requested is as follows:

FY 1998: 34

FY 1999: 84

FY 2000: 88

FY 2001: 98

FY 2002: 125

FY 2003: 89

As of 12/31/03: 86

6. Please provide the following information with respect to the telemarketing center in Fort Wayne, Indiana:

a) the dates when the Fort Wayne center began telemarketing operations for KPMG products and when it ceased telemarketing operations for KPMG products;

In May 1995, KPMG initiated this activity with one individual who operated from her home office in Fort Wayne.

The Fort Wayne Practice Development Coordinators ("PDCs") were terminated on July 2, 2003 and all such operations in Fort Wayne ceased on that date.

b) the date on which the telemarketing center in Fort Wayne, Indiana was closed;

As stated above, operations ceased on July 2, 2003. KPMG's lease on the office space involved expired on September 30, 2003 and was not renewed.

c) the maximum number of employees who worked at the center at any one time;

The maximum number of employees who worked in the Fort Wayne facility was 43, in August 1999. This included PDCs (15, down from 17 in March-July 1999), management/administrative (3), marketing/web support (7) and research (18).

d) copies of any document related to the closure or the decision to close this center; and

The following are attached:

1. October 1, 2003 letter from Dan A. Dickey, President NAI Harding Dahm to Ken Boland notifying of lease expiration, and October 13 letter from Mr. Boland to Mr. Dickey acknowledging the October 1, 2003 letter.

e) whether, since the center was closed, KPMG has employed, or entered into any contract or arrangement with, an outside entity to perform telemarketing calls and, if so, the name, address, and telephone number of each such entity, a description of the services performed and the dates during which these services were performed.

Beginning in December 1999 and continuing to the present, KPMG's National Business Development Center has contracted with MarketSource Corporation to perform all centralized business development telemarketing for KPMG. MarketSource's address and contact information is:

MarketSource Corporation
2 Commerce Drive
Cranbury, New Jersey 08512
Program Manager: Kathy Heilman
(609) 860-5319

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MarketSource contacts non-audit companies for the purpose of scheduling face-to-face or conference call appointments between KPMG professionals and prospective clients.



Three Chestnut Ridge Road
Montvale, NJ 07645-0435

Telephone 201 307 7000
Fax 201 830 8617

P. 01
Y

FILED PT. 11/1/03

October 13, 2003

Dan A. Dickey, CCIM, RPA
President
NAI Harding Dahm
118 East Ludwig Road
Suite 400
Fort Wayne, IN 46825

Dear Dan:

Thank you for your letter of October 1, 2003.

I appreciate the advice and service you and your company have provided to me and KPMG over the years. It has been a real pleasure working with you.

Very truly yours,

Kenneth J. Boland
Partner
National Director Real Estate Services

KPMG 0053840

Post-It® Fax Note	7671	Date	12/16/03	Page	2
To	KENEC MASSOUD	From	KEN BOLAND		
Co./Dept.		Co.			
Phone #		Phone #	201-307-7636		
Fax #	201-505-3993	Fax #			

KPMG LLP (KPMG LLC) is a U.S. limited liability partnership. It is a member of KPMG International, a Swiss entity.



COMMERCIAL REAL ESTATE SERVICES, WORLDWIDE.

888/428-4211
202/424-1077 Fax
www.NAIHardingDahm.com

118 East Lusk Road, Suite 100

October 1, 2003

KPMG Peat Marwick, LLP
Attn: Ken Boland
3 Chestnut Ridge Road
Montvale, NJ 07645

RECEIVED
OCT 1 0 2003
REAL ESTATE &
FACILITIES PLANNING

Dear Ken:

As I am sure you are aware, the Lease Agreement for the Fort Wayne location has expired effective September 30, 2003.

We have taken all utilities out of KPMG's name and had the trash dumpster removed. Workspace Solutions has been working with the people from your office on getting the furniture sold for you. I know they have everything out of the building except the furniture that the Owner of the building wants to purchase and use in the building.

There will be final utility bills and other straggler invoices that will be coming in. Once all the bills have been paid we will reconcile your account. Within approximately 30 days a final building report along with any remaining funds from your account will be mailed to you.

Ken, it has certainly been a pleasure working with you and KPMG over the past several years. If you ever have a real estate need in the Fort Wayne area, please do not hesitate to contact me as I will be happy to help. We are also a part of NAI which is a worldwide network. If there is a real estate need anywhere in the United States or worldwide, contact me and we can help you.

Very truly yours,

Dan A. Dickey, CCIM, RPA
President

DAD/ake

7. Please provide an accurate organizational chart for the KPMG Tax Services Practice as of February 10, 2003, the responsive date for the PSI subpoena issued on January 3, 2003; as of June 30, 2002; and as of December 31, 2002.

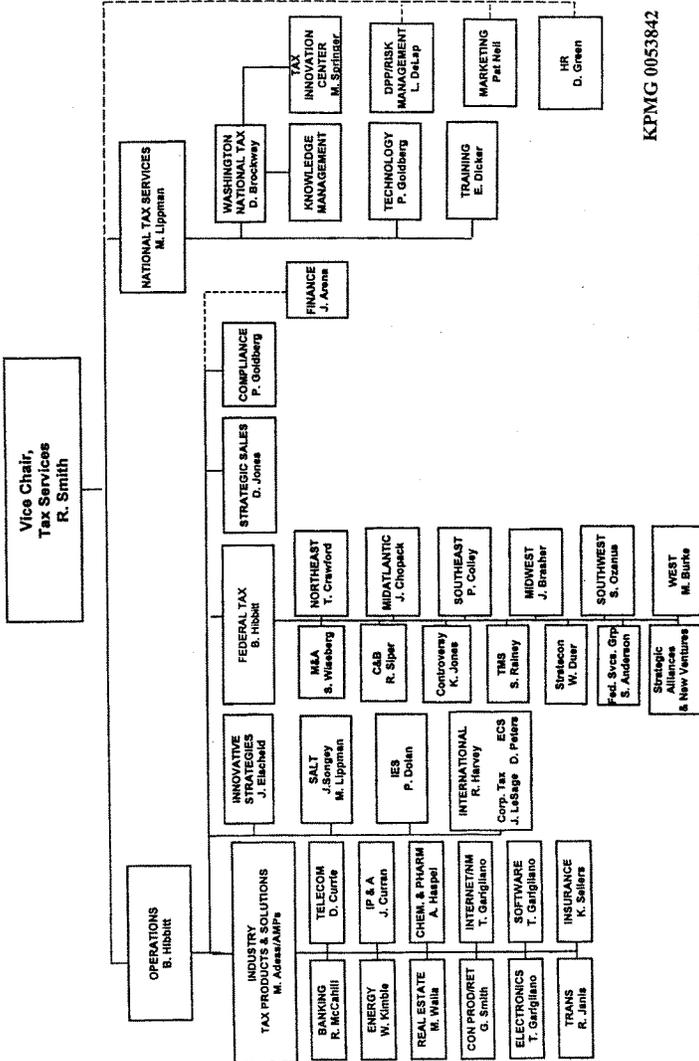
I have not been able to locate organizational charts that, to the best of my knowledge and belief, based on reasonable inquiry, are accurate as of those dates. The organization of the firm's tax practice is relatively fluid and changes informally on a regular basis. The firm does not maintain "official" organization charts for the tax practice, although organization charts are created and updated from time to time by different individuals for different purposes. The various charts submitted in response to the Subcommittee's January 6, 2003 subpoena were documents in existence in our files that appeared to be responsive to the request in the subpoena for "any organizational chart depicting KPMG's (1) overall international, national, regional, and functional business units; (2) business units involved in providing tax products or tax-related services; or (3) senior partners responsible for managing or overseeing its tax services" for the period January 1, 1999 to December 31, 2002.

At the November 18, 2003 Subcommittee hearing, I was questioned about one of these charts, labeled "2003" as a result of confusion in the document production process. I have since determined that that chart in fact was intended to describe the practice organization from the time I became Vice Chair, Tax Services in April 2002, to the end of the 2002 fiscal year on September 30, 2002, and should therefore have also been labeled "2002."

As a general rule, the firm does not archive organization charts, and they are overwritten on our system whenever someone enters a change. Historically, no consistent effort has been made at the time a change is entered to ensure that other changes that should be made are entered. Thus, while the chart might be updated and accurate as of a particular date with respect to one individual or position, other aspects of the chart may continue to be outdated. Therefore, to respond to your question, I have directed my staff to create organization charts that, on the basis of available information, I believe reasonably approximate the status of the organization on the dates specified in your question. I would emphasize that what we have attempted to reflect in these charts is a "snapshot" as of the date specified. As noted in my responses to prior questions, various practice groups were phased out over the period covered by these charts. Therefore on a particular date a practice group might still be listed as part of the organization even though it might have been almost fully phased out at that time.

Those charts are attached.

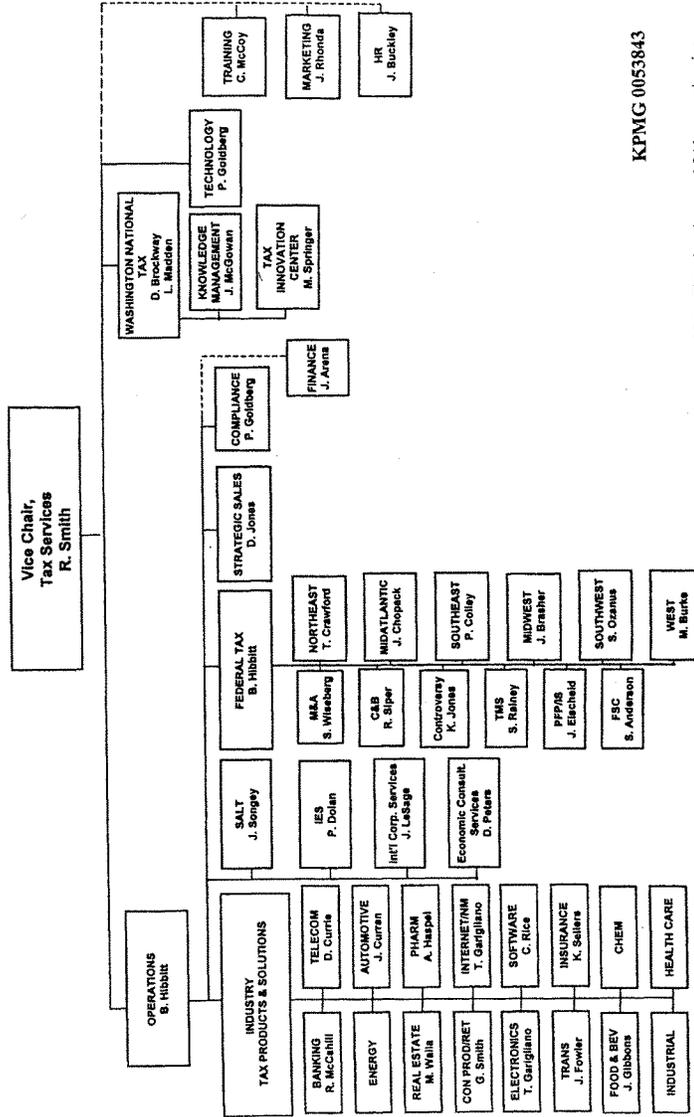
KPMG Tax Practice Organization June 30, 2002



KPMG 0053842

NOTE: This chart is a good faith approximation of the positions and personnel in those positions as they existed on the date specified.

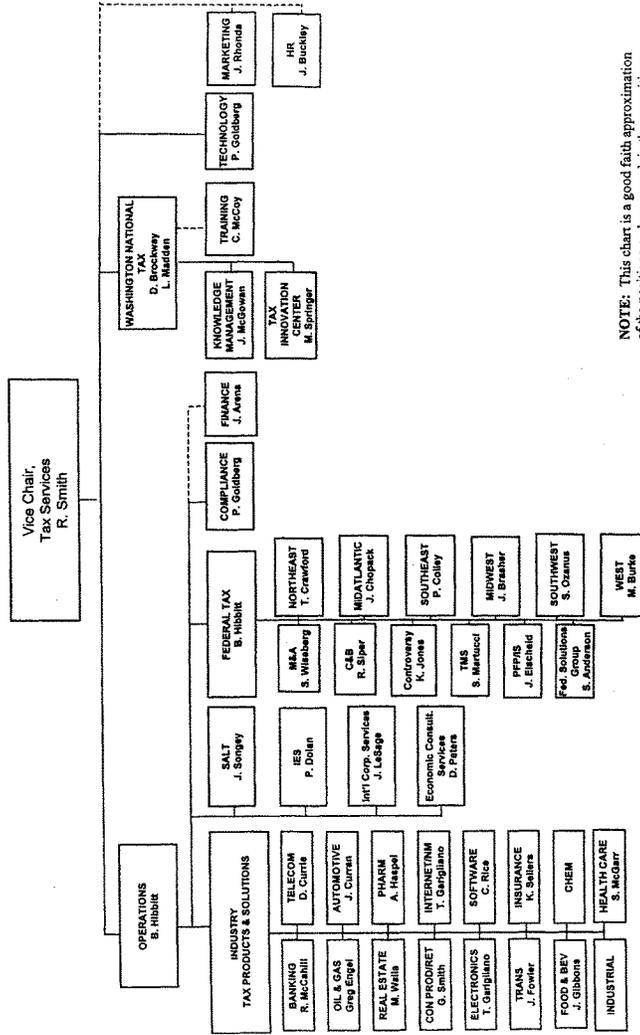
KPMG Tax Practice Organization
December 31, 2002



KPMG 0053843

NOTE: This chart is a good faith approximation of the positions and personnel in those positions as they existed on the date specified.

KPMG Tax Practice Organization
February 10, 2003



NOTE: This chart is a good faith approximation of the positions and personnel in these positions as they existed on the date specified.

KPMG 0053844

8. Please provide copies of insurance policies or insurance policy templates from AIG, Hartford and any other insurance company which agreed to provide insurance related to the S-Corporation Charitable Contribution Strategy (SC2), BLIPS, FLIP or OPIS tax products.

Attached are:

1. A redacted binder for insurance coverage on an SC2 transaction written by Lexington Insurance Company.
2. A draft generic tax insurance policy requested in connection with SC2. Although the draft policy does not specify an insurer it contains the legend "AIG M&A 5/1/00" at the top of each page.

After reasonable inquiry, to the best of my knowledge and belief, we have not been able to locate any insurance policies or insurance policy templates related to BLIPS, FLIP, or OPIS.

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LEXINGTON INSURANCE COMPANY

NOTICE: THIS INSURANCE COMPANY IS NOT LICENSED BY THE STATE OF NEW YORK.

NOTICE: THIS INSURANCE IS ISSUED PURSUANT TO THE NEW JERSEY SURPLUS LINES LAW.

NOTICE: COVERAGE WILL BE PROVIDED ON A CLAIMS MADE BASIS.

BINDER

FISCAL EVENT INSURANCE POLICY

Date:

Named Insured:

Additional Insureds:

Insurer: Lexington Insurance Company
70 Pine Street
New York 10270

Policy Number:

Policy Period: (12:01 A.M. Standard Time at the address of the Insured stated above.)

Coverage: Fiscal Event Insurance, as per form of policy attached as Exhibit A.

Retention:

Limit of Liability:
1

PROPRIETARY AND CONFIDENTIAL

KPMG 0053845

Note: This binder affords only a summary of coverage. Please refer to the form of policy for the actual

Expenses.

Coinsurance Provision:

Premium:

The premium shall be fully earned at inception.

It is the responsibility of the Insured to pay all applicable surplus lines tax, as well as any other premium tax, stamping office fee, and any other surcharges or taxes required by law in connection with the issuance of this Binder or the policy.

Exclusions:

Cancellation:

Coverage may not be cancelled by either the Insured or the Insurer, except that the Insurer may cancel if it has not received full payment of the premium in accordance with the terms of the policy.

Subject To:

Coverage under this Binder or the policy is conditional upon:

- Closing of the transaction.
- Receipt, review and acceptance by the Insurer of executed copies of the KPMG LLP opinions referred to in the policy.
- Receipt by the Insurer of an executed copy of the representation letter set forth as Exhibit B to the policy, dated the policy inception date.
- Receipt, review and acceptance by the Insurer of an executed copy of the redemption agreement which will be set forth as Exhibit C to the policy, dated the policy inception date.
- Receipt, review and acceptance by the Insurer of a final copy of the written appraisal and any supporting documentation and information conducted by that is referred to in the representation letter set forth as Exhibit B to the policy.
- Receipt, review and acceptance of a final copy of the warrants to be distributed as described in the KPMG LLP opinions.

In the event that a final form of policy has not been issued

within 90 days from the date hereof, all coverage bound hereunder shall be deemed immediately void *ab initio* without further action by the Insurer or the Insured, and the Insurer shall refund to the Insured the premium paid.

- Governing Law:** This Binder shall be governed by and construed and interpreted in accordance with the laws of the _____, without reference to the principles of conflicts of laws.
- Assignment:** This Binder is not assignable by the Insured without the prior written consent of the Insurer.
- Counterparts:** This Binder may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement.
- Authority of Named Insured:** It is agreed that the Named Insured shall act on behalf of all Additional Insureds with respect to any action required to be taken by an Insured under the terms of this Binder or the policy.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the form of policy attached as Exhibit A.

This Binder supersedes the terms of any and all prior term sheets or binders between the Insurer and the Insured.

Each of the Insured and the Insurer, as the case may be, has reviewed the terms, conditions and significance of this Binder and the coverage described hereunder with the legal and tax counsel and the accountants of its choice, and each is executing and delivering this Binder with full knowledge of its terms, conditions and significance. In executing and delivering this Binder, the Insured is not relying upon any representation or warranty by the Insurer regarding the legal, tax or accounting implications for the Insured or the Insurer of the coverage described in this Binder.

The parties intend this to be a binding commitment to provide the coverage described herein until replaced with a mutually agreed upon insurance policy.

2914

Accepted by

Accepted by Lexington Insurance Company

4

KPMG 0053848

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AIG M&A 5/1/00

[ISSUING INSURER]
A Capital Stock Insurance Company
70 Pine Street
New York, NY 10270

[REQUIRED REGULATORY LEGENDS]

Policy No.: []

FISCAL EVENT INSURANCE POLICY

NOTICE: THIS IS A CLAIMS MADE POLICY. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE (CONTEST EXPENSES). AMOUNTS INCURRED FOR CONTEST EXPENSES SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND; HOWEVER, THE INSURER MUST ADVANCE CONTEST EXPENSES PURSUANT TO THE TERMS HEREIN PRIOR TO THE FINAL DISPOSITION OF A CLAIM.

DECLARATIONS

ITEM 1. NAMED INSURED:
MAILING ADDRESS:

ITEM 2. INSURED TAX EVENT: Sec Endorsement No. 1.

ITEM 3. POLICY PERIOD: From: To:
(12:01 A.M. Standard Time at the address stated in Item 1.)

ITEM 4. LIMIT OF LIABILITY:

ITEM 5. RETENTION:

KPMG 0053849

2916

AIG M&A 5/1/00

ITEM 6: PREMIUM:

Authorized Representative or Countersignature
(in states where applicable)

SPECIMEN

[ISSUING INSURER]

FISCAL EVENT INSURANCE POLICY

[REQUIRED REGULATORY LEGENDS]

In consideration of the payment of the premium, and in reliance upon the representations made and documents provided to [Issuing Insurer] (the "Insurer"), the Insurer agrees as follows:

1. INSURING AGREEMENT

The Insurer shall pay, subject to the applicable Retention (as defined herein) and other terms and conditions of this Policy, the Loss of the Insured arising from a Claim first made against the Insured during the Policy Period and reported to the Insurer pursuant to the terms of this Policy. The Insurer shall, in accordance with and subject to Clause 7 hereof, advance Contest Expenses of such Claim excess of the Retention prior to its Final Determination.

2. DEFINITIONS

- (a) "Application" means any application submitted by or on behalf of the Insured in connection with the underwriting of this Policy.
- (b) "Claim" means any written notice of deficiency in Taxes from any Taxing Authority alleging the Insured may be legally liable for such deficiency, but only if such deficiency is directly related in whole or in part to the Insured Tax Event.
- (c) "Code" means the Internal Revenue Code of 1986, as amended and in effect as of the Inception Date.
- (d) "Contest" means a dispute with a Taxing Authority over an adjustment in the Insured's liability for its Taxes as it relates to the Insured Tax Event for which the Insurer may be required to indemnify the Insured hereunder.
- (e) "Contest Expenses" means the reasonable and necessary legal expenses consented to by the Insurer of conducting that part of a Contest which directly relates to the Insured Tax Event, following the Insured having given notice under Clause 6 of this Policy.
- (f) "Final Determination" means (i) a decision, judgement, decree, or other order by a court of competent jurisdiction, or (ii) a closing agreement, accepted offer in compromise or other final settlement with a Taxing Authority.

- (g) "Gross-Up" means the amount by which a payment under this Policy must be increased to take into account any federal or state income taxes which will be imposed on the Insured in respect of such payment.
- (h) "Inception Date" means the first date listed in Item 3 of the Declarations.
- (i) "Interest" means interest on an underpayment of tax assessed by a Taxing Authority.
- (j) "Insured" means the Named Insured listed in Item 1 of the Declarations.
- (k) "Insured Tax Loss" means any Taxes, Interest, fines or penalties legally owed by the Insured to a Taxing Authority directly related to the Insured Tax Event, subject to all of the terms, conditions and exclusions of the Policy.
- (l) "Loss" means: Insured Tax Loss and, to the extent directly related to any Insured Tax Loss, any Contest Expenses and Gross-Ups.
- (m) "Offsetting Benefit" means any amount realized, or to be realized, by the Insured, with respect to any year, of any saving of any Taxes that would not have been realized but for an Insured Tax Loss.
- (n) "Opinions" means the opinion(s) attached hereto as Exhibit A and deemed a part of this Policy.
- (o) "Policy" means this Fiscal Event Insurance Policy agreed to and underwritten by the Insurer for the benefit of the Insured.
- (p) "Policy Period" means the period of time shown in Item 3 of the Declarations, as the same may be extended pursuant to the terms and conditions hereof.
- (q) "Representation Letter" means the letter attached as Exhibit B to this Policy, executed by an authorized officer of the Insured and delivered to the Insurer in connection with the underwriting of this Policy, which letter is deemed part of the application for this Policy.
- (r) "Taxes" mean any federal or state income taxes imposed by the Code or comparable provisions under applicable state law.
- (s) "Taxing Authority" means the Internal Revenue Service, or comparable state authority.
- (t) "Tax Return" means a return required to be filed under the Code or comparable provisions of applicable state law.

3. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against the Insured:

- (a) arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act, or any knowing and intentional violation of any law, rule, regulation or statute;
- (b) arising, based upon or attributable to any material inaccuracy in the Application and/or the Representation Letter;

(c) arising out of, based upon, or attributable to a change in the Code, comparable state statute or corresponding regulations after the Inception Date;

(d) the failure of the Insured to follow proper tax procedures relating to the filing of its tax returns; or

(e) any compromise of any Insured Tax Loss without the Insurer's prior written consent.

4. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING CONTEST EXPENSES)

The Limit of Liability stated in Item 4 of the Declarations is the limit of the Insurer's liability for all Loss arising out of all Claims first made against the Insured during the Policy Period. Further, in the event that the Policy Period is extended by endorsement as set forth in the last paragraph of Clause 8, a Claim for Loss which is made during an extension of the Policy Period shall also be subject to the one aggregate Limit of Liability stated in Item 4 of the Declarations.

Contest Expenses are not payable by the Insurer in addition to the Limit of Liability. Contest Expenses are part of Loss and as such are subject to the Limit of Liability for Loss.

5. RETENTION

The Insurer shall only be liable for the amount of Loss which is in excess of the retention amount stated in Item 5 of the Declarations (the "Retention"). This Retention shall be carried by the Insured at its own risk and remain uninsured. A single Retention shall apply to all Loss arising from all Claims relating to the Insured Tax Event.

6. NOTICE PROVISIONS

(a) The Insured shall give written notice to the Insurer as soon as practicable during the Policy Period of any Claim made, but in all events not later than 10 business days after such Claim was first made. It is agreed that a Claim shall be considered made by a Taxing Authority upon the knowledge of its existence on the part any of the office of the General Counsel, the Chief Financial Officer, the Comptroller or the Tax Director of the Insured.

(b) The Insured shall give written notice to the Insurer as soon as practicable during the Policy Period of any (i) informal or threatened (whether oral or written) proceeding, (ii) any contact or communication (whether oral or written) by or with any Taxing Authority, in either case regarding potential liability arising out of the Insured Tax Event, but in all events not later than 10 business days after the office of the General Counsel, the Chief Financial Officer, the Comptroller or the Tax Director of the Insured first becomes aware of such proceeding, contact or communication.

(c) Notice to the Insurer. Any notice or other communication to be given to the Insurer shall be made in writing and delivered to the Insurer at the following address:

[Issuing Insurer]
c/o A.I. Management and Professional Liability Claim AdjustersSM
P.O. Box 1000
New York, NY 10268

with a copy to:
American International Companies®
Mergers & Acquisitions Division
175 Water Street, 12th Floor
New York, NY 10038

Any notice or other communication to the Insurer shall be only effective upon receipt.

(d) Notice to the Insured. Any notice or other communication to be given to the Insured shall be made in writing and delivered to the Insured at its mailing address set forth in Item 1 of the Declarations.

7. CONTEST EXPENSES, SETTLEMENTS, AND JUDGMENTS (INCLUDING THE ADVANCEMENT OF CONTEST EXPENSES)

The Insurer shall advance excess of the Retention, at the written request of the Insured, Contest Expenses every 90 days prior to the Final Determination of a Contest. Such

advance payments by the Insurer shall be repaid to the Insurer by the Insured in the event and to the extent that the Insured shall not be entitled under the terms and conditions of this Policy to payment of such Loss.

The Insurer does not, however, under this Policy, assume any duty to defend. The Insured shall defend and contest (taking all actions reasonable and necessary in connection therewith), any Claim, action, notice, audit, investigation, examination or review made or brought against it including, but not limited to, any proposed or final adjustment, including all appeals thereof (to the most senior court of competent jurisdiction) until there has been a Final Determination with respect to which either no further appeal is available or the Insurer declines to request the Insured to pursue an appeal, unless the Insured's counsel provides a written opinion without qualification that there is no reasonable basis to pursue further action or appeal in connection therewith. The Insurer shall have the right to consent to the Insured's choice of defense counsel, which consent shall not be unreasonably withheld. The Insured shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Contest Expenses, without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Contest Expenses which have been consented to by the Insurer shall be recoverable as Loss under the terms of this Policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to effectively associate in the defense (including defense strategy) and the negotiation of any settlement of any Claim, action, notice, audit, investigation, examination, review or Contest of any Claim that involves or appears reasonably likely to involve the Insurer.

The Insurer shall have the right to effectively associate with the Insured in the defense of any Claim or potential Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Insured shall give the Insurer full cooperation and such information as it may reasonably require.

The Insurer may make any settlement of any Claim it deems expedient with respect to the Insured subject to the Insured's written consent. If the Insured withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Contest Expenses incurred as of the date such settlement was proposed in writing by the Insurer.

8. PROCEDURE FOR TIME OF PAYMENT

Payment of Claims hereunder shall be made to the Insured at the address set forth in Item 1 of the Declarations not more than 30 days after the receipt by the Insurer of a copy of a Final Determination of an Insured Tax Loss, but not later than the time the Insured is required by a Taxing Authority to make such payment. If the Insurer fails to reimburse the Insured within the time period set forth in this clause, such amounts shall be paid to the Insured by the Insurer with interest thereon, accruing from the latest date such

payment could have been made by the Insurer under this clause, at the rate announced by Citibank, N.A. in New York, New York as its prime rate, as in effect from time to time. Notwithstanding the foregoing provisions of this clause, if the defense of a Contest requires a payment of a Claim prior to the Final Determination with respect to such Claim, the Insurer shall make such payment at that time, subject to the Insurer's rights under Clauses 7 and 11 herein.

If, prior to the expiration of the Policy Period, the Insurer receives notice that the Insured has agreed to a Taxing Authority's request for an extension of time in which to assess additional taxes pertaining to the Insured Tax Event this Policy shall be endorsed, at no additional cost to the Insured, to extend the Policy Period to correspond with the date which is 30 days beyond the extension of time agreed upon.

9. CONDITIONS PRECEDENT

It is a condition precedent to the right of the Insured to be indemnified hereunder that the Insured comply with the terms and conditions of clauses (a) and (b) below:

(a) Mitigation. The Insured shall have acted in relation to a Taxing Authority at all times substantially as if uninsured and shall have undertaken all reasonable actions to mitigate any Insured Tax Loss and to contest all Insured Tax Loss.

(b) Tax Returns, etc. The Insured shall have prepared and filed all applicable Tax Returns and financial statements of the Insured in a manner consistent with that anticipated by the Opinions and/or the Representation Letter.

10. SUBROGATION

If the Insurer makes any payment under this Policy in respect of Loss, the Insurer shall be subrogated, to the extent of such payment, to all the rights and remedies of the Insured in respect of such Loss, and the Insurer shall be entitled at its own expense to sue in the name of the Insured. The Insured shall take all reasonable action requested in writing by the Insurer to secure the rights and remedies of the Insurer in subrogation.

11. REFUNDS AND REIMBURSEMENTS

(a) If the Insured:

(i) recovers from any Taxing Authority all or any part of any payment made by the Insurer hereunder (a "Recovered Payment");

- (ii) receives any indemnity payment (an "Indemnity Payment") from another party or insurer in respect of a Loss for which the Insured has received a payment hereunder; or
- (iii) realizes an Offsetting Benefit in respect of a payment made by the Insurer hereunder.

the Insured shall promptly notify the Insurer of such payment or benefit and shall, subject to Clause 11(d), pay or refund such amount, together with any interest received thereon, to the Insurer within 30 days of the Insured's receipt of such Recovered Payment or Indemnity Payment or realization of such Offsetting Benefit, as the case may be.

- SPECIMEN
- (b) If the Insured receives any Indemnity Payment or realizes any Offsetting Benefit:
 - (i) prior to notifying the Insurer of a Claim in accordance with Clause 6, the Insured shall include in such notice a statement describing the Indemnity Payment received or the Offsetting Benefit realized, as the case may be;
 - (ii) subsequent to notifying the Insurer of a Claim in accordance with Clause 6, but prior to receiving any payment hereunder in respect of such Claim, the Insured shall promptly provide notice to the Insured describing the Indemnity Payment received or the Offsetting Benefit realized, as the case may be, and the amount payable by the Insurer to the Insured hereunder shall, subject to Clause 11(d), be reduced by the amount of such Indemnity Payment or Offsetting Benefit. If, notwithstanding the foregoing, the amount paid by the Insurer to the Insured is for any reason not so reduced, the Insured shall, subject to Clause 11(d), pay to the Insurer the amount of such Indemnity Payment or Offsetting Benefit, as the case may be, within 30 days after receipt by the Insured of the payment from the Insurer.
 - (c) If the Insurer is required at any time to make a payment to the Insured hereunder in respect of a particular Loss and the Insured is due an Indemnity Payment or an Offsetting Benefit in respect of such Loss but has not, at such time, received such Indemnity Payment or realized such Offsetting Benefit, the Insured shall promptly notify the Insurer of such payment or benefit due, and the amount payable by the Insurer to the Insured shall, subject to Clause 11(d), nonetheless be reduced by the amount of such Indemnity Payment or Offsetting Benefit.
 - (d) Notwithstanding the foregoing, any amount otherwise payable by the Insured to the Insurer under this Clause 11, or the amount of any reduction (a "Reduction") otherwise determined in accordance with Clause 11(b)(ii) or Clause 11(c) of the amount payable by the Insurer to the Insured under this Policy shall be reduced:

- (i) if all or any part of the related Recovered Payment, Indemnity Payment or Offsetting Benefit, as the case may be, is included in the Insured's income for Tax purposes, by the amount of the Taxes attributable to such income inclusion; and
 - (ii) to the extent necessary to ensure that such payment or Reduction does not put the Insured in a worse position than it would have been in had it not received the related Recovered Payment or Indemnity Payment or realized the related Offsetting Benefit, as the case may be.
- (e) For the purposes of this Policy, the Insured shall be considered to have realized an Offsetting Benefit at the time that:

- DEFINITIONS**
- (f) the Insured receives a cash payment equal to the amount of such benefit from a Taxing Authority;
 - (ii) a Taxing Authority notifies the Insured that the Taxing Authority has taken into account the amount giving rise to such benefit in computing the income, loss or taxable income of the Insured for any taxation year and, as a result, has reduced by the amount of such benefit the amount of Taxes owing, at the time of such notification, by the Insured to such Taxing Authority; or
 - (iii) a Taxing Authority notifies the Insured that the Taxing Authority has offset the amount of such benefit against Taxes owing, at the time of such notification, by the Insured to such Taxing Authority.
- (f) If the Insured fails to reimburse the Insurer within the applicable time period set forth in this clause, such amounts shall be paid to the Insurer by the Insured with interest thereon, accruing from the latest date such payment could have been made by the Insured under this clause, at the rate announced by Citibank, N.A. in New York, New York as its prime rate, as in effect from time to time.

12. PREMIUM EARNED AT INCEPTION; CANCELLATION

- (a) The payment of the full premium no later than the third business day after the Issuance Date, is a condition to the effectiveness of this Policy. The premium shall be fully earned at inception.
- (b) Neither the Insured nor the Insurer shall be permitted to cancel this Policy.

13. WAIVER

Notice to any agent or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this Policy or prevent the Insurer from asserting

any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except pursuant to a written endorsement.

14. ASSIGNMENT OF POLICY

This Policy is not assignable by the Insured without the written consent of the Insurer. The Insurer may assign this Policy to another member company of American International Group, Inc. ("AIG") without the consent of the Insured provided such other insurer's claims paying ability rating (Best's) and financial strength rating (Standard & Poor's) are equal to or better than that of the Insurer.

15. OTHER INSURANCE

Such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance. Further, in the event such other insurance is provided by the Insurer or any member company of AIG (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim) then the maximum aggregate Limit of Liability for all Loss combined covered by virtue of this Policy as respects any such Claim shall be reduced by the limit of liability (as set forth on the declarations page) of the other AIG insurance.

16. ARBITRATION AND CHOICE OF LAW

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this Policy, whether arising before or after termination, including any determination of the amount of Loss, shall be submitted to the American Arbitration Association in New York, New York under and in accordance with its commercial arbitration rules then in effect. On any specific dispute or claim, the parties shall agree on whether there shall be one or three arbitrators. If the parties cannot agree on the number of arbitrators, there shall be three arbitrators. The arbitrator(s) shall be disinterested, shall have knowledge of the legal, tax, and insurance issues relevant to the matters in dispute or the claim, and shall otherwise be chosen in the manner provided in such rules. The arbitration shall be subject to the Federal Arbitration Act and, to the extent such Act is not applicable, the laws of the State of New York. The construction, validity and performance of this Policy shall be governed by the laws of the State of New York, provided, however, that the Policy shall be construed in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the Policy, without regard to the authorship of the language and without any presumption in favor of either party. No award of the arbitrators or judgment of any court with respect to any award, dispute or controversy shall be entered in an amount exceeding the applicable Limit of Liability set forth in this Policy. The Insurer shall have no obligation to pay or reimburse the Insured's legal expenses incurred in mediating or arbitrating a claim or dispute under this Policy, except to the extent specified in the arbitrator(s) award, in which event such legal

expenses will be included in the Loss payable by the Insurer in accordance with, and subject to the Retention, Limit of Liability and other terms, conditions and exclusions of, this Policy.

17. ACTION AGAINST INSURER

Except as provided in Clause 16 of the Policy, no action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance by the Insured with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been the subject of a Final Determination.

18. HEADINGS

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

19. SERVICE OF SUIT

[All states except Illinois - Subject to any clause in this Policy requiring arbitration or other alternative dispute resolution, in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, [Issuing Insurer], 70 Pine Street, New York, NY 10270, or his representative, and that in any suit instituted against the Insurer upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.]

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AIG M&A 5/1/00

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary and signed on the Declarations Page by a duly authorized representative of the Insurer or countersigned in states where applicable.

SPECIMEN

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AIG M&A 5/1/00

ATTACHMENTS

Endorsement No. 1: Insured Tax Event

Exhibit A: Opinion(s)

Exhibit B: Representation Letter

SPECIMEN

KPMG 0053862

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AIG M&A 5/1/00

ENDORSEMENT NO. 1

This endorsement, effective 12:01 A.M. Standard Time [_____, ____], forms a part of Policy No. [_____] issued to [_____] by [Issuing Insurer].

**FISCAL EVENT INSURANCE POLICY
DEFINITION OF INSURED TAX EVENT**

The Policy is amended as follows:

Clause 2. DEFINITIONS is amended to include the following additional definition:

"Insured Tax Event" means

All other terms, definitions, conditions and exclusions of the Policy remain unchanged.

Authorized Representative or Countersignature
(in states where applicable)

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KPMG 0053863

9. With respect to S-Corporations whose shareholders utilized KPMG's SC2 product, in how many instances did the S-Corporation reduce, limit or suspend, or adopt resolutions to reduce, limit or suspend distributions after the shareholders decided to implement the SC2 products?

To the best of my knowledge and belief, after reasonable inquiry, I am not aware of an instance in which an S-Corporation that implemented SC2 adopted a resolution to reduce, limit, or suspend distributions after the shareholders decided to implement the SC2 product. However, because most of the income from the S-Corporation during the time a tax exempt organization holds nonvoting stock in the S-Corporation is allocable to the tax exempt organization, it was anticipated that income distributions previously made for income tax purposes could be reduced, limited, or suspended if the S-Corporation decided to utilize such income to increase working capital, expand the business, or for other corporate purposes.

To the best of my knowledge and belief, after reasonable inquiry, KPMG typically was not involved in decisions with respect to distributions by S-Corporations that implemented SC2. Therefore, I do not have direct knowledge as to the exact number of S-Corporations that may have reduced, limited, or suspended distributions. However, again to the best of my knowledge and belief, after reasonable inquiry including discussions with individuals familiar with SC2, I am aware of eleven S-Corporations that did suspend or reduce distributions, including at least two cases in which the S-Corporations did not have the financial means to make such distributions. After reasonable inquiry of individuals involved in SC2, we are unable to locate definitive information on the practices of other S-Corporations that implemented SC2.

10. With respect to the SC2 product, identify the valuation firms used to assess the value of the non-voting shares of S-Corporation stock. Please indicate whether they were identified by KPMG or independently identified and selected by the client, and which valuation firms, if any, were audit clients of KPMG.

After reasonable inquiry, KPMG has identified the valuation firms listed below that valued S-Corporation stock.

1. Business Valuation, Inc.
2. David L. Black & Company
3. Howard Lawson & Company
4. Southwest Financial Analytics,
Inc.
5. GMK Consulting, LLC
6. Duff & Phelps, LLC
7. The Wallach Company
8. FMV Opinions, Inc.
9. Mesirow Financial
10. Financial Solutions Network
11. Willamitt Management
12. Valuation and Venture
Consulting
13. KPMG Consulting, Inc
(now Bearing Point, Inc.)
14. KPMG LLP

To the best of my knowledge and belief, after reasonable inquiry, it appears that only one firm (Duff & Phelps, LLC) was an audit client of KPMG, and that two firms--Howard Lawson & Co. and Mesirow Financial--were both identified and selected by clients. In one additional case we are aware that the client both identified and chose the firm but we are unable to determine the name of the firm. With the exception of KPMG LLP, the other firms were chosen by clients from among firms identified by KPMG. In one case, we have been unable to determine what firm was chosen, although we are aware that it was among firms which had been identified to the

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client by KPMG. KPMG LLP provided the valuation services to the S-Corporations only in connection with two transactions that took place prior to approval of the SC2 strategy. These transactions are discussed further in my response to Question 11 below.

11. With respect to the SC2 product, how many Beta tests were conducted by KPMG and for each Beta test, identify the entity that performed the valuation of the non-voting shares of S-Corporation stock.

The term "beta tests" is a designation that applied to transactions that may have been implemented before WNT and DPP approval for presentation to multiple clients. To the best of my knowledge and belief, after reasonable inquiry, two SC2 transactions were implemented during 1999, which would be prior to the date on which WNT and DPP approved the transaction. It is my further understanding that the valuation services in these transactions were provided by KPMG LLP. When SC2 was approved, DPP indicated that valuation services should be performed by independent valuation firms not affiliated with KPMG LLP. It is my understanding that, as reflected in the response to Question 10, DPP's direction was followed.

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KPMG LLP
345 Park Avenue
New York, NY 10154

Telephone 212 758 9700
Fax 212 758 9819

May 10, 2004

Honorable Norm Coleman
United States Senate
SH-320 Hart Senate Office Building
Washington, DC 20510

Honorable Carl Levin
United States Senate
SR-269 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Coleman and Senator Levin:

We are looking forward to meeting with your staff of the Permanent Subcommittee on Investigations on Wednesday, May 12, 2004. In preparation for our meeting we are submitting the enclosed memorandum for your background. We trust that this memorandum will assist in preparing the final report of the Subcommittee.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Chopack".

John J. Chopack
Vice Chair - Tax Services Operations

cc: Raymond V. Shepherd, III
Leland B. Erickson
Elise J. Bean
Robert L. Roach

Permanent Subcommittee on Investigations
EXHIBIT #147b



KPMG LLP, a U.S. limited liability partnership, is the U.S. member firm of KPMG International, a Swiss cooperative.



For more than a century KPMG LLP (herein after referred to as KPMG) has been dedicated to professional excellence and integrity. KPMG has approximately 1,500 partners and over 11,500 professionals in the United States. Almost 1,000 of our partners and over 8,000 of our professionals are associated with our Audit and Risk Advisory Services practices, while approximately 500 partners and 3,000 professionals comprise our tax practice. KPMG is part of a network of professional service firms and provides audit, tax and advisory services delivered by technically skilled professionals who number nearly 100,000 worldwide. The network has operations in 715 cities in 148 countries.

In the past few years there have been significant developments in the manner by which KPMG, and the entire accounting profession, view and provide tax services. KPMG now recognizes that certain tax strategies previously offered, and the manner in which they were offered, were inconsistent with the role expected of a professional organization to which public trust and confidence is indispensable. We no longer offer, implement, or endorse aggressive look-alike strategies. We disbanded the practices that developed and marketed the strategies under review by the Subcommittee. Although these practices comprised a relatively small percentage of our partners and professionals and our tax revenue, we can say today that the culture created through the development and implementation of those aggressive tax products has been dispelled and that KPMG hopes to, once again, attain the highest degree of professional trust from our clients, our regulators, and the public at large.

In addition, we have made substantial enhancements to our tax practice policies and procedures. We have adopted new guiding principles for our tax practice that are aimed at restoring public trust in the accounting profession. We have a renewed and unwavering commitment to evolving industry best practices. It is no longer enough to say that a tax strategy complies with the law or meets technical standards. The measure we use is whether any service could, in any way, risk the reputation of KPMG or our clients. We will not engage in any tax services that have the potential to compromise our reputation, integrity, or credibility with our clients, our regulators, or the public at large.

Outlined below are the significant areas of change in our tax practice, with details relating to specific developments and new procedures:

KPMG's Cultural Transformation

- We refocused our Tax practice to emphasize the importance of quality of advice tailored to our clients' specific facts and circumstances.
 - We abolished positions such as national deployment champions and area deployment champions. Individuals serving in these positions were responsible for the market launch of new tax strategies.
 - We eliminated the Tax Innovation Center that was responsible for coordinating the development and deployment of tax strategies.
 - We closed our telemarketing center.
 - We are in the process of disbanding our network of business development managers (BDMs) and re-evaluating our personnel requirements for market research and account management.
- We are reinforcing a sense of personal responsibility for:
 - continuous pursuit of technical excellence by emphasizing the importance of training.

- achieving the highest levels of client service while adhering to the highest standards of integrity and independence.

Our firm and tax leadership messaging and our performance review process reinforce the significance of an individual's commitment to these standards.

KPMG Tax and Leadership Personnel Changes

- We disbanded two practices, Stratecon and Innovative Strategies, because we realized that these practices were not consistent with our commitment to upholding the trust placed in us by our clients, or with meeting the responsibilities incumbent upon us from our regulators and the public at large.
 - Of the 13 partners and professionals assigned to the Innovative Strategies practice in early 2002, five have left the firm, two were transferred to the Federal tax practice and six were transferred to the Personal Financial Planning practice.
 - Of the approximately 115 total Stratecon professionals with the firm at the beginning of 2002, 57 partners and professionals have since departed, and the remaining 58 have been reassigned to other practice groups within the firm.
 - The individuals transferred from Stratecon and Innovative Strategies, as with all our tax professionals, are not involved with the development or deployment of aggressive look-alike strategies like FLIP, OPIS, BLIPS or SC2.
- We have taken strong action with respect to leadership and have effected changes that are consistent with our ongoing consideration of the firm's tax practices and procedures and our risk architecture.
 - Jeff Stein, Deputy Chairman of KPMG LLP, formerly Vice Chair – Tax Services, retired from the firm effective January 31, 2004.
 - Jeff Eischeid, the former leader of the now disbanded Innovative Strategies practice, was placed on administrative leave on January 12, 2004 and, as such, has had no client responsibilities or any involvement in the development or delivery of any tax services for the firm. He is departing KPMG on May 31, 2004.
 - Richard Smith, who had served as Vice Chair – Tax Services, was reassigned to another segment of KPMG's global practice.

KPMG's Steps to Strengthen Quality Oversight and Regulatory Compliance

- We recognize that enforcing the highest standards of professional practice is a continuous process that requires enhancements on an on-going basis.
- We have established a firm-wide compliance and ethics hotline that provides our partners and employees with a communication channel to report concerns related to any potentially unethical, improper, or illegal conduct within the Firm.
- We took immediate steps to ensure that our quality oversight and regulatory compliance functions were independent and objective. One such step included the separation of risk management and quality oversight from business operations, and in May 2002 we created the new position of Vice Chair – Risk and Regulatory Matters, which reports directly to the CEO.
- In April 2003, we created a new role, Partner in Charge of Risk and Regulatory Matters – Tax, and restructured the position in November 2003 to report directly to the Vice Chair – Risk & Regulatory Matters. This position works independent of tax operations and has the ultimate authority to define the parameters for acceptable tax services. Frank Lavadera currently holds this position (bio attached), and he is charged with overseeing our regulatory compliance and developing organizational processes, systems and a culture that drives accountability and institutional integrity.
- The Department of Professional Practice – Tax has been independent of the tax practice since May 2002 and now reports directly to the Partner in Charge of Risk & Regulatory Matters – Tax.
- We instituted a more rigorous and formal review of our tax services, which entails three levels of approval including sign-off by the partners in charge of Risk & Regulatory Matters – Tax, Washington National Tax and Department of Professional Practice – Tax. Any of these three

can withhold approval, and the partners in charge of Risk & Regulatory Matters – Tax and Department of Professional Practice – Tax make the ultimate determination.

- We implemented protocols surrounding provision of tax planning services with a material financial statement impact to audit clients.
 - The client must secure a timely, independent, third-party “should” level opinion prior to recording the financial statement benefit.
- We are facilitating the tax practice’s communication with Audit Committees, if appropriate, through management such as the Tax Director, CFO and/or CEO, to ensure the directors understand the tax transactions from both a business and tax perspective, as required under SAS 61 and SAS 96.

KPMG’s Tax Services and Offerings

- We offer tax services that are tailored to our clients’ individualized business objectives and tax planning needs. We do not offer, implement, or endorse aggressive look-alike strategies.
- We have voluntarily adopted new policies surrounding the provision of tax services to corporate executives of our audit clients. The policies include protocol for communication with the Audit Committees regarding tax services rendered to the executives.
- We do not offer any listed (or substantially similar) transactions.

KPMG’s Enhanced Training Programs

- We have more closely aligned our resources in charge of tax training with our technical resources in Washington National Tax to enhance the technical component of our training programs.
- We implemented intensive training focused on the latest regulatory changes including Sarbanes-Oxley and tax provision review to help safeguard our clients.
- We developed training related to tax shelter compliance and continue our annual training pertaining to independence to ensure our partners and professionals understand the rules and required behavior and act with integrity.
- We instituted training for partners and professionals to reinforce the importance of quality and ethics. We recognize that the quality and integrity our partners and professionals demonstrate in their daily actions, communications, work product and relationships are critical to meeting the public’s expectations for upholding confidence in the accounting system.

KPMG’s Commitment to Cooperating with the Ongoing Examination and Investigation

- KPMG intends to work with the Internal Revenue Service (“IRS”) to provide the information necessary to meet the expectations of the IRS in its ongoing audit of KPMG’s tax services.
- KPMG has produced approximately 1.5 million pages of materials to date in response to IRS summonses, and intends to comply with the recent judicial decision ordering additional materials to be provided. KPMG is adopting a more cooperative approach with its regulators than had been adopted in the past.
- KPMG has been cooperating with the U.S. Attorney’s office in its investigation that commenced sometime around February 2004.

* * * * *

The following sections provide greater elaboration on the significant changes we effected in our tax practice to respond to specific questions recently raised by PSI staff.

Disbanding Innovative Strategies and Stratecon

The Innovative Strategies (IS) practice had only nominal revenue in the six months between April 1 and September 30, 2002, the end of the 2002 fiscal year, when we ceased to account for it as a separate practice. The IS practice comprised a small number of individuals. They have been reassigned to other practices, albeit with no formal documentation of the changes. The individuals

transferred from Innovative Strategies, as with all our tax professionals, are not involved with the development or deployment of aggressive look-alike strategies like FLIP, OPIS or BLIPS. Furthermore, the marketing of "loss-generating" strategies such as BLIPS, SOS, FOCUS and variations thereon, ceased in 2002 with the disbanding of the IS group.

At the beginning of 2002 there were approximately 115 Stratecon professionals. As of November 2002, tax professionals who had previously been part of the Stratecon practice were either no longer with KPMG or transferred to other practice groups within the firm. Today, 58 of those professionals remain with the firm practicing as part of other tax services groups. The individuals transferred from Stratecon, as with all our tax professionals, are not involved with the development or deployment of aggressive look-alike strategies like SC2.

KPMG's Cultural Transformation and the Disbanding of the BDM Network

We have transformed our organization to reflect the changes outlined above. Our goal is to gain a strong understanding of our clients' organizations, businesses, issues and needs. This understanding serves as the foundation for providing tailored tax advice based on our clients' specific facts and circumstances.

We are in the process of disbanding our network of business development managers (BDMs). The network grew from 34 professionals serving Tax in 1998 to 87 individuals serving Tax, Audit and Risk Advisory presently and is no longer consistent with our current objectives. We view the past role of BDMs as inconsistent with the reforms we have made to our culture and practices. Going forward we envision a discrete team that will focus on enhancing our existing individualized relationships with companies where our firm currently does business or has a well-recognized opportunity. These individuals will be aligned with a limited number of specific accounts and will not be involved in cold calling or the marketing of aggressive tax strategies. In sum, we have worked towards inculcating a culture focused on meeting the needs of our clients with the highest degree of integrity.

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR CARL LEVIN
for
DEUTSCHE BANK

1. Please provide the Subcommittee with the following information:
 - a) What is the current status of the Structured Transactions Group, and if it was disbanded, when and why it was disbanded? If the Structured Transactions Group was disbanded, please provide all documentation related to its disbanding.
 - b) Is there any other group within Deutsche Bank responsible for the same or similar functions as those performed by the Structured Transactions Group? If so, please provide the name of the group, a description of its responsibilities and activities, and an organizational chart.
 - c) If no such group exists within Deutsche Bank at the present time, how are the functions once handled by the Structured Transactions Group now handled within Deutsche Bank?

Answer: See attached letter response.

2. Please provide the Subcommittee with all documents related to all communications and meetings involving or that address Mr. John Ross or Mr. John Wadsworth and are related to Deutsche Bank's involvement in, and all relations with KPMG related to, BLIPS.

Answer: See attached letter response.

3. Exhibit 105 (attached) is an email from Mr. William Boyle proposing that Deutsche Bank finance additional BLIPS loans by providing funds to HVB. Mr. Boyle also suggested that Deutsche Bank execute the trades related to the BLIPS transactions financed by the Deutsche Bank funds. At the Subcommittee hearing on November 20, Mr. Boyle testified with respect to this matter, "[Mr. Wadsworth of Deutsche Bank] clearly was not interested in doing any more of these deals and it stopped at that point."

Please provide the Subcommittee with the following information and all related documentation, including any internal communications within Deutsche Bank and any communications with HVB or KPMG, on this matter:

- a) whether this proposal was ever formally or informally reviewed within Deutsche Bank, the names and positions of the individuals involved in the review, the outcome of the review, and the reason for that outcome;

Permanent Subcommittee on Investigations

EXHIBIT #148

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-2-

- b) **whether anyone from Deutsche Bank ever approached HVB with this proposal, and if so, who from Deutsche Bank approached HVB, who from HVB was approached, and on what date; and**
- c) **what form this communication took, whether any meetings or discussions took place, the dates of any such communications or meetings, the names and positions of those involved, what representations were made by Deutsche Bank in those communications, and HVB's response to Deutsche Bank's proposal.**

Answer: See attached letter response.

#

Ernest Leonardini
02/22/2002 01:33 PM

Sent by: Ernest Leonardini

To: Jules S Goodman/NewYork/DBNA/DeuBa@DBNA
cc:
Subject: Updated Presidio/KPMG trades

Jules,
FYI Re. BLIPs.
Regards,
Ernie

Forwarded by Ernest Leonardini on 02/22/2002 01:32 PM

From: William Boyle on 06/20/2000 02:38 PM
To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust; Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

John,

During 1999, we executed \$2.8 b. of loan premium deals as part of the BLIP's approval process. At that time, NatWest and Hypovereinsbank had executed approximately \$ 0.5 b. of loan premium deals. I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. Since that time, Hypovereinsbank, and to a certain extent NatWest, have participated in approximately an additional \$1.0-1.5 b. of grandfathered BLIP's deals. Both Hypovereinsbank and NatWest have capacity issues in terms of their ability to execute a large number of transactions at any point in time. In addition, Hypovereinsbank has limited the amount of loans it is willing to have outstanding at any one point in time.

Presidio and KPMG are developing an expanded version of BLIP's which it will execute on a limited basis for its wealthy clientele. They anticipate executing approximately 10-15 deals of significant size (i.e. in the \$100-300m. range). The expanded version of the BLIP's deal will continue to employ the high coupon fixed rate loan, but will expand the investment menu to include a greater variety of investments which will be tied in more closely to the individual's other investments or business.

Currently, Hypovereinsbank is in the position of facing the client both in terms of making the high-coupon loan and executing the underlying trades. However, Hypovereinsbank has certain capacity issues during a period in terms of their ability to execute and monitor a large number of transactions and also the amount of loans which may be outstanding at any one point in time. However, Hypovereinsbank does not have the same sensitivity to and market exposure as DB does with respect to the reputational risk from making the high-coupon loan to the client. We are in the unique position where we can step in and execute the underlying transactions. As you are aware, the tax benefits from the transaction potentially arise from a contribution to the partnership subject to the high-coupon note and not from the execution of FX positions in the partnership, activities which we perform in the ordinary course of our business.

In addition to the execution of the underlying FX transactions, we would like to lend an amount of money to Hypovereinsbank equal to the amount of money Hypovereinsbank lends to the client. We could potentially make a market interest rate loan secured by Hypovereinsbank high-coupon loan to the client which would be secured by the underlying FX transactions. The loan we fund Hypovereinsbank with could be differentiated from the underlying loan to the client because of the market coupon vs high coupon, the date the loans are made and the fact that we do not face the client as Hypovereinsbank does.

Permanent Subcommittee on Investigations
EXHIBIT #105

DB BLIPS 03278

2942

We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 03274

2943

 William Boyle
06/20/00 02:38 PM

To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust, Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

John,

During 1999, we executed \$2.8 b. of loan premium deals as part of the BLIP's approval process. At that time, NatWest and Hypovereinsbank had executed approximately \$0.5 b. of loan premium deals. I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. Since that time, Hypovereinsbank, and to a certain extent NatWest, have participated in approximately an additional \$1.0-1.5 b. of grandfathered BLIP's deals. Both Hypovereinsbank and NatWest have capacity issues in terms of their ability to execute a large number of transactions at any point in time. In addition, Hypovereinsbank has limited the amount of loans it is willing to have outstanding at any one point in time.

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We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 0328

BINGHAM McCUTCHEN

January 9, 2004

BY PDF AND REGULAR MAIL

The Honorable Norm Coleman, Chairman
 The Honorable Carl Levin, Ranking Minority Member
 United States Senate
 Permanent Subcommittee on Investigations
 199 Russell Senate Office Building
 Washington, DC 20510

Bingham McCutchen LLP
 Suite 800
 1120 20th Street, NW
 Washington, DC
 20036-3406

202.778.6150
 202.778.6155 fax

bingham.com

Boston
 Hartford
 London
 Los Angeles
 New York
 San Francisco
 Silicon Valley
 Singapore
 Walnut Creek
 Washington

Re: Permanent Subcommittees' hearings, U.S. Tax Shelter Industry:
The Role of Accountants, Lawyers and Financial Professionals

Dear Mr. Chairman and Senator Levin:

We are in receipt of your letter dated December 9, 2003 addressed to Mr. Seth Waugh, CEO of Deutsche Bank for the Americas, in which you have raised certain questions. Deutsche Bank appreciates the opportunity to provide additional information as requested.

In response to your letter, Deutsche Bank has gathered information responsive to your requests and has searched for responsive documents. Deutsche Bank provides the following responses based upon currently available information.

Question 1

a) What is the current status of the Structured Transactions Group, and if it was disbanded, when and why it was disbanded? If the Structured Transactions Group was disbanded, please provide all documentation related to its disbanding.

b) Is there any other group within Deutsche bank responsible for the same or similar functions as those performed by the Structured Transactions Group? If so, please provide the name of the group, a description of its responsibilities and activities, and an organizational chart.

c) If no such group exists within Deutsche Bank at the present time, how are the functions once handled by the Structured Transactions Group now handled within Deutsche Bank.

Response

In October, 2001, Deutsche Bank reorganized and refocused the business strategy of the Structured Transactions Group and changed its name to the Structured

The Honorable Norm Coleman
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Page 2

Bingham McCutchen LLP
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Capital Markets Group ("SCM"). Many full service financial institutions, like Deutsche Bank, feature groups similar to Deutsche Bank's SCM group, which provide similar services to their clients. SCM is an organizational unit within Deutsche Bank's Global Markets function. SCM does not execute tax-advantaged transactions involving multiple high net worth individual investors, analogous to the BLIPS transactions. Instead, SCM delivers structured financial services to Deutsche Bank's corporate and financial institution clients who may seek alternative investment or borrowing opportunities not otherwise available through traditional capital markets instruments. These transactions are typically structured to meet specific client requirements and often have significant credit, liquidity, market risk and tax consequences.

A copy of an organizational chart for SCM is enclosed.

Question 2

Please provide the Subcommittee with all documents related to all communications and meetings involving or that address Mr. John Ross and Mr. John Wadsworth and are related to Deutsche Bank's involvement in, and all relations with KPMG related to, BLIPS.

Response

Deutsche Bank has searched for documents responsive to this request and has not located any such documents other than those already produced to the Senate. The documents previously produced are Bates stamped DB BLIPS 03278-03279, 03281-03282, 03283, 03286, 03926-03928, 06514, 06520-06521, 06553-06555. Deutsche Bank is continuing its search and will produce any additional responsive documents that are located.

Question 3

Exhibit 105 is an email from Mr. William Boyle proposing that Deutsche bank finance additional BLIPS loans by providing funds to HVB. Mr. Boyle also suggested that Deutsche Bank execute the trades related to the BLIPS transactions financed by the Deutsche Bank funds. At the Subcommittee hearing on

The Honorable Norm Coleman
The Honorable Carl Levin
January 9, 2004
Page 3

November 20, Mr. Boyle testified with respect to this matter, “[Mr. Wadsworth of Deutsche bank] clearly was not interested in doing any more of these deals and it stopped at that point.”

Please provide the Subcommittee with the following information and all related documentation, including any internal communications within Deutsche Bank and any communications with HVB or KPMG, on this matter:

Bingham McCutchen LLP
bingham.com

Response

Deutsche Bank has searched for documents responsive to this request and has not located any such documents other than the email referred to in the request.

Deutsche Bank is continuing its search and will produce any additional responsive documents that are located.

a) whether this proposal was ever formally or informally reviewed within Deutsche Bank, the names and positions of the individuals involved in the review, the outcome of the review, and the reason for the outcome.

Response

Based on currently available information, Deutsche Bank is not aware of any formal or informal review process regarding the suggestion set forth in Mr. Boyle’s email, although Deutsche Bank is aware of the discussions referenced by Mr. Boyle in his testimony. Deutsche Bank did not participate in any BLIPS transactions executed by HVB, nor did HVB participate in any BLIPS transactions executed by Deutsche Bank.

b) whether anyone from Deutsche bank ever approached HVB with this proposal, and if so, who from Deutsche Bank approached HVB, who from HVB was approached, and on what date.

Response

Based on currently available information, Deutsche Bank believes that Mr. Boyle attended a meeting with HVB regarding the possibility of financing additional BLIPS loans by Deutsche Bank providing funds to HVB.

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Page 4

c) what form this communication took, whether any meetings or discussions took place, the dated of any such communications or meetings, the names and positions of those involved, what representations were made by Deutsche Bank in those communications, and HVB's response to Deutsche Bank's proposal.

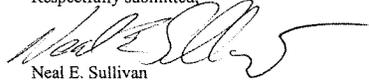
Bingham McCutchen LLP
bingham.com

Response

Deutsche Bank believes that Mr. Boyle and possibly one or more of his colleagues attended a meeting with Mr. Domenick DeGiorgio, Managing Director of HVB and possibly one of his colleagues, during the spring of 2000 where the subject was discussed. Ultimately, Deutsche Bank was not interested in moving forward with such an arrangement, for the reasons Mr. Boyle testified to. HVB also was not interested in proceeding with such an arrangement.

We have provided the following information in order to assist the Senate Subcommittee in its investigation of the BLIPS transaction. We appreciate the opportunity to provide this information. If there is additional information you desire, please contact me.

Respectfully submitted,

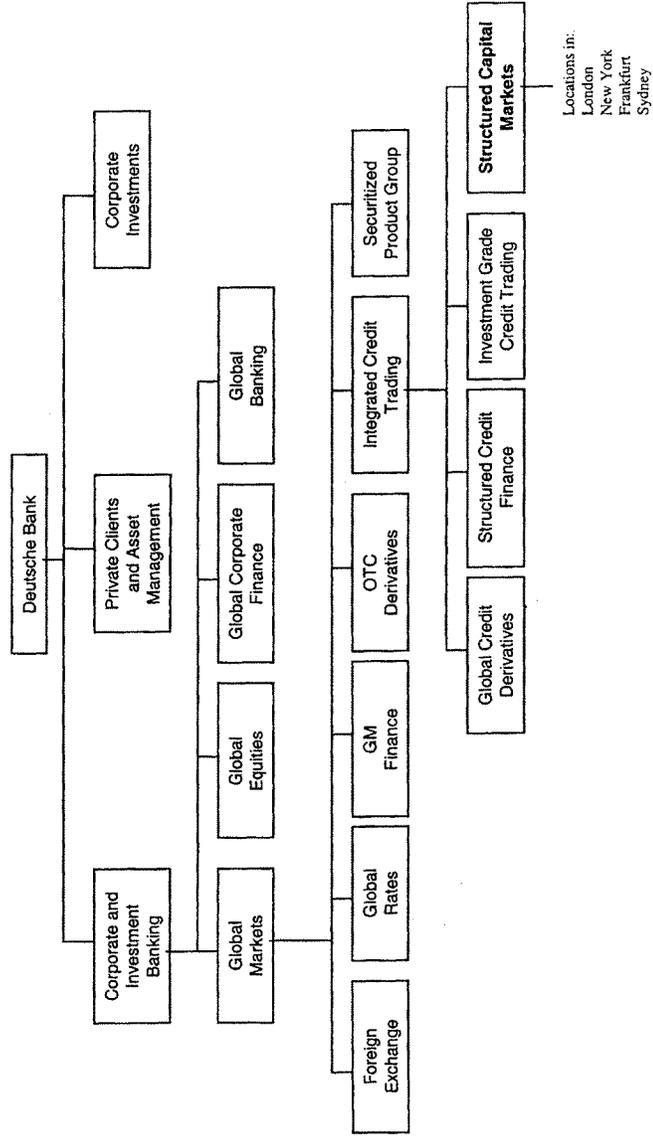


Neal E. Sullivan

Enclosure

cc: Marla Alhadeff, Esquire
Nicholas M. Gess, Esquire

Organization Chart: Structured Capital Markets



RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR CARL LEVIN
for
HVB AMERICA, INC.

1. Document "HVB 002035" (attached) cited on page 91 of the Minority Staff Report is an email from Kerry Bratton of Presidio to Alexandre Nouvakhov of HVB referencing the conversion of Euros to U.S. Dollars on behalf of two LLCs involved in BLIPS transactions, Mobile and Roanoke. Bratton writes, "Due to the tax consequences that result from these sales, it is critical that these transactions be reversed and made to look as though they did not occur at all."

Please provide the following information and all related documentation, including trade records:

- a) Please provide a description of the transactions that were the subject of Ms. Bratton's email.
- b) Please provide a description of the "tax consequences" referred to by Ms. Bratton and how the sales referred to by Ms. Bratton resulted in those tax consequences.
- c) Did HVB inquire of Presidio, or did Presidio ever inform HVB, why Presidio wanted these transactions reversed and why Presidio wanted it "made to look as though they did not occur at all"? If so, what was the explanation offered by Presidio? If not, why didn't HVB ask Presidio why the transactions had to be reversed and why Presidio wanted it to appear as if they did not occur at all?
- d) Please describe in detail what actions HVB took in response to the communication from Ms. Bratton, and the trades in question, including:
 - i. a description of all internal meetings, reviews and communications regarding the matter;
 - ii. a description of all meetings and communications HVB had with Presidio or KPMG on the matter;
 - iii. whether HVB took any actions to make it look as though the trades did not occur at all and, if so, why such actions were taken and what actions were taken to achieve that outcome; and if no actions were taken, why not; and
 - iv. whether HVB created and maintained records of the trades in question and any subsequent transactions related to those trades, and, if not, why not?

Answer: See attached letter response.

2. Exhibit 105 (attached) is an email from William Boyle of Deutsche Bank proposing that Deutsche Bank finance additional BLIPS loans by providing funds to HVB. Mr. Boyle also suggested that Deutsche Bank execute the trades related to the BLIPS transactions financed by the Deutsche Bank funds. At the Subcommittee hearing on November 20, Mr. Boyle stated with respect to this matter, “[Mr. Wadsworth of Deutsche Bank] clearly was not interested in doing any more of these deals and it stopped at that point.”

Please provide the following information and all related documentation, including any internal communications within HVB and any communications with Deutsche Bank or KPMG, on this matter:

- a) whether Deutsche Bank approached HVB with this proposal and, if so, the date when this communication took place;
- b) whether any meetings or discussions took place, what was represented by Deutsche Bank, the names and positions of all individuals involved in any such meetings or discussions, and a short description of the substance of the meetings or discussions; and
- c) what decision was made by HVB with respect to this proposal, who was involved in making the decision, why the decision was made, and how and when the decision was communicated to Deutsche Bank.

Answer: See attached letter response.

3. Exhibit 137 (attached) is a 1997 memorandum from Robert Pfaff to John Lanning and Jeff Stein. In the memorandum, Mr. Pfaff writes:

“I have spent a significant amount of time courting a relationship with Bayerische Vereinsbank (“BV”). It now appears that this investment may pay-off in terms of deal and product flow. BV has engaged Caplan and Drysdale to assist them on these products.”

Please describe what HVB understands to be the facts related to Mr. Pfaff’s statements regarding a relationship with BV, deal and product flow and BV’s retention of Caplan & Drysdale to assist them on the products, including but not limited to:

- a) a description of the meetings and communications that took place between BV and Mr. Pfaff or other KPMG personnel regarding these matters, including the names and positions of the BV and KPMG personnel involved;
- b) a description of the nature of any relationship Mr. Pfaff, on behalf of KPMG, established with BV and what, specifically was BV asked and expected to do;

2951

-3-

- c) a description of BV's review and approval process for the relationship Mr. Pfaff discussed in his memorandum, including the names and positions of the BV personnel involved in the process and the outcome of that process;
- d) a description of the "deal and product flow" that Mr. Pfaff was referring to in his memorandum; and
- e) a description of the assistance provided by Caplan & Drysdale that Mr. Pfaff referred to in his memorandum, and the names of the individuals at Caplan & Drysdale who provided that assistance.

Please provide the Subcommittee with all documentation related to the relationship and communications between Mr. Pfaff and BV referred to in Mr. Pfaff's 1997 memorandum.

Answer: See attached letter response.

#

2952



"Kerry Bratton" <kbratton@presidioadv.com> on 12/28/99 08:47:06 PM

To: Alexandre Nouvakhov/StruFin/NY/NA/Vereinsbank, Amy McCarthy/NY-3/NY/NA/Vereinsbank
cc: "Steven Buss" <sbuss.PO1.Presidio_Domain@presidioadv.com>

Subject: FX Confirmations

I know that Steven has talked to you regarding the error for Roanoke Ventures. I have also noted an error for Mobile Ventures. None of the Euro's should have been converted to USD in 1999. Due to the tax consequences that result from these sales, it is critical that these transactions be reversed and made to look as though they did not occur at all.

I'll give you a call in the AM to discuss.

Thanks
Kerry

Kerry Bratton
Presidio Advisory Services, LLC
Phone: (415) 284-7282
Fax: (415) 284-7284

HVB 002035

Ernest Leonardini
02/22/2002 01:33 PM

Sent by: Ernest Leonardini

To: Jules S Goodman/NewYork/DBNA/DeuBa@DBNA
cc:
Subject: Updated Presidio/KPMG trades

Jules,
FYI. Re. BLIPs.
Regards,
Ernie

Forwarded by Ernest Leonardini on 02/22/2002 01:32 PM

From: William Boyle on 06/20/2000 02:38 PM
To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust; Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

John,

During 1999, we executed \$2.8 b. of loan premium deals as part of the BLIP's approval process. At that time, NatWest and Hypovereinsbank had executed approximately \$ 0.5 b. of loan premium deals. I understand that we based our limitations on concerns regarding reputational risk which were heightened, in part, on the proportion of deals we have executed relative to the other banks. Since that time, Hypovereinsbank, and to a certain extent NatWest, have participated in approximately an additional \$1.0-1.5 b. of grandfathered BLIP's deals. Both Hypovereinsbank and NatWest have capacity issues in terms of their ability to execute a large number of transactions at any point in time. In addition, Hypovereinsbank has limited the amount of loans it is willing to have outstanding at any one point in time.

Presidio and KPMG are developing an expanded version of BLIP's which it will execute on a limited basis for its wealthy clientele. They anticipate executing approximately 10-15 deals of significant size (i.e. in the \$100-300m. range). The expanded version of the BLIP's deal will continue to employ the high coupon fixed rate loan, but will expand the investment menu to include a greater variety of investments which will be tied in more closely to the individual's other investments or business.

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Permanent Subcommittee on Investigations
EXHIBIT #105

DB BLIPS 0327

2954

We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 0327€

2955

 William Boyle
06/20/00 02:38 PM

To: John T Wadsworth@Bankers_Trust
cc: Paul Glover@Bankers_Trust, Ernest Leonardini@Bankers_Trust
Subject: Updated Presidio/KPMG trades

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We would like tax department approval to participate in the aforementioned more complex trades by executing the underlying transactions and making loans to Hypovereinsbank. After you have had an opportunity to review, please give me a call to discuss.

Thanks,

Bill

DB BLIPS 0321

Author: Larry Delap at KPMG_Palo_Alto
Date: 7/29/97 1:55 PM
Priority: Normal
TO: Gilbert D. Bloca at KPMG_WST
TO: Paul S. Lowry at KPMG_Boston
TO: Richard J. Solway at KPMG_NYO_Tax
Subject: Revised Memorandum

----- Message Contents -----

The attachment obviously is very confidential. Please do not share it with anyone. I would like to get your general thoughts on the proposal therein following our '357(c) discussion tomorrow.

Larry

----- Forward Header -----

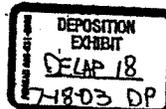
Subject: Revised Memorandum
Author: Robert A. Pfaff at KPMG_Danver
Date: 7/29/97 2:09 PM

Attached is a revised version of my July 18, 1997 memorandum.

I have added additional comments concerning my perception of KPMG's opportunity in the international banking market.

Jeff, as you requested, I have copied Larry Delap.

Bob



CONFIDENTIAL

KPMG JAC 331
CONFIDENTIAL

637378

KPMG Peat Marwick LLP

To John Lanning/Jeff Stein
New York

Date July 29, 1997

From Bob Pfaff
Denver

Sender
Re: Lanning_jeff.doc

cc John Larson, San Francisco
Larry DeLap, Palo Alto

My Thoughts Concerning:

- (I) KPMG's Tax Advantaged Transaction Practice
- (II) Presidio's Relationship with KPMG
- (III) Transition Issues

(I) KPMG's TAX ADVANTAGED TRANSACTION ("TAT") PRACTICE

While I am certain there is no shortage of frustration, I think we made significant progress in FY1997. First and foremost, the TAT Opinion & Procedures Committee (implemented by Larry DeLap) turned chaos and inconsistency into a tough but, fair, prompt, independent, and reliable process. I think these procedural safeguards ("nonengagement letters," releases, etc.) have significantly reduced the Firm's exposure in what is clearly a high-risk practice.

(a) Consistency

I think our big challenge now is to make sure that we comply with the procedures and not make substantive changes to the transaction that has been approved by the opinion committee. I sincerely believe any slippage on this front is the result of ignorance of the new DPP policies. This highlights the need to have dedicated teams involved in delivery and implementation. I believe we have identified most, if not all, of the "one off" deals that were done. However, on a prospective basis, we should make certain that the delivery and opinion process is uniform. The partner who will ultimately write the opinion needs to have input on the front-end before any structure is implemented.

KPMG JAC 331161
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637379

 Peat Marwick LLP

Page 2

July 29, 1997

Memorandum to John Lanning/Jeff Stein

(b) Process

I believe there are four distinct phases from creation to revenue-recognition on these products. Whoever you select to run the practice will need to be involved and manage all four phases.

(i) Idea Generation

Keep in mind that we are ultimately looking for "turn-key" products. In most cases, they will require capital and an intermediary. Generally, this will involve a "name," financial institution, and an intermediary domiciled in a favorable jurisdiction, who is nontaxable in the jurisdiction of receipt and can absorb an item that can be characterized as "income" under U.S. tax law.

We have an abundance of KPMG professionals who are capable of generating idea-flow. Additionally, KPMG's reputation in the international banking community is stellar. An internal issue we need to resolve is how to reward the idea-generators so they will be more forthcoming.

(ii) The Turn-Key Process

In my view, this process is our missing link. We need to think how we can create a critical component of a product and then earn a royalty on sales.

To succeed in this area, one needs to gain entrance to the international banking, investment and leasing community and have an alignment with the "handful" of law firms who are skilled and respected in this area. Fortunately, the KPMG name is highly-respected and will open most doors. Once the door is open, you obviously need to deliver an idea that is impressive. Patience and fastidiousness are virtues that will be rewarded.

It should also be noted that providing a true turn-key product, with KPMG as sole provider, will in many cases be difficult or impossible due to restrictions placed on the firm's scope of activities by authorities such as the SEC.

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637380

KPMG JAC 331162
CONFIDENTIAL

 Peat Marwick LLP

Page 3
 July 29, 1997
 Memorandum to John Lanning/Jeff Stein

(iii) Marketing and Dissemination

This is tougher than it appears and runs counter to one's intuition. Logically, we would simply issue an edict that "any client with an imminent gain of a threshold amount" should contact the TAT practice. However, after reading *Colgate Pabodwe* it is clear we cannot openly market tax results of an investment. Rather, our clients should be made aware of investment opportunities that are imbued with both commercial reality and favorable tax results. Conversely, we cannot offer investments without running afoul of a myriad of Firm and securities rules. Ultimately, it was this dilemma that led me to the conclusion that I was in the wrong industry to play the role I enjoy the most and, hence, the Firm's need to align with the likes of a Presidio.

In my observation, Gary Powell and Gregg Ritchie are well-suited for the role of figuring out where our target markets should be and how to strategically and efficiently identify such markets and gain entry. I might add that John Larson and I discovered, after about 18 months of trial and error, that it is far more efficient, albeit less glamorous, to close a transaction with a privately held enterprise, than it is with IBM. Recognize that calls to the *Fortune 100* may be important for strategic reasons, but may rarely result in a prompt closing.

Finally, it is also important to remember the distinction between marketing and sales. I think sales calls should be limited to the KPMG partner or manager relationship and a TAT member who knows the product.

(iv) Sales, Delivery and Option Writing

I think the same professional(s) should be involved to assure consistency with the TAT-approved product and to make certain the product is "optionable." If we bifurcate this process, the sales guy has a tendency to stretch too far to get the sale and promise modifications that we ultimately cannot deliver. It appears we have a couple of these situations.

The ideal candidate would be someone who knows the product cold, is flexible, decisive, and has reasonably good sales skills. However, given the fact that a relationship partner is likely to be present, I would recommend

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KPMG JAC 331163
 CONFIDENTIAL

637381

~~KPMG~~ Past Marwick LLP

Page 4

July 29, 1997

Memorandum to John Lanning/Jeff Stein

erroring on the side of going with a technician with the caveat he or she not be a "waffler."

As you are no doubt aware, the TAT Opinion Committee consists of:

- Larry DeLap
- Gil Bloom
- Paul Lowry
- Rick Solway

The professionals I have identified with the aptitude and the interest include:

- Bob Simon, Denver
- John Harris, Denver
- Marcel Maier, Fort Lauderdale
- Bill Albaugh, Atlanta
- Randy Bickham, Palo Alto
- Richard Smith, WNT
- Gregg Ritchie, Warner Center
- Jeff Eischeid, Atlanta

I am sure there are others that will emerge if encouraged.

II. PRESIDIO'S RELATION WITH KPMG

I strongly desire a close relationship with KPMG and would be willing to commit to an arrangement whereby Presidio would agree to offer KPMG a right of first-refusal on products. I believe it would be a reasonable consideration, in turn, for KPMG to offer Presidio a preferred provider opportunity in such instance. I think a formalized relationship between Presidio and KPMG may be subject to scrutiny, considering the problems the firm had with KPMG Baymark. I am also aware that entering into an "alliance" with KPMG is now a difficult and complex matter under current firm policy.

It is clear that Presidio desires to offer a number of products. We have several ideas that we would like to "turn-key" in the near future. We would be willing to

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637382

 Peat Marwick LLP

Page 5

July 29, 1997

Memorandum to John Lanning/Jeff Stein

engage in dialogue with KPMG with the goal of developing mutually-beneficial products. Quite frankly, the first question is "who is in charge and responsible for 'cutting the deal' on behalf of KPMG"? This role requires more of a "businessman role" than anything else.

(a) Quadra Potential Conflict

With regard to the foreign leveraged investment program, KPMG took the idea to Quadra who, in turn, brought UBS to the table. We used them exclusively, but discovered that after Dave Lippman joined Quadra, he cut a deal to expand the network to C&L by striking an alliance with Mike Schwartz. My best sense of all this is that Quadra figured they were the only game in town and probably counted on KPMG being irritated but, ultimately, decided to continue to do business with Quadra.

My initial reaction would be to sever the Quadra relationship, in light of their open and notorious relationship with C&L, on a product KPMG developed and brought to Quadra. On reflection, this would probably be ill-advised because we need to live with Quadra, particularly on IRS exams and on completed transactions. We also have several clients who did well economically on the UBS stock and will probably want to do more.

Finally, as we learned with Quadra, it is always better to have the leverage of having more than one source of supply, unless we (KPMG) are confident the supplier is equally committed to an exclusive relationship. In the current situation, I think it would be in KPMG's best interests to keep the Quadra relationship with a number of caveats. Firstly, KPMG needs assurance that our modifications and refinements (effectively, our intellectual capital) are not pipelined directly to C&L. Clearly, we had close to a one-year head-start and are likely to be more evolved than C&L. Secondly, if Presidio commits to be exclusive to KPMG on this product, it would appear to be a fair consideration for KPMG to offer Presidio and Deutsche Bank the first opportunity to present its product.

Finally, it would be essential that if KPMG works with both providers, that there be a "Chinese Wall," separate engagement teams, sales teams, and opinion writers.

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Page 6

July 29, 1997

Memorandum to John Lanning/Jeff Stein

(b) Other Presidio Issues

If Presidio and KPMG strike some sort of agreement, the following business issues need to be resolved:

(i) KPMG Fees

The deal with Quadra was confusing because different partners had different deals. KPMG needs to speak with one voice and any pricing system must be easily understood.

The current pricing arrangement between KPMG and Quadra is 1.5 points less shared costs. The shared costs diminish as a percentage as the size of the transaction increases.

The "shared costs" concept has caused confusion and, in certain instances, distrust. A better formula would be a fixed amount, escalating based upon deal size.

Amount	7.0% Charge	7.5% Charge
(a) \$10m - \$20m	1.0%	1.50%
(b) \$20m - \$50m	1.25%	1.75%
(c) >\$50m	1.30%	1.80%
(d) >\$100m	To be separately negotiated because the client may attempt to negotiate a fee of less than 7.0%	

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~~KPMG~~ Part Marwick LLP

Page 7

July 29, 1997

Memorandum to John Lanning/Jeff Stein

(ii) KPMG Fees for Various Roles

In certain circumstances a party, other than KPMG, may be a "finder." In such instance, KPMG may play a limited role, which could include:

- Opinion Provider
- Structuring and Comfort
- Authorization to use KPMG's name

There should be a sliding scale of fees for these limited roles or, alternatively, KPMG may agree to fee sharing. We have a number of these deals pending where KPMG was not the finder. These are significant transactions with very wealthy individuals who are not currently clients of the firm. The situations we are currently pursuing represent excellent opportunities for the PFP practice and, especially for the Bay Area ICE practice.

III. TRANSITION ISSUES

(a) Existing Deals

John Larson, working with Randy Bickham and John Harris, intends to have completed prior to his departure the KPMG opinion on closed transactions regarding to the foreign leveraged investment program.

I think it would be advisable for all the teams to meet in the next several weeks to make sure we have covered all bases. Denver would appear to be the most logical location.

(b) New Technology

There are several ideas that we have, which we believe have a reasonable prospect of becoming near-term products. KPMG needs to figure out what commitment and role they want to make. Assuming the answer is affirmative, a "business deal" then needs to be struck.

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Page 3

July 29, 1997

Memorandum to John Laming/Jeff Stein

(c) Transfer of Relationship

I have spent a significant amount of time courting a relationship with Bayerische Vereinsbank ("BV"). It now appears that this investment may pay-off in terms of deal and product flow. BV has engaged Caplan & Drysdale to assist them on these products. BV has also interviewed a number of accounting firms and are most impressed with PW's TAT practice. PW's practice is London-based and, accordingly, presents itself as the only multinational TAT practice among the Big Six. Although beyond the scope of this memorandum, it has become clear to me that the multinational banks are chasing increasingly-sophisticated customers in a market that has increasingly small profit margins. Accordingly, they are looking for competitive edges to shore-up their operating margins and respective share of the market. Two key differentials are: (i) tax advantaged transactions and (ii) financial accounting enhancements. The market is brimming with opportunity for KPMG to tax advantage its standing. By way of example, in the last week, Bank of America's Structured Finance has inquired about a relationship with Prudico to bring them leading-edge products.

I will use my best efforts to introduce Tony Alexandrou (Jeff's recommendation) to BV.

I would be pleased to continue to work with a replacement to help assure a smooth transition.

Similarly, I have NOL monetization prospects.

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637386

~~KPMG~~ Past Marwick LLP

Page 9

July 29, 1997

Memorandum to John Lanning/Jeff Stein

Other important relationships include:

- Kredietbank
- ING
- Deutsche Bank
- Bank of America, Structured Finance - Chicago
- Republic Financial Corporation
- ICA
- Fortrend
- Stamford Capital
- Skandia

I recognize that it will take beyond the end of July to provide appropriate introductions. I would be willing to work with whomever KPMG designates after my departure.

In summary, it is clear that KPMG needs to make business decisions concerning the tax advantaged transaction process. I have attempted to address the most critical issues.

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637387

2966



Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
202-862-5000 202-429-3301 Fax
www.caplindrysdale.com

202-862-8852 Direct
csr@capdale.com

January 12, 2004

VIA HAND DELIVERY

Honorable Norm Coleman
Chairman, Permanent Subcommittee on Investigations
SROB 199
Washington, DC 20510-6252

Honorable Carl Levin
Ranking Minority Member,
Permanent Subcommittee on Investigations
SROB 199
Washington, DC 20510-6252

Re: Questions to Bayerische Hypo-und Vereinsbank

Dear Senators Coleman and Levin:

This is in response to the letter delivered to my client Bayerische Hypo-und Vereinsbank AG ("HvB") by the Senate Permanent Subcommittee on Investigations ("the Subcommittee") on or about December 9, 2003, with questions following up on the testimony of Domenick DeGiorgio of HvB on November 20. HvB's responses to the three questions are set forth below.

1. Regarding the Kerry Bratton email number HVB 002035:
 - a. In the transaction at issue, a United States-based limited liability company ("LLC") borrowed funds from HvB denominated in U.S. dollars for a term of 7 years. The U.S. LLC then converted the U.S. dollars into Euros, and deposited the Euros in a demand deposit account with HvB. The Euro deposit in the U.S. LLC's account was pledged to HvB as collateral for the loan from HvB to the LLC. The U.S. LLC then entered into a forward agreement with HvB obligating the U.S. LLC to sell its Euros and buy U.S. dollars.
Consistent with the investment strategy outlined by Presidio Advisors, the U.S. LLC assigned the loan and its proceeds to a Strategic Investment Fund ("SIF"), another newly formed LLC that was established to conduct certain trading activities,

208523

namely investing in foreign currency transactions. The SIF then entered into a series of foreign currency transactions, which were executed by HvB's treasury desk.

In this particular case, Roanoke Ventures LLC entered into foreign currency exchange transactions whereby it was "short" a foreign currency. In the case of Roanoke, on December 28, 1999, HvB executed a trade in which Roanoke sold (to HvB) € 68,426.20 and bought (from HvB) a corresponding amount of U.S. dollars. This trade was erroneous in amount, however. When it was brought to HvB's attention, HvB promptly reversed the trade on December 29, 1999, by executing a trade on that date in which Roanoke sold its US dollars and re-purchased € 68,426.20, again with HvB as the counterparty on both legs. On the same date (December 29, 1999), HvB executed a trade in which Roanoke sold the proper amount of Euros, € 37,600.00, and bought U.S. dollars in the amount of \$37,769.20 using December 28 values. Statements showing these transactions are enclosed as pages R-001 through R-003.

A similar error occurred with Mobile Ventures LLC. On December 28, 1999, HvB converted € 14,800 into US \$14,866. Apparently, this transaction was executed in error, but the error was not noticed as promptly. HvB implemented a "contra" trade to reverse the financial impact of the first transaction on January 7, 2000 at values as of December 28, 1999. Subsequently, on January 19, 2000, Presidio on behalf of Mobile Ventures LLC instructed HvB to convert € 14,800 into US \$14,918. This transaction was consummated correctly. Statements and other transaction documents showing these transactions are enclosed as pages M-001 through M-008.

Correcting trading errors like this is perfectly legal and is not uncommon. Since HvB was in both instances the counterparty, the only person potentially harmed was HvB itself. Please note, however, that both transactions continue to appear on HvB's books and records, and that in each instance the original foreign exchange trade was not made to "appear" as though it "did not happen."

- b. As Mr. DeGiorgio testified, HvB was not a tax advisor with respect to these transactions. Thus, while HvB is somewhat familiar with the provisions of Section 988 of the Internal Revenue Code of 1986, and the general treatment of foreign currency transactions thereunder, it is not in a position to understand the context of Ms. Bratton's use of "tax consequences" in her email.
- c. HvB did not make any inquiries of, nor did Presidio offer any explanation for, Presidio's reasons for wanting the transactions reversed and "made to look as though they did not occur at all." However, HvB did realize that the transactions were executed in error. Consequently, HvB executed a second foreign currency transaction that fully offset the results of the first trade, thereby reinstating the customers' intended financial position. HvB has not located any "tickets" documenting the original and reversing trades, but as noted above pages R-001 through R-003, which are enclosed, document how the transactions occurred.
- d. In response to Ms. Bratton's email, HvB informed Presidio that while it could reverse the financial impact of executing the foreign currency transactions for

Mobile and Roanoke by performing “contra trades,” as described in (a) and (c) above, it could not make the transactions “look as though they did not occur at all.” Once a foreign currency transaction is executed, it becomes a part of HvB’s official books and records. No other specific actions, meetings or communications took place regarding this matter. Presidio accepted HvB’s explanation, which was conveyed to it orally by phone, and appeared to be satisfied with the results.

2. Regarding “Exhibit 105” and Deutsche Bank’s suggestion to provide funds to HvB so that HvB could make additional BLIPS loans:
 - a. Deutsche Bank approached HvB with the offer to provide it with financing so that it could make additional BLIPS loans in the second quarter of 2000.
 - b. The proposal was first made to HvB over a lunch meeting that was attended by Domenick DeGiorgio and Bill Tsai of HvB and William Boyle and John Rolfos of Deutsche Bank. Messrs. Boyle and Rolfos had learned (apparently from communications with Presidio) that HvB had certain restrictions and capacity constraints that limited the number of BLIPS loans HvB was willing to have outstanding at any given point in time. In order to alleviate these constraints, Deutsche Bank offered to provide HvB with the funds that could be used to finance additional BLIPS loans. For the loan it proposed to make to HvB, Deutsche Bank expected to receive a portion of the upfront fee paid to HvB by Presidio in addition to an adequate margin on the funds advanced. HvB informed Deutsche Bank that it would consider its proposal and provide Messrs Boyle and Rolfos with a response in due course.
 - c. HvB declined Deutsche Bank’s proposal approximately one week later. While it was true that HvB had set certain restrictions and guidelines limiting the amount of BLIPS loans outstanding at any given point in time, these parameters were not imposed because of funding capacity concerns. In fact, from a capital perspective, HvB was able to provide additional loans to Presidio’s customers. However, HvB believed that certain trading, monitoring and administrative personnel and functions associated with the BLIPS loans might be overwhelmed and result in mistakes in the transactions. HvB refers to these issues as “execution and operational risks.” Deutsche Bank’s proposal to provide funds to HvB would not have alleviated such risks and concerns. Consequently, HvB did not see an advantage to Deutsche Bank’s proposal. This was communicated orally by Mr. DeGiorgio to Mr. Boyle.
3. Regarding Mr. Robert Pfaff’s memorandum to John Lanning and Jeff Stein (“Exhibit 137”):
 - a. Mr. Pfaff had been introduced to Mr. DeGiorgio of HvB in 1996, while Mr. Pfaff was a partner with KPMG. Mr. Pfaff had presented Mr. DeGiorgio with a number of opportunities for loan transactions for KPMG clients, of which HvB participated in approximately 3 financings totaling approximately \$50 million. In 1997, HvB considered forming a Structured Transaction Group, the primary focus of which would be to provide financing, trading and other banking products and services to corporations and private banking clients. In this regard,

Mr. DeGiorgio introduced Mr. Pfaff to a number of senior level members of HvB management, including Ralf Fiedler, former General Manager of HvB-New York, and David Fischbein, former Chief Credit Officer of HvB-New York. (Neither Mr. Fiedler nor Mr. Fischbein are currently employed by HvB.)

Over the course of several meetings, including a visit with Mr. Pfaff at his KPMG offices in Denver, Colorado, Mr. Pfaff described to HvB that his firm was interested in offering "structured solutions" to its multi-national corporate clients as well as the firm's private banking customers. HvB could participate in this arena by offering banking products, such as lending, trading, and cash management services to KPMG's clients. Mr. Pfaff implied that some of these transactions might result in accounting, tax and/or regulatory benefits for the counterparties and, as a result, HvB could expect to receive a premium return for the services it would provide.

- b. Mr. Pfaff's relationship with HvB was strictly one of referrals of business. HvB never entered a formal contract with Mr. Pfaff and never paid him any fees. It is HvB's understanding that soon after the memorandum referred to above, Mr. Pfaff resigned from KPMG and formed Presidio with John Larson and Amir Makov.

Further communication between Mr. Pfaff and Mr. DeGiorgio or other members of HvB were very limited. In fact, Mr. DeGiorgio does not recollect having any contact with Mr. Pfaff or any member of Presidio in all of 1998 and well into 1999, when HvB was approached with the proposal to provide BLIPS loans.

- c. Following the meeting with Mr. Pfaff in Denver, Mr. Fiedler asked Mr. DeGiorgio to learn which other professional firms were offering structured solutions to their customers and to gain a better understanding of the business, the potential risks to HvB, and how those risks might be mitigated. Consequently, Mr. DeGiorgio approached a number of legal and accounting firms, including Arthur Andersen, PricewaterhouseCoopers, Shearman & Sterling, Baker & McKenzie, and Caplin & Drysdale.
- d. We are uncertain what Mr. Pfaff meant by "deal and product flow" in his memorandum. In 1997, Mr. Pfaff provided HvB with only one "sample" transaction that KPMG was presenting to some of its clients.
- e. HvB engaged Charles Plambeck, David Rosenbloom, and Daniel Rosenbaum of Caplin & Drysdale and requested that they review the "sample" transaction as to its technical merits and the risks HvB might be exposed to if it provided lending services. Upon learning of HvB's engagement of Caplin & Drysdale, Mr. Pfaff was apparently encouraged at the prospect of HvB becoming an active participant in this market, and we believe this is the gist of the reference in his memorandum to Messrs. Lanning and Stein.

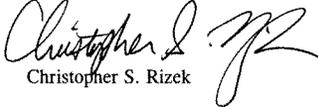
The substance of Caplin & Drysdale's advice to HvB regarding the particular transaction it analyzed is privileged under the attorney-client privilege. However, HvB did not participate in that particular transaction.

2970

Caplin & Drysdale
CHARTERED

- 5 -

Please do not hesitate to contact me if you have any further questions.

Very truly yours,

Christopher S. Rizek

Enclosures

cc: HvB

2971

ROANOKE VENTURES LLC; C/O HOWARD
RUBY; 2222 CORINTH AVE
LOS ANGELES, CA 90064
ATT: MS. SHERI JENSEN

USD

ROANOKE VENTURES LLC

1764194503

23DEC99 - 31DEC99

1

1

23DEC99	BALANCE FORWARD			0.00
27DEC99	FUNDS TRFER.	ROANOKE VE	686,364.00CR	
29DEC99	28DEC99	DEALING	316702 ROA	37,769.20CR
30DEC99	FUNDS TRFER.	123012108	724,133.20DR	

0.00

724,133.20

724,133.20

R 001

2972

ROANOKE VENTURES LLC; C/O HOWARD
RUBY; 2222 CORINTH AVE
LOS ANGELES, CA 90064
ATT: MS. SHERI JENSEN

EUR

ROANOKE VENTURES LLC

1764194504

23DEC99 - 31DEC99

1

1

23DEC99	BALANCE FORWARD			0.00
27DEC99	FUNDS TRFER.	ROANOKE VE	68,426.20CR	
28DEC99	DEALING	316633 ROA	68,426.20DR	
29DEC99 28DEC99	DEALING	316702 ROA	37,600.00DR	
29DEC99 28DEC99	DEALING	316679 ROA	68,426.20CR	

30,826.20CR

106,026.20

136,952.40

R 002

2973

ROANOKE VENTURES LLC; C/O HOWARD
RUBY; 2222 CORINTH AVE
LOS ANGELES, CA 90064
ATT: MS. SHERI JENSEN

USD

ROANOKE VENTURES LLC

1764194503

30NOV00 - 29DEC00

12

1

30NOV00

BALANCE FORWARD

0.00

0.00

0.00

0.00

R 003

2974

MOBILE VENTURES LLC
784 PARK AVE.
NEW YORK, NY 10021

MOBILE VENTURES LLC

EUR

1781444504

15DEC99 - 31DEC99

1

1

15DEC99
27DEC99
28DEC99

BALANCE FORWARD
FUNDS TRFER. MOBILE
DEALING 316635 MOB

14,800.00CR
14,800.00DR

0.00

0.00

14,800.00

14,800.00

M 001

2975

MOBILE VENTURES LLC
784 PARK AVE.
NEW YORK, NY 10021

USD

MOBILE VENTURES LLC

1781444502

14DEC99 - 31DEC99

1

1

14DEC99	BALANCE FORWARD			0.00
27DEC99	FUNDS TRFER.	MOBILE	291,573.00CR	
28DEC99	DEALING	316635 MOB	14,866.60CR	
29DEC99	FUNDS TRFER.	122915902	187,500.00DR	
30DEC99	FUNDS TRFER.	123012201	118,939.60DR	
31DEC99	INCOMING FEDS	RC090212	16,854.80CR	

16,854.80CR

306,439.60

323,294.40

M 002

2976

MOBILE VENTURES LLC
784 PARK AVE.
NEW YORK, NY 10021

MOBILE VENTURES LLC

EUR

1782444504

31DEC99 - 31JAN00

1

1

11DEC99	BALANCE FORWARD			0.00
7JAN00	DEALING	322255 MOB	14,800.00CR	
19JAN00	DEALING	319375 MOB	14,800.00DR	

0.00

14,800.00

14,800.00

M 003

2977

MOBILE VENTURES LLC
784 PARK AVE.
NEW YORK, NY 10021

MOBILE VENTURES LLC

USD

1781444502

31DEC99 - 31JAN00

1

1

31DEC99	BALANCE FORWARD		16,854.80DR	16,854.80CR
4JAN00	FUNDS TRFR.	010409017	16,854.80DR	
7JAN00	28DEC99 DEALING	322255 MOB	14,866.60DR	
19JAN00	DEALING	319375 MOB	14,918.40CR	
31JAN00	1FEB00 INTEREST AND CHARGE INTEREST		56.16DR	

AVAILABLE AMOUNT

51.80CR
4.36DR

31,777.56

14,918.40

M 004

2978

Alexandre Nouvakhov 01/19/2000

To: Matt Dunn/Treasury/NY/NA/Vereinsbank@BV-NA
cc:
Subject: Presidio

Matt,

We need to sell Euros for another Presidio account and credit their USD DDA account. It is the same deal as the one for Roanoke you did earlier today. Sorry for giving piecemeal info, but Presidio told us about this transaction minutes ago. Please confirm when you do the trade and let me know the rate. Thanks.
Alex Nouvakhov

Client Name	Euro Account #	Euro Balance	Euro Rate	Value Date	USD Account #	USD Balance
Mobile Ventures	1781444504	14,800.00		19-Jan-00	1781444502	

M 005

2979

Jan-19-00 01:00pm From-PRESIDIO ADVISORY SERVICES, LLC +4157012555 T-337 P. 01/01 F-541

PRESIDIO ADVISORY SERVICES, LLC

333 Hayes Street, Suite 200
San Francisco, CA 94102

Telephone (415) 284-7333
Facsimile (415) 284-7284

Date January 19, 2000 Page 1 of 1

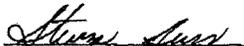
To Alex Nouvakhov cc Timothy Schifter
Company HVB Structured Finance Inc. Tel 212.736.6262 Ext. 28
Tel 212.672.5620 Fax 212.396.1144
Fax 212.672.5591

From Steven Buss cc Edward Poreba - KPMG
Tel 415.284.7287 Fax 212.872.3318
Fax 415.701.2555

Subject FX Instructions -- Mobile Ventures LLC

On Wednesday January 19, 2000 please FX 14,800 Euros as follows:

HVB Account 1731444504 - Mobile Ventures LLC
14,800 Euros to USD


Steven Buss
Presidio Advisory Services, LLC

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delivering this message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the telefaxed information is strictly prohibited. If you have

received this telefax in error, please immediately notify us by telephone (call collect to the number listed above) to arrange for the return of the original document to us.

M 006

2980

Alexandre Nouvakhov 01/19/2000

To: "Steven Buss" <sbuss@presidioadv.com>
cc:
Subject: Re: mobile

here is mobile euro sale info;

Client Name	Euro Sold	Euro Rate	Value Date	USD Bought
Mobile Ventures	14,800.00	1.008	19-Jan-00	14,918.40

M 007

2981

Jan-19-00 05:20pm From-PRESIDIO ADVISORY SERVICES, LLC +4157012555 T-348 R 01/01 F-551

PRESIDIO ADVISORY SERVICES, LLC

333 Hayes Street, Suite 200
San Francisco, CA 94102

Telephone (415) 284-7333
Facsimile (415) 284-7284

Date January 19, 2000 Page 1 of 1

To Timothy Schifter cc Edward Poreba - KPMG
Tel 212.736.6262 Ext. 28 Fax 212.872.3318
Fax 212.396.1144

From Steven Buss cc Alex Nouvakhov
Tel 415.284.7287 Fax 212.672.5591
Fax 415.701.2555

Subject Sale Confirmation

Hypo-Vereinsbank has confirmed the following sale transaction:

<u>Account Name</u>	<u>Account #</u>	<u>Trade Date</u>	<u>EURO</u>	<u>FX Rate</u>	<u>USD</u>
Mobile Ventures LLC	178144-4504	01/19/2000	14,800.00	1.008	\$14,918.40

If you have any questions, please contact me at (415) 284-7287.

Best Regards,



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delivering this message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the telefaxed information is strictly prohibited. If you have

received this telefax in error, please immediately notify us by telephone (call collect to the number listed above) to arrange for the return of the original document to us.

M 008

2982

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR CARL LEVIN
for
JEFFREY GREENSTEIN
Quellos Group, LLC

1. With respect to the FLIP and OPIS transactions, was the size of the capital investment made by the Cayman Island company tied to the amount of capital loss that the transaction was expected to generate for the taxpayer who participated in the transaction?

Answer: See attached letter response.

2. With respect to the FLIP and OPIS transactions, was the size of the fee received by Quadra tied to the amount of capital losses the transaction was expected to generate for the taxpayer who participated in the transaction?

Answer: See attached letter response.

#

2983

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center
Boston, Massachusetts 02111

Jeffrey S. Robbins
Member
Direct dial 617/348-1722
jsrobbias@mintz.com

617 542 6000
617 542 2241 fax

December 12, 2003

BY FAX

Ms. Mary D. Robertson
Chief Clerk
Permanent Subcommittee on Investigations
199 Russell Senate Office Building
Washington, DC 20510-6262

Dear Mary:

I am writing in response to a letter received by my client from Chairman Coleman and Senator Levin dated December 9, 2003. That letter enclosed two questions from Senator Levin, to which we are pleased to respond.

1. The actual capital investment made by the Cayman Island company, which was deposited into its account at UBS, represented the amount required by UBS to be placed on deposit in order to support a notional contract of the amount desired. The deposit amount was roughly 10% of the notional amount, some of which was funded by the proceeds of the Cayman Island company's sale of a call option on UBS stock. The notional amount of the investment was determined by the investor and his tax or financial advisor and was presented to my client, which understood that the notional amount correlated closely to the expected capital loss to be realized from the transaction.

2. My client's fees were determined as a percentage of the notional amount. Charging based upon the dollars under management or the face amount of a notional principal contract is standard practice in the investment management industry.

Please forward these responses to the appropriate individuals. Thank you for your assistance.

Best regards.

Very truly yours,



Jeffrey S. Robbins

cc: Elise Bean, Chief Counsel to the Minority
Robert Roach, Counsel to the Minority

LIT 1434387v1

Boston Washington Reston New York New Haven Los Angeles London

SUSAN M. COLLINS, MAINE, CHAIRMAN

TED STEVENS, ALASKA	JOSEPH I. LIEBERMAN, CONNECTICUT
GEORGE V. VOINOVICH, OHIO	CARL LEVIN, MICHIGAN
NORM COLEMAN, MINNESOTA	DANIEL K. BAKA, HAWAII
ARLEN SPECTER, PENNSYLVANIA	RICHARD J. DURBIN, ILLINOIS
ROBERT F. BENNETT, UTAH	THOMAS R. CARPER, DELAWARE
PETER G. FITZGERALD, ILLINOIS	MARK DAYTON, MINNESOTA
JOHN E. SUNUNUJ, NEW HAMPSHIRE	FRANK LAUTENBERG, NEW JERSEY
RICHARD C. SHELBY, ALABAMA	MARK PRYOR, ARKANSAS

MICHAEL D. BOFF, STAFF DIRECTOR AND CHIEF COUNSEL
JOYCE A. RECHTSCHAFFEN, MINORITY STAFF DIRECTOR AND COUNSEL

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

December 8, 2003

VIA U.S. MAIL & FASCMILIE (404/853-8806)

Mr. James Henderson, Esquire
Managing Partner
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

Dear Mr. Henderson:

On November 20, 2003, Jerold Cohen of your firm testified before the Permanent Subcommittee on Investigations in a second day of hearings on the *U.S. Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals*. Mr. Cohen testified, among other matters, that the Minority Staff Report released in connection with the hearings contained "misstatements" relating to Sutherland Asbill & Brennan. To clarify the hearing record in light of his testimony, please have your firm provide the following information no later than December 19, 2003.

For information requests which require your firm to provide data with respect to specific clients or to produce documents containing specific client names, Sutherland Asbill & Brennan may, if it wishes, omit or redact any client name, provided that your firm replaces each such client name with a unique identifier, such as "Client No. 1," and consistently uses the same unique identifier for the same client when providing information or documentation in response to this letter.

- (1) At the hearing, Mr. Cohen confirmed that Sutherland Asbill & Brennan has a longstanding and ongoing relationship with KPMG, defending KPMG against "malpractice" claims. When asked for the approximate total amount of attorney fees that KPMG has generated for Sutherland Asbill & Brennan, Mr. Cohen indicated that he did not have the information at the hearing but would determine whether the firm could provide that information for the record including, if necessary, by seeking a waiver from KPMG.
 - (a) Please provide, for the period January 1, 1998 to the present, the total amount of money paid by KPMG to Sutherland Asbill & Brennan for legal representation.
 - (b) For each of the years 2000, 2001, and 2002, please provide the total amount of money paid during each individual year by KPMG to Sutherland Asbill & Brennan for legal representation.

Permanent Subcommittee on Investigations

EXHIBIT #151

Mr. James Henderson, Esquire
Sutherland Asbill & Brennan LLP
December 8, 2003 – Page 2

- (2) Mr. Cohen testified at the hearing that he did not recall stating to the Subcommittee staff that Sutherland Asbill & Brennan represented 24 KPMG clients. He testified that the firm has, in fact, represented “approximately 40” clients involved with the KPMG tax products known as Bond Linked Issue Premium Structure (BLIPS), Foreign Leveraged Investment Program (FLIP), or Offshore Portfolio Investment Strategy (OPIS). Mr. Cohen also testified that “a number of major corporations in the country are clients of mine for tax matters and are joint clients in that they are clients of KPMG.”
- (a) Please provide the total number of clients who have been represented by Sutherland Asbill & Brennan, at any time from January 1, 1998 to the present, in connection with such client’s purchase, use, or other involvement with a tax product, solution, strategy, or service that has been developed, sold, provided, or implemented by or is otherwise associated with KPMG (hereinafter “KPMG tax product or service”).
- (b) Of the clients identified in response to question (2)(a), please specify how many are natural individuals, how many are publicly traded corporations, how many are private corporations, and how many are other types of entities such as partnerships or trusts.
- (c) Of the clients identified in response to question (2)(a), please specify how many purchased, used, or were involved with BLIPS, how many with OPIS, how many with FLIP, and how many with some other KPMG tax product or service.
- (3) Mr. Cohen testified at the hearing that he believed KPMG had referred clients to Sutherland Asbill & Brennan, but he did not know how many and believed the number was less than two dozen. Mr. Cohen also testified that, although he did not recall stating to the Subcommittee staff that he was “sure” KPMG was giving his firm’s name to KPMG clients, “I will tell you that I suspect that is true.”
- (a) Of the clients identified in response to question (2)(a), please provide the total number who were referred by a third party to your firm, the total number who contacted your firm directly without being referred by anyone, and the total number for whom Sutherland Asbill & Brennan lacks clear information as to whether or not they were referred by a third party to your firm.
- (b) Of the clients identified in response to question (3)(a) as having been referred to your firm by a third party, please provide a list of the third parties who referred one or more of these clients to your firm, including KPMG. For each such third party, please provide the name of the third party; the total number of clients they referred to your firm out of the clients identified in response to question (3)(a); and the name, job title, and telephone number of a person who is employed by or represents the referring party and who can provide additional information about such referrals.

Mr. James Henderson, Esquire
Sutherland Asbill & Brennan LLP
December 8, 2003 – Page 3

- (c) Please provide copies of any document evidencing a client referral identified in response to question (3)(a), including but not limited to any correspondence, agreement, memorandum, communication, electronic mail message, telephone message, handwritten or other note, or any other document of any type or character.
- (4) Mr. Cohen testified at the hearing that, in addition to providing written disclosure to each potential client who had purchased, used, or was involved with a KPMG tax product or service regarding the firm's relationship to KPMG, Sutherland Asbill & Brennan orally informed or advised each such client (or a client representative) "several times" that, if the client contemplated taking legal action against KPMG, the client would have to retain another lawyer.
- (a) For each client identified in response to question (2)(a), please provide a copy of the engagement letter or other document in which Sutherland Asbill & Brennan disclosed its relationship with KPMG and advised the client that the client would have to obtain alternate legal representation if the client wanted to take legal action against KPMG.
 - (b) For each client identified in response to question (2)(a), please provide a brief description of actions taken by Sutherland Asbill & Brennan to orally inform or advise the client or client's representative about the firm's relationship with KPMG, including each date on which such information or advice was provided, who provided it, whether it was provided in a meeting or by telephone, and to whom it was given. In addition, please provide copies of any document evidencing the transmittal of such oral information or advice, including any memorandum, communication, electronic mail message, telephone message, handwritten or other note, or any other document of any type or character.
- (5) Mr. Cohen testified at the hearing that, contrary to the suggestion in the Subcommittee's Minority Staff Report that Sutherland Asbill & Brennan had "entered into agreements hiring KPMG" in cases involving clients who had purchased, used, or were involved with a KPMG tax product or service, your firm had entered into just one agreement with KPMG, which Mr. Cohen characterized as a Kovel agreement that was never actually utilized.
- (a) For the period January 1, 1998 to the present, please provide a copy of any document evidencing a Kovel relationship or any other relationship, arrangement, contract, or agreement between Sutherland Asbill & Brennan and KPMG related to any client identified in response to question (2)(a), other than the Kovel relationship already discussed at the hearing.
 - (b) For the period January 1, 1998 to the present, please provide the total amount of money, if any, paid by Sutherland Asbill & Brennan to KPMG for any services rendered or for any client referral fees in connection with one or more of the clients identified in response to question (2)(a). If any such money was paid by Sutherland Asbill & Brennan

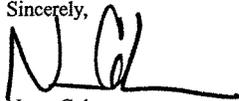
Mr. James Henderson, Esquire
Sutherland Asbill & Brennan LLP
December 8, 2003 – Page 4

to KPMG, please provide a breakdown, for each client, of the payment or payments made to KPMG in connection with such client; a brief explanation of the reasons for each such payment; what portion was paid using funds provided by Sutherland Asbill & Brennan and what portion was paid using funds provided by the client; and copies of any document related to one or more such payments, including any payment record, billing, correspondence, agreement, memorandum, communication, electronic mail message, handwritten or other note, or any other document of any type or character.

- (6) Of the clients identified in response to question (2)(a), please indicate how many, after obtaining legal representation from Sutherland Asbill & Brennan, have filed a lawsuit or other claim against KPMG related to a KPMG tax product or service.
- (7) Please provide copies of all documents in the possession or control of Sutherland Asbill & Brennan related to any analysis, discussion, or consideration by the firm or any person associated with the firm of possible conflict of interest issues related to the firm's providing legal representation to a person who has purchased, used, or was involved with a KPMG tax product or service. Please include any memorandum, policy statement, analysis, guidance, correspondence, agreement, communication, electronic mail message, telephone message, communication, handwritten or other note, or any other document of any type or character.

Thank you for your assistance. Please direct any questions to Elise J. Bean of Senator Levin's staff at (202) 224-9505 or Leland Erickson of Senator Coleman's staff at (202) 224-3721.

Sincerely,



Norm Coleman
Chairman
Permanent Subcommittee on Investigations



Carl Levin
Ranking Minority Member
Permanent Subcommittee on Investigations

NC:CL/ejb

cc: N. Jerold Cohen
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

**Sutherland
Asbill &
Brennan LLP**

ATTORNEYS AT LAW

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December 19, 2003

The Honorable Norm Coleman, Chairman
The Honorable Carl Levin, Ranking Minority Member
United States Senate
Committee on Governmental Affairs
Permanent Subcommittee on Investigations
Washington, DC 20510-6250

Dear Senator Coleman and Senator Levin:

This letter responds to requests of the Permanent Subcommittee on Investigation for information and documents relating to certain aspects of the testimony of N. Jerold Cohen of our firm before your Subcommittee on November 20, 2003. Based on conversations with our counsel and counsel for the Subcommittee, Sutherland Asbill & Brennan's response is set out below. Other than response (1), our response is based on a review of all client files maintained by Mr. Cohen that we were able to identify as involving representation in connection with any of the tax products identified by the Subcommittee's letter requesting Mr. Cohen to testify, or any other "KPMG tax product or service," as that term is defined in your letter of December 8, 2003, together with interviews of all lawyers we identified as having substantive involvement in those matters. We have also surveyed all of the firm's tax partners to confirm that none has represented a client in connection with any of the KPMG tax products identified by your letter as "BLIPS," "FLIPS," or "OPIS," and none reported having done so. For convenience, I will number our responses to correspond with the separately numbered requests made in your letter of December 8, 2003.

(1). The following table summarizes our billings to KPMG (for representation in business litigation unrelated to any of the tax products that appear

AO 1036344.1

Atlanta ■ Austin ■ New York ■ Tallahassee ■ Washington, DC

The Honorable Carl Levin, Ranking Minority Member
 The Honorable Norm Coleman, Chairman
 December 19, 2003
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to be the focus of the Subcommittee's concern), our billings to tax clients involving the specific tax products referenced in your letter, and total firm billings.

	1998	1999	2000	2001	2002
Total Firm Billings	Redacted by Permanent Subcommittee on Investigations				
KPMG Billings	523,237	2,597,875	2,595,166	3,757,184	3,171,167
Tax Client Billings	0	0	0	60,755	683,794

(1)(a). Our records reflect that, for the period January 1, 1998 to the present, the total amount of money paid by KPMG to Sutherland Asbill & Brennan LLP for legal representation has been \$13,920,391. The firm's total revenues for the same period were \$756,715,089.

(1)(b). For the year 2000, the total amount of money paid by KPMG to our firm for legal representation was \$2,540,364. For 2001, such payments amounted to \$3,522,581, and the corresponding figure for 2002 was \$3,447,619. The firm's total revenues for the same periods were Redacted by Permanent Subcommittee on Investigations and Redacted by Permanent Subcommittee on Investigations respectively.

(2)(a). Our review, which we believe to be complete, identified 39 separate matters in which the firm (through Mr. Cohen) has represented clients in connection with the client's involvement with a KPMG tax product or service. Some of those matters involved representation of a group of taxpayers who were involved in the same transaction. In the time available, we may not have been able to compile a completely accurate list of all client group members, but we believe that the process of identification is substantially complete. If the individual members of client groups that we have identified were counted as separate clients, the total would be 113. For the Subcommittee's convenience, we have attached as Exhibit A a schedule identifying the matters and individual group members involved, using the convention suggested by your letter of December 8 for client identification (e.g., "Matter 1, client group member 1a, 1b, and 1c"). The

The Honorable Carl Levin, Ranking Minority Member
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documents we have submitted bear Bates numbers from SAB0001 through SAB0263.

(2)(b). We have identified on Exhibit A the nature (*e.g.*, natural individual, publicly traded corporation, private corporation, or other type of entity) of each taxpayer identified in paragraph (2)(a) above as either a separate client or a member of a client group. Of the total of 113 taxpayers involved, we have identified 71 natural individuals, 3 publicly traded corporations, 16 private corporations, and 23 other types of entities.

(2)(c). Exhibit A also identifies the nature of the KPMG tax product or service with which each paragraph 2(a) matter deals. We count 8 matters involving transactions your letter describes as “BLIPS,” 31 involving transactions described as “FLIP/OPIS” (because of time limitations, we were not able to distinguish between “FLIP” and “OPIS” transactions), and 9 involving some other tax product or service.

(3)(a). Our firm’s procedures for collecting information about the reasons that clients approach our firm to seek legal services generally ask for identification of at least one reason that the client approached us, but do not guarantee that all persons who may have recommended that a particular client contact our firm will be identified in the firm’s records, and, when such persons are identified, we do not as a matter of routine capture information about them such as names, job titles, and telephone numbers. Based on our interviews of the lawyers involved in these cases, we have determined that, even where the firm’s records show a single referral source (*e.g.*, KPMG), it may have been that other referral sources contributed or predominated in the client’s decision to seek representation from our firm, but our records do not reflect that fact or identify the matters involved. Accordingly, the most accurate response we could make to a request for identification of “the” source of a client referral would be that the source of that referral is uncertain. Nevertheless, we can state that a review of our records discloses that in every instance but one at least one third party referral source was identified in connection with each matter identified in paragraph (2)(a) above, although in one instance the third parties were not identified by name. When clients referred to our firm in connection with one product later asked us (without a

The Honorable Carl Levin, Ranking Minority Member
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second referral) to represent them in connection with another product, we have considered the subsequent engagement to be a product of the initial referral.

(3)(b). We have attached as Exhibit B a list of third parties identified in our records as having referred one or more clients identified in paragraph (2)(a) to our firm. That list reflects, to the full extent we are able to locate relevant information, the identities of the third parties, the total number of such clients they referred to our firm, and contact information for them.

(3)(c). We are submitting to the Subcommittee copies (redacted to avoid disclosure of confidences that we are obligated not to disclose) of all documents we identified as relating to referrals of paragraph (2)(a) clients. Our redactions follow the convention suggested by your letter with respect to client identity; counsel or other representatives of the client are identified as "advisors."

(4)(a). We are submitting copies of all documents identified by our review in which the firm informed paragraph (2)(a) clients about its relationship with KPMG and advised the client that the firm could not provide advice or representation in connection with any actual or prospective claim against KPMG, again redacted to eliminate client confidences that we are obligated not to disclose.

(4)(b). We are providing all documents that our review identified as reflecting the firm's having informed clients that we were not in a position to provide advice or representation in connection with any actual or potential claim against KPMG. There may have been, and no doubt were, additional instances of communications of this sort to clients that were not captured in the files, but limitations of human memory prevent us from providing specific details about them.

(5)(a). The only document our review found to evidence a Kovel or similar relationship between the firm and KPMG relating to a paragraph (2)(a) client is being submitted to the Subcommittee.

(5)(b). Sutherland, Asbill & Brennan has not paid referral fees to anyone, nor has it paid any money to KPMG in connection with services that KPMG may have provided to paragraph 2(a) clients.

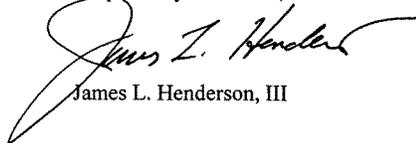
The Honorable Carl Levin, Ranking Minority Member
The Honorable Norm Coleman, Chairman
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Page 5

(6). We have been informed that former client 31a has made a claim against KPMG. Our records do not indicate that any other client or former client, after obtaining legal representation from our firm, has filed a lawsuit or other claim against KPMG relating to a KPMG tax product or service, and we are not aware from other sources of any such claims having been asserted. There could of course be instances about which we have not been informed.

(7). Our review has not produced any written analyses prepared prior to entering into the representation of paragraph (2)(a) clients of whether our agreement to defend clients against Internal Revenue Service challenges to transactions they entered into on the basis of dealings with KPMG involved a conflict of interest.

In conclusion, Sutherland Asbill & Brennan has made every attempt to fully comply with the Subcommittee's requests. Sutherland Asbill & Brennan is committed to responding fully and accurately to the Subcommittee's concerns. If you have any questions concerning our response, please do not hesitate to contact me or Barbara Van Gelder at 202.719.7032.

Respectfully submitted,



James L. Henderson, III

JLH/maa
Enclosures

Clients - KPMG products				
Matter	Client	FLIP/OPIS	BLIP	OTHER
1	1a (LLC); 1b (individual); 1c (individual); 1d (individual); 1e (individual); 1f (individual)	Y		
2	2a (LLC); 2b (individual)	Y	Y	
3	3a (individual); 3b (Trust)	Y		Y
4	4a (individual); 4b (individual)	Y	Y	
5	5a (individual)	Y		
6	6a (individual)	Y		
7	7a (individual)	Y		
8	8a (individual); 8b (Trust)	Y	Y	Y
9	9a (individual); 9b (individual)	Y		
10	10a (individual); 10b (LLC)	Y		
11	11a (individual); 11b (LLC); 11c (individual); 11d (individual); 11e (individual); 11f (individual); 11g (individual); 11h (Trust); 11i (Trust); 11j (Trust); 11k (Trust); 11l (Trust)	Y		
12	12a (individual)	Y		
13	13a (individual); 13b (individual); 13c (individual); 13d (individual); 13e (LLC)	Y		
14	14a (corporation); 14b (individual); 14c (individual); 14d (individual); 14e (individual); 14f (LP)	Y		

Matter	Client	FLIP/OPIS	BLIP	OTHER
15	15a (individual)	Y		
16	16a (individual); 16b (individual)	Y		
17	17a (Partnership); 17b (individual); 17c (individual); 17d (individual); 17e (individual); 17f (individual); 17g (individual); 17h (Trust); 17i (Trust); 17j (Trust); 17k (Trust); 17l (Trust); 17m (Trust); 17n (Trust); 17o (Trust); 17p (Trust)	Y		
18	18a (LLC); 18b (individual); 18c (individual); 18d (individual); 18e (individual); 18f (individual)	Y		
19	19a (individual); 19b (individual); 19c (individual); 19d (individual); 19e (individual)		Y	
20	20a (LLC); 20b (individual); 20c (individual)	Y		
21	21a (individual)	Y		
22	22a (LLC); 22b (individual)	Y		
23	23a (Public Corporation)			Y
24	24a (Private Corporation); 24b (individual); 24c (individual); 24d (individual)	Y		
25	25a (individual)	Y		
26	26a (individual); 26b (Trust); 26c (individual); 26d (Trust)	Y	Y	Y
27	27a (individual); 10b (LLC)	Y		

Matter	Client	FLIPI/OPIS	BLIP	OTHER
28	28a (individual); 28b (individual)	Y		
29	29a (individual); 29b (Fund); 29c (Fund)		Y	Y
30	30a (LP); 30b (individual); 30c (LLC); 30d (individual)	Y		
31	31a (individual)		Y	
32	32a (LLC); 32b (individual)	Y		
33	33a (individual); 2a (LLC)	Y	Y	
34	34a (individual)	Y		
35	35a (individual); 32b (individual)	Y		
36	36a (Public Corporation)			Y
37	37a (Public Corporation)			Y
38	38a (Public Corporation)			Y
39	39a (Private Corporation)			

Contact Information	Number of Clients Referred
John Castrucci Wachovia Wealth Management 190 River Road Summit, NJ 07901	3
Client 3	1
Client 16	1
Paul C. Dunham Kirkland, Russ, Murphy & Tapp 13577 Feather Sound Drive, Suite 400 Clearwater, FL 33762-5539	1
Julian Fortuna Intercontinental Hotels 3 Ravinia Drive Suite 2000 Atlanta, Georgia 30346	1
Steve Gertzman Ernst & Young LLP 5 th Floor 1225 Connecticut Avenue, N.W. Washington DC 20036	1
David Ivey McKenna Long & Aldridge LLP Suite 5300, 303 Peachtree Street Atlanta, GA 30308	2
KPMG	17

Contact Information	Number of Clients Referred
Jeffrey Martin Wachovia Bank, NA 191 Peachtree Street, N.E. Atlanta, Georgia 30303	1
John C. Martin PriceWaterhouseCoopers 1055 Broadway, 10 th Floor Kansas City, MO 64105-1595	1
Kenneth J. Norcross Drinker Biddle & Reath LLP 500 Campus Drive Florham Park, NJ 07932-1047	1
Andrew J. Robbins Quellos Private Capital Markets, LP 667 Madison Avenue, 25 th Floor New York, NY 10021	1
Murray Saylor The Saylor Law Firm LLP 1175 Peachtree Street, N.E. 100 Colony Square, Suite 1224 Atlanta, GA 30361	1
Bradley Seltzer Deloitte & Touche LLP 555 12 th Street Washington, DC 20004	1

Contact Information	Number of Clients Referred
Larry Schenfield Quellos Private Capital Markets, LP 667 Madison Avenue, 25 th Floor New York, NY 10021	1
Sandy Spitz Wachovia Wealth Management 401 S. Tryon Street Charlotte, NC 28202	2
Paul M. Talmadge Harris Tower, 233 Peachtree Street, Suite 950, Atlanta, GA 30327	2
Ronald Weiner Wolf Block Schorr And Solis-Cohen LLP 1650 Arch Street, 22 nd Floor Philadelphia, PA 19103	1

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY

SENATOR CARL LEVIN

for

THOMAS R. SMITH, JR.

Sidley Austin Brown & Wood

1. Please confirm that a meeting took place in December 1997, involving Paul Pringle and Eric Haueter of your firm and individuals from KPMG. Please describe when and where the meeting took place, who was present, and what was discussed.

Answer: See attached letter response.

2. For each of the KPMG tax products known as FLIP, OPIS, BLIPS, and SC2, please provide the following information:

- a) How many opinion letters were issued by Sidley Austin Brown and Wood?
- b) Please provide the total amount of fees obtained by your firm for issuing these opinion letters.
- c) In how many instances in which Sidley Austin Brown and Wood issued an opinion letter, was there direct consultation with the client?

Answer: See attached letter response.

3. Please explain how the \$50,000 minimum fee was determined for the opinion letters issued by your firm in connection with FLIP, OPIS, and BLIPS. Who, in addition to Mr. Ruble, was involved in the decision to charge that price, and how many opinion letters had to be issued at that price before your law firm recouped the expenses incurred in developing the prototype opinion letter? Based on billing records maintained by Sidley Austin Brown and Wood, how many hours were spent preparing these opinion letters? Please identify the highest amount paid by any single client for one of these letters.

Answer: See attached letter response.

4. Please describe your firm's procedure for issuing opinion letters from January 1, 1997 until the present, including any changes during this time period. Please provide copies of any documents setting out or explaining this procedure.

Answer: See attached letter response.

Permanent Subcommittee on Investigations

EXHIBIT #152

5. You testified before the Subcommittee that the firm had a "second signer requirement" with respect to the issuance of opinions. With respect to this requirement, please provide the following information:
- a) Please explain the firm's second-signer requirement as it applied to the issuance of opinions for the FLIP, OPIS and BLIPs products.
 - b) In how many cases was the second-signer requirement observed for each of these products?
 - c) In those cases in which it was observed, please provide the names of any individuals who served as a second signer.
 - d) In those cases in which it was not observed, please explain why it was not observed.

Answer: See attached letter response.

6. Did Sidley Austin Brown and Wood or Mr. Ruble enter into any alliances or agreements with KPMG at any time? If so, please explain the nature of all such alliances or agreements and provide any documentation related to any such alliance or agreement.

Answer: See attached letter response.

3001

SIDLEY AUSTIN BROWN & WOOD LLP

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WASHINGTON, D.C.

WRITER'S DIRECT NUMBER
(212) 839-5535

WRITER'S E-MAIL ADDRESS
tsmith@sidley.com

January 16, 2004

By Email and Post

Mary D. Robertson
Chief Clerk
Permanent Subcommittee on
Investigations
199 Russell Senate Office Building
Washington, D.C. 20510

Re: Responses to Supplemental Questions
Hearing on November 20, 2003

Dear Ms. Robertson:

I would like to express again my appreciation for the courtesy shown by the Subcommittee and its Majority and Minority staffs in connection with my appearance before the Subcommittee at the hearing on November 20, 2003. I write to follow up with additional information that was requested during that testimony and in the attachment to your letter of December 16, 2003. Responses are numbered to correspond to the questions in the attachment.

1. With respect to Exhibit 120, referencing a 1997 meeting of Paul Pringle and Eric Haueter, two Brown & Wood securities partners in San Francisco, with KPMG, those partners recall that Mr. Ruble asked them to meet with representatives of KPMG to discuss possible new business. A single meeting of less than one hour took place on or about December 23, 1997 at the Brown & Wood San Francisco office. It was attended by Gregg Ritchie and Randy Bickham of KPMG and by Messrs. Pringle and Haueter, who described their corporate securities practices. No subsequent meetings between them took place and, to the knowledge of those partners, no business resulted.

2. (a) With respect to the number of opinions written by Mr. Ruble in connection with the KPMG transactions, we are unable to determine a precise count because of the loss of certain of our related records in the World Trade Center. At this

Mary D. Robertson
January 16, 2003
Page 2

time, our best estimate is 62 opinions with respect to FLIPS, 72 with respect to OPIS and 180 with respect to BLIPS. We have no record of opinions having been issued by the firm with respect to any transaction referred to as "SC2."

(b) Subject to the same limitations caused by the loss of records, our best estimate of the fees obtained by our firm is \$3,418,290 with respect to FLIPS, \$6,427,637 with respect to OPIS and \$13,286,790 with respect to BLIPS.

(c) It appears that, on occasion, Mr. Ruble had direct consultations with clients and/or their advisors and representatives. However, we have not been able to confirm the extent or number of, or participants in, such consultations.

3. To the best of my knowledge, no one at our firm other than Mr. Ruble was involved in determining the fees charged for opinion letters in connection with FLIP, OPIS, or BLIPS transactions (the "KPMG transactions"). I understand that KPMG may well have communicated with Mr. Ruble. I have no personal knowledge, however, of any communications between Mr. Ruble and KPMG.

Because the amount of the fees charged for an opinion often varied, and because Mr. Ruble may not have recorded all the time he spent working on these transactions, the number of opinions necessary to recoup time value and expenses cannot be determined. Based on a review of time records, it appears that approximately 2,500 hours were recorded by Mr. Ruble with respect to the KPMG transactions.

Brown & Wood records reflect one invoice for and payment of approximately \$900,000 with regard to an opinion in a transaction. I cannot determine if this amount was ultimately for one or more investors who used the opinion. The average fee with respect to KPMG transactions was approximately \$75,000.

4. At January 1, 1997, Brown & Wood had an opinions committee and expected partners to seek the advice of that committee, or of their other colleagues at the firm, on novel or unsettled legal issues. In addition, as I said at the hearing, if an opinion was to be expressed with respect to tax matters, other than a customary opinion in connection with a municipal bond transaction, the partner-in-charge was expected to consult with a partner in the tax department, who had to approve the opinion. This policy was set forth in writing in the section of the Brown & Wood manual entitled "Firm Opinions." The copy of this section of the manual that we have been able to locate (and which I have attached hereto) bears a date in the footer of September 11, 2000. While we have not been able to locate an earlier version of the "Firm Opinions" section of the manual, it is my belief that this policy was in effect and in writing at some earlier point in time. It was my understanding that while the written policy is unclear on whether a tax

Mary D. Robertson
January 16, 2003
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partner was required to consult with another tax partner with respect to a tax opinion, it was the practice of partners in the Brown & Wood tax department to consult with a second tax partner with respect to a tax opinion.

At the Brown & Wood partner retreat in November 1999, it was announced that the firm would implement on January 1, 2000 a policy requiring review of all legal opinions by a second partner. The policy was memorialized in a memorandum from me dated October 24, 2000, a copy of which is enclosed. The tax department subsequently began discussions on adoption of specific guidelines for implementing the policy with respect to tax opinions, but these discussions were subsumed by the merger with Sidley & Austin a few months later, in connection with which the opinion policy was further revised.

At the time of the merger Sidley & Austin and Brown & Wood, the combined firm agreed that it would discontinue the practice of issuing the opinions that are of concern to this Committee. After the merger, the combined firm maintained and expanded the size of the opinion committee and further enhanced its legacy opinion policies. These policies evolved as follows:

(i) from the date of the merger through March 14, 2002, all tax opinions issued from the New York office were handled in accordance with the legacy Brown & Wood policy, as modified in accordance with understandings reached at the time of the merger,

(ii) all opinions issued after March 14, 2002 were to be reviewed by designated senior tax partners (subject to a modification on May 6, 2002 that all opinions were to be reviewed by a second partner who was not "materially involved in the transaction" and by a designated senior partner if "material tax consequences are reasonably in doubt or in which the intended tax results are a principal element underlying the arrangement"), and

(iii) all tax opinions dated after March 14, 2002 were to be posted in a tax opinion electronic file.

The purpose of this policy was to help ensure the quality and consistency of tax advice provided by the firm and to provide a library of tax opinions to which all tax lawyers could refer.

In addition, in 2003, the firm hired a tax attorney whose principal responsibility is to monitor our internal procedures respecting tax matters and our compliance with the evolving requirements of the Internal Revenue Service.

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SIDLEY AUSTIN BROWN & WOOD LLP

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Page 4

Copies of the above-mentioned Brown & Wood tax matters policy from the Brown & Wood manual, the October 24, 2000 memorandum, and memoranda reflecting the post-merger tax opinion and monitoring policies are enclosed.

5.

(a) The firm's policies and practices discussed in response 4. above applied to the KPMG transaction opinions to the extent that those policies and procedures were in effect at the time such opinions were rendered.

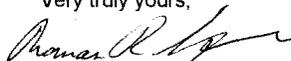
(b)-(c) It was my understanding that Mr. Ruble on occasion sought the advice of partners in the Brown & Wood tax department with respect to discrete issues arising in transactions on which Mr. Ruble was working. It is my understanding that none of the partners in the tax department considered themselves to have functioned as a reviewing partner or "second signer" on any opinion Mr. Ruble issued in the KPMG transactions.

(d) The partner in charge of a transaction was responsible for adherence to the firm's policies and practices regarding issuance of opinions. Mr. Ruble was the partner in charge on the KPMG transactions. To the extent Mr. Ruble did not observe the practices, procedures, or requirements of the firm with respect to review of opinions issued by Mr. Ruble in the KPMG transactions, I do not know why Mr. Ruble did not observe such practices, procedures, or requirements.

6. To my knowledge, Brown & Wood never entered into any formal agreement with KPMG of the type referenced in Exhibit 116. I understand, however, that KPMG identified Brown & Wood to taxpayers as a firm they or their advisors might consult respecting the KPMG transactions. I also understood that Mr. Ruble worked with KPMG and others by providing input with respect to the transactions (or modifications thereto) in anticipation of, or in connection with, providing an opinion to existing or prospective clients.

We hope this and the other information we have provided will assist the Subcommittee in its work.

Very truly yours,



Thomas R. Smith, Jr.

FIRM OPINIONS

Opinions of counsel play a pivotal role in financial and corporate transactions. Clients and members of the public may act in reliance upon such opinions. Accordingly, the preparation and delivery of Firm opinions are matters of the utmost importance.

Any communication which purports to be, or which under the circumstances may be understood to be, a Firm opinion must be in writing and must be on Firm's letterhead. Any such communication must be signed in the Firm name and may be signed only by the Partner-in-Charge of the particular matter or, in the absence or unavailability of the Partner-in-Charge, by another Partner designated by the Partner-in-Charge. A copy of each opinion should be prepared on blue copy paper and initialed by the Partner signing the original. The blue copy thus initialed should be sent to the Letter File for the transaction. If an opinion is to be expressed with respect to tax matters, other than a customary opinion in connection with a municipal bond transaction, the Partner-in-Charge shall consult with a Partner in the Tax Department, who must approve such opinion.

The form, scope and substance of any opinion which the Firm will be called upon to deliver should, to the extent reasonably practicable, be agreed upon in advance of any party entering into any agreement or taking any action in reliance upon the expectation of the delivery of such opinion. The form, scope and substance of any Firm opinion must be approved by the Partner-in-Charge.

With the exception of responses to requests for auditors regarding potential or pending litigation (see "Responses to Auditors' Letters"), which are similar to opinions in many respects, it is not Firm policy to require that Firm opinions follow or avoid any particular form, terminology or style. In order to provide some consistency in Firm opinions, and to assure that difficult or novel issues receive broad consideration, Partners-in-Charge are encouraged to review the form and substance of each Firm opinion with Firm opinions previously rendered in a similar context. The Partner-in-Charge is responsible for assuring timely completion of any appropriate review of the form, scope, substance and preparation of proposed Firm opinions.

The obligations of the Firm to its clients and to those who may act in reliance on Firm opinions require that in the preparation of Firm opinions Lawyers exercise great care, diligence, and sensitivity to ethical considerations. No Firm opinion should be delivered unless all appropriate inquiries and investigations have been completed and all conditions precedent have been satisfied or informedly waived. Each Lawyer participating in the preparation of such opinion or familiar with the subject matter thereof is responsible for timely informing the Partner-in-Charge or, in the absence or unavailability of the Partner-in-Charge, another Partner involved in the review of such opinion of any matter or issue of which such Lawyer becomes aware which may be relevant to the correctness of any conclusion proposed to be expressed in such Firm opinion or the appropriateness of the delivery of such opinion.

All Lawyers are encouraged to discuss with the Partner-in-Charge any question they may have regarding the form, scope or substance of Firm opinions, the preparation of Firm opinions and the circumstances of the delivery of Firm opinions.

MEMORANDUM TO ALL PARTNERS

Thomas R. Smith, Jr.

October 24, 2000

Re: Opinion Practice

As previously announced, the "second signer" requirement has been effective since January 1, 2000. All partners are reminded that no Firm opinion (including "litigation pending" letters to accountants) should be delivered unless a second Partner has reviewed and approved the opinion.

The Practice Groups (and, to the extent considered appropriate by the individual Practice Groups, Focus Groups and specialty sub-groups) have the latitude to implement the Firm's second signer requirement (including adopting review standards or procedures, and identifying and allocating responsibilities among second signers), subject to Management Committee review. In general,

- The Practice Group Head, billing Partner, or other person designated by the Practice Group should designate the second signer as early in the transaction as possible.
- The time of the reviewing Partner will be billed to client matter. While the reviewing Partner will not literally be a second signer of the opinion, the reviewing Partner should be identified in diary entries as the second signer.
- The branch offices should be integrated into the opinion review procedures of each Practice Group.
- There should be a regular rotation (most likely on an annual or bi-annual basis) of second signers, although that should not preclude some Partners from continuing service as second signers if they choose.

Although the individual Practice Groups, Focus Groups and specialty sub-groups may specify their own standards and procedures for opinion review, in general

- The Partners working on a transaction are encouraged to address any novel or troublesome issues with the second signer as early in the transaction as possible.
- Any reasoned opinion and any opinion involving novel or troublesome issues should be reviewed by the second signer and, to the extent that either the Partner responsible for the matter or the second signer deem appropriate, one or more

other Partners selected by the Partner responsible for the matter, in consultation with the second signer.

- The second signer should review the opinion proposed to be delivered in a matter, any accompanying officer's certificates and any other materials that he or she deems appropriate and should confirm with the Partner responsible for the matter that appropriate standard forms (or standard form paragraphs) have been used in preparing the opinion, that appropriate procedures have been followed, that appropriate consideration has been given to relevant legal issues and that suitable investigation has been made of the relevant legal issues. The second signer would not be required to review the transaction documents or to perform or supervise the research or backup work necessary to render the opinion.
- A back-up memorandum supporting the conclusion in any opinion is not required to be prepared for or by the second signer. However, if a reasoned opinion is delivered, or if any novel or troublesome issues are addressed as part of the opinion process, the opinion giver is encouraged to prepare a short memorandum for inclusion in the transaction files

In addition, the Practice Groups, Focus Groups and specialty sub-groups should be preparing standard forms of opinions or opinion paragraphs appropriate for their practices and clients.

Sidley Austin Brown & Wood

MEMORANDUM

TO: Tax Lawyers – U.S. Offices
FROM: Thomas A. Humphreys
Sharp Sorensen
RE: Tax Opinions
DATE: March 14, 2002

We are pleased to announce that Paul Wysocki has agreed to serve as a co-Vice Chair of the Opinion Committee for Tax Opinions. (Sharp will continue as a Vice Chair and will be the "other co-".)

Effective immediately, we will use the following procedures for tax opinions:

- Before opinions are delivered (or, earlier, if effectively committed to through an engagement letter or otherwise), they must be reviewed with either Paul or Sharp, who will likely also involve one or more of the other tax lawyers in the review. It is assumed that all NY-based partners will go to Paul, all Chicago-based partners will go to Sharp and all tax lawyers in the other U.S. offices will go to either Paul or Sharp. If at all possible, please give Paul and Sharp at least 48 hours "notice."
- A final signed copy of all tax opinions (and copies of descriptions of tax consequences in offering materials or merger proxies) must be delivered to both Paul and Sharp, who will undertake to deliver copies of all opinions to all tax partners. The purpose of this procedure is to share knowledge among all. In order to make this "knowledge sharing" more complete for this year, all tax partners are requested to deliver copies of opinions already issued this year to Paul and Sharp.
- Partners are strongly urged to consider a similar review for any audit letters in which views are expressed about the outcome of tax controversies.

T.A.H.
S.S.

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Sidley Austin Brown & Wood

cc: **Management Committee**
Dennis V. Osimitz, Chair – Opinion Committee

TAX OPINION POLICY

I. POLICY

Every tax opinion to be issued by a tax partner of the Firm must, prior to the time it is issued (and, if relevant, prior to the time a commitment is made as to its issuance), be reviewed by one or more other partners who are knowledgeable in the substantive areas covered by the opinion and who are not materially involved in advising on the matter that is the subject of the opinion ("Partner Review").

Tax opinions to be issued involving an arrangement in which (i) material tax consequences are reasonably in doubt or (ii) in which the intended tax results are a principal element underlying the arrangement must, in either such case, be brought to the attention of a Co-Chair/Tax of the Committee on Legal Opinions and Audit Letters. With respect to each opinion brought to his or her attention, the Co-Chair shall either (x) as a review in addition to Partner Review, review such opinion and/or designate one or more partners other than the one performing Partner Review to review such opinion ("Co-Chair Review") or (y) determine that no review other than Partner Review is required.

II. STANDARD OF REVIEW

While the correctness of a tax opinion is ultimately the responsibility of the issuing partner each partner performing Partner Review or Co-Chair Review is expected to perform reasonable due diligence as to the correctness of the tax opinion. The nature and extent of the due diligence will depend on various factors including, among others, the nature of the matter, the complexity and novelty of the legal and factual issues of the matter and the parties reasonably expected to rely on the tax opinion. Each partner performing Partner Review or Co-Chair Review must determine the appropriate nature and extent of due diligence for the particular opinion (e.g., whether the underlying operative documents should be reviewed, whether other partners should be consulted and whether the tax opinion complies with the requirements of Circular 230 as they relate to tax shelter opinions), after consulting with the issuing partner and, when appropriate, other reviewing partners and/or a Co-Chair. It is the responsibility of the issuing partner to identify to each partner performing Partner Review or Co-Chair Review any unique feature or areas for special consideration.

III. DEFINITION OF TAX OPINION

A tax opinion is any written legal advice that (i) states that it is an opinion of the Firm, or (ii) is written advice that refers to the Firm (directly by name or indirectly through use of terms such as a person's "counsel", etc.) and that concerns any tax aspect of an arrangement where the tax lawyers working on the transaction know or have reason to believe that the written advice will be relied on by a non-client or used or referred to by a client or other person to promote any arrangement or (iii) is a "tax shelter opinion" within the meaning of Circular 230.

IV. DISSEMINATION OF TAX OPINIONS

Each tax opinion, together with relevant backup materials (e.g., related disclosure, file memoranda, officer certificates, representations, etc.) must be (i) circulated to each tax lawyer in the firm (other than those in foreign offices) and (ii) filed in a central opinion file maintained by the Firm. The manner for carrying out the foregoing will be determined from time to time by the Co-Chairs.

May 6, 2002

MEMORANDUM

TO: SABW Tax Lawyers (Domestic)
FROM: Sharp Sorensen
Paul Wysocki
RE: Tax Group Opinion File
DATE: May 16, 2002

This memorandum is further to the Tax Opinion Policy dated May 6, 2002. Specifically, this memorandum provides instructions for the dissemination of tax opinions under Paragraph IV of the Policy.

Each tax opinion together with related supporting materials (including, for example, as relevant, related disclosure, representation letters, officers' certificates, file memoranda, and similar materials) must be distributed as follows within ten days after the date of the opinion (or another date agreed to by a Co-Chair):

- (1) Tax opinions and related supporting materials must be posted to an electronic "Tax Group Opinion File" in accordance with the instructions attached as Attachment A. The material filed electronically need not include original signatures, provided the requirements set forth below are met.
- (2) The opinion and related supporting materials must be submitted, along with a memorandum in the form attached as Attachment B (document #2421816), to Laura Coleman in the Chicago office for inclusion in the Firm's Master Opinion File. *The opinion and related materials submitted must include signatures as relevant.*

Please use your best judgment in deciding which items should be filed along with each opinion, keeping in mind the purposes of the foregoing requirements: (i) to create an electronic file that is useful in documenting the review procedure and in enhancing consistency by providing precedents for similar transactions and issues, and (ii) to create a paper file documenting the review procedure and providing a permanent record of the opinion and related supporting materials (including necessary signatures, etc.).

Please call either of us with any questions you may have.

S.S.
P.R.W.

May 9, 2002

INSTRUCTIONS FOR FIRM-WIDE DISTRIBUTION OF TAX OPINIONS

All Tax Opinions and related documents are required to be posted to an electronic "Tax Group Opinion File" maintained as part of the Firm's computer system. Instructions are provided below for each SABW tax lawyer in each domestic office, and his or her secretary, to add a "Tax Group Opinion File" icon to his or her desktop. Through the file represented by the icon, tax lawyers and their secretaries can post tax opinions and related documents and review all tax opinions and related documents posted, as described below. If you have any questions regarding the following, call Kim Deuerling (x37616) and she will attempt to resolve any questions you may have.

I. Installing the Icon

- The icon is being sent to each lawyer and secretary by e-mail;
- Right click on the icon shown in the e-mail;
- Click "save as";
- A "save attachment" box will open and at the top there will be a box with a drop-down arrow next to it;
- Click the arrow and then click on "desktop" (the first item);
- A "save attachment" box will appear -- click on "save".

The icon should then be on your desktop.

II. Posting Opinions: If you want to post an opinion to the Opinion File:

- Double click the Tax Group Opinion File icon on your desktop;
- The display page will appear;
- Click the "post" icon shown in the upper left portion of the display page (the post icon has a picture of a pin and a "post-it") to open the posting page;
- The template on the posting page calls for certain information. After entering the information, click the "post" icon on the posting page to send the information to the Opinion File. (If you wish to correct any entries after the information is sent to the Opinion File, call Kim Deuerling promptly after the information is sent). When entering the information, please follow the formatting instructions below. The template calls for the following information:

Synopsis: Please provide a brief summary of the opinion. The synopsis should be sufficient to permit those reviewing the Opinion File to put the opinion in context. The synopsis should generally be somewhere from four to five words to two sentences.

To facilitate a review of the opinions submitted, please attempt to use consistent terminology in this field, particularly in the case of the first word. For example, each synopsis of a REMIC opinion should probably start with the word "REMIC", each synopsis of a tax-free reorganization opinion should probably start with the word "Reorganization", each tax-exempt bond opinion should probably start with the word "Tax-Exempt", etc.

Date of Opinion: Please enter the date of the opinion in the format mm/dd/yy (for example 05/01/02).

Issuing Partner and Associate: Please list each tax partner and associate involved in the issuance of the opinion (other than those performing Partner Review or Co-Chair Review). Please list by last names only, with partner's name listed first.

Reviewing Partner/Co-Chair: Please list the name of the partner performing Partner Review and, if applicable, Co-Chair Review. List as the Co-Chair the Co-Chair and/or other partners performing Co-Chair Review; do not list a Co-Chair if the determination was made that no Co-Chair review was to take place. Please list by last names only, with the partner(s) performing Partner Review listed first.

Client Name: Please indicate by name the client for which the opinion was rendered. Use full names, not abbreviations or initials (for example Telephone and Data Systems, not TDS). No number is required.

Matter Name: Please indicate by name the matter with respect for which the opinion was rendered. No number is required.

Attachments: Please post in the area provided the opinion and related supporting material, documents or other materials as described in the memorandum to which these instructions are an attachment. *Scanning may be required for items not on the Firm's system.*

In order to attach items to the posting page, use the following steps:

- E-mail yourself the document you wish to attach;
- Open the e-mail and right click on the document;
- Click "copy";
- Go to your posting page, and right click in the "Insert Attachments Here" box;
- Click "paste";

- Click the "post" icon shown in the upper left hand portion of the posting page to send the information to the Opinion File.

III. **Reviewing the Opinions:** If you wish to review the information posted with respect to any tax opinion:

- Double click the Tax Group Opinion File icon on your desktop to open to the display page;
- On the display page, the "Current View" box (white box at the top of the page) should show "Tax Group Opinion." If it does not, click on the drop-down arrow next to the box. "Tax Group Opinion" should appear;
- On the display page, double click the entry line for the tax opinion that you want to review.

Notice that by clicking on the various column headings, you can sort the entries using the indicated criteria.

* * *

SIDLEY AUSTIN BROWN & WOOD

MEMORANDUM

TO: All U.S. Tax Lawyers
FROM: Tom Humphreys
Sharp Sorensen
CC: Paul Wysocki
RE: Tax Opinion Policy Effective Date
DATE: June 7, 2002

This memorandum is further to the general tax opinion policy each of you received on March 14, 2002 and the subsequent tax opinion distribution instructions you received on May 16, 2002.

Effective Date of Tax Opinion Policy: March 14, 2002: The tax opinion policy and the distribution instructions referred to above are applicable to all tax opinions dated on or after March 14, 2002. There are no "grandfather" rules. To the extent you have not already done so, please post and file all such opinions previously issued no later than June 28, 2002.

Tax Opinions Issued Prior to March 14, 2002 but on or After May 1, 2001: In accordance with prior discussions:

- Domestic Offices (other than SF or NY): Tax opinions issued between May 1, 2001 and March 14, 2002 from domestic offices (other than San Francisco or New York) should have been dealt with in accordance with the legacy Sidley & Austin tax opinion policy dated March 6, 1998, as modified in accordance with understandings reached at the time of the SA/BW merger. Accordingly, to the extent not previously submitted, a copy of each such opinion (and related materials) should be submitted in accordance with the 1998 policy, using a cover sheet in the relevant form attached, not later than June 28, 2002. Opinions and materials should be submitted to Sharp Sorensen.
- San Francisco and New York: Tax opinions issued between May 1, 2001 and March 14, 2002 from the San Francisco or New York offices should have been handled in accordance with the legacy Brown & Wood opinion policy, as modified in accordance with understandings reached at the time of the SA/BW merger. In addition, all such tax opinions issued between January 1, 2002 and March 14, 2002 (and related materials) should be sent to Claudette Clark (NY), using a cover sheet in the relevant form attached, not later than June 28, 2002.

T.A.H.
S.S.

3016

STATEMENT FOR THE RECORD

TOM LOPEZ
Chief Investment Officer
Fire and Police Pension System of Los Angeles

I am Tom Lopez, the Chief Investment Officer for the Fire and Police Pension System of Los Angeles. I have worked for the City and Department for over twenty-three years and have been Chief Investment Officer for over ten years. I am involved in the gifts to the system because the donations were in the form of private equity.

In 1999 I got a call from Larry Manth and Doug Duncan. They said they worked for KPMG and were representing clients that were interested in making a donation to the pension fund. This was the first time that we had ever heard from them or KPMG.

The KPMG people came to the office and described the donation. Clients of theirs would donate non-voting shares of S-Corporation stock that the clients owned and would take a tax deduction for the donation. After we had owned the stock for several years we would then be able to sell the stock back to the owner and receive cash for the stock at a price determined by the appraised value of the company at that time in the future. KPMG estimated that each donation might generate \$50,000 to a few hundred thousand dollars for the Fund.

After some more calls a meeting with the Board was arranged on December 16, 1999. KPMG made a presentation the Board describing the same proposal that they described to me.

The Board voted to approve the gifts subject to a clearance from the Board's outside tax counsel. The opinion letter approving the transactions arrived a few weeks later and our first donations of S stock were received just before end of 1999.

We received 28 of these donations, 11 of them have been sold. One was canceled and 16 have not been sold yet. None of donors had any prior relationship with the Fund. The Fund has realized approximately 5.9 million dollars from sales and dividends to date. Eight of the corporations have paid dividends to the Fund.

The donations are recorded on the Fund's books at a zero cost and a zero market value until the stock is actually sold. At that time the sale proceeds are recorded. Before donation the Donors have the stock appraised by someone that specializes in business appraisals. It is appraised once more prior to the sale by the donor and their appraiser.

Permanent Subcommittee on Investigations
EXHIBIT #153

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR CARL LEVIN
for
THOMAS LOPEZ
Los Angeles Department of Fire & Police Pensions

1. In the submission you made to the Subcommittee, you wrote:

“The KPMG people came to the office and described the donation. Clients of theirs would donate non-voting shares of S-Corporation stock that the clients owned and would take a tax deduction for the donation. After we owned the stock for several years we would then be able to sell the stock back to the owner and receive cash for the stock at a price determined by the appraised value of the company at that time in the future.”

a) Who from KPMG met with the Pension Fund and described the transaction?

Answer: Larry Manth and Doug Duncan.

b) When did the meeting with the KPMG people take place?

Answer: Fall 1999.

c) Please describe in detail the basis for your statement that:

“After we owned the stock for several years we would then be able to sell the stock back to the owner and receive cash for the stock at a price determined by the appraised value of the company at that time in the future.”

Answer: Sale of the stock back to the donor was part of the KPMG presentation to the Board and written into the donor stock agreements. Copies of both have been provided.

i) Did KPMG’s representatives tell or represent to the Pension Fund that after the Pension Fund had owned the stock for several years the Pension Fund would then be able to sell the stock back to the owner? If so, who from KPMG said that or made that representation? If not, why did your submission to the Subcommittee represent that fact?

Answer: Yes. Larry Manth.

- ii) Was it your understanding that it was the expectation of the KPMG representatives that the shares would be redeemed by the owner?

Answer: Yes.

- iii) Did the Pension Fund expect that the shares would be redeemed by the owner?

Answer: Yes.

2. In the submission you made to the Subcommittee, you wrote:

“[The Fire and Police Pension System of Los Angeles] received 28 of these donations, 11 of them have been sold. One was cancelled and 16 have not been sold yet. None of the donors had any prior relationship with the Fund.”

- a) Please describe the due diligence efforts undertaken by the Pension Fund to review and assess the S-Corporations and the donors.

Answer: The Fund told KPMG that we would accept donations only from respectable companies given that the Fund is for police officers and firefighters.

- i) Please describe the due diligence activities the Pension Fund undertook on its own, and whether such due diligence was performed before or after it agreed to accept the donations.

Answer: The plan relied upon KPMG to make sure the donations were from a legitimate business.

- ii) If the Pension Fund relied on other parties to conduct any due diligence activities, please identify those due diligence activities, who performed them and whether those due diligence activities were performed before or after the Pension Fund agreed to accept the donations.

Answer: KPMG had been asked to screen donors and companies. This occurred before acceptance of the donation. Prior to the acceptance of the first donation, the matter was referred to the Board's outside fiduciary/tax counsel to determine if it was legal for the fund to accept these donations. A copy of the legal opinion has been provided to the Subcommittee.

- iii) **Did the Pension Fund learn the identities of both the S-Corporations and the donors prior to agreeing to accept the donations? If so, when did it learn the identities? If not, why not, and when, if ever, did it learn the identities?**

Answer: Yes. The name of the donor and company was revealed to the plan either shortly before the agreements arrived or when the agreements were delivered.

- b) **Of the 28 donations received by the Pension Fund, please identify all S-Corporations where the representatives of the Pension Fund had direct contacts with the donor by telephone or in person.**

Answer: I remember having direct contact with either the donor, attorney for the donor or an employee of the donor for the following companies: Award Homes, S&N Holding Company, ESRI, Santa Clara Valley Housing, Myers East Bay, Glenn Elliott Futrell, Clinical Laboratories, Network Telephone Services, West Cost Homebuilders, Inc., Sierra Pacific Properties, Inc., Century Plaza Development Corporation.

- c) **Of the 28 donations received by the Pension Fund, in how many instances did the Pension Fund sign a redemption agreement that accompanied the donation of the S-Corporation stock? Please identify all S-Corporations for which the redemption agreement that accompanied the donation of the S-Corporation stock provided the S-Corporation with the right of first refusal to buy back its shares if the Pension Fund decided to sell them. Why did the Pension Fund agree to such a right?**

Answer: All of the donated stocks included a redemption agreement and a right of first refusal. It was part of the transaction structure.

- d) **Please identify each of the 16 S-Corporations in which the Pension Fund still holds non-voting shares, and explain why its shares have not been redeemed.**

Answer: Listed on the donated stock summary sheet that has been provided. The date of the redemption window has not yet been reached.

- e) **If the Pension Fund has retained ownership of any of the donated S-Corporation shares beyond the time period established in the redemption agreement:**

- i) **Please identify each such S-Corporation.**

Answer: National Telephone Service.

- ii) **How long beyond the holding period identified in the redemption agreement has the Pension Fund retained the shares?**

Answer: 11 months.

- iii) **Why and at whose initiative have the shares been retained beyond the time period established in the redemption agreement?**

Answer: National Telephone Service asked for more time before the redemption because the donors did not have the money to buy the stock back.

- iv) **Was there an extension clause in any redemption agreement that was triggered? If so, please identify each instance (and each S-Corporation) and who triggered the extension. In any of these instances, was there a clause in the redemption agreement that required or allowed an extension of the holding period in cases where distributions or certain amounts of distributions were made to the Pension Fund? If so, please identify each S-Corporation whose redemption agreement contained such a clause.**

Answer: Yes. Award Homes, Century Plaza, Denova Homes, Santa Clara Valley Homes, Sierra Pacific, S&N all triggered by the company involved.
Yes. The same companies.

3. In the submission you made to the Subcommittee, you wrote:

“Eight of the corporations have paid dividends to the Fund.”

For each of the eight S-Corporations that provided dividends to the Pension Fund:

- a) **Please provide the name of each S-Corporation, the date and amount of each dividend payment, and the annual amount of income allocated (but not distributed as dividends) to the Pension Fund during the years in which the Pension Fund was a shareholder of the S-Corporation.**

Answer: Dividends are listed on the summary document you have. The Fund does not have information in our records on the amount of income allocated to the Fund.

- b) **With respect to the dividends received by the Pension Fund, did the Pension Fund ever examine whether or not the per share amount of the dividends distributed to the Pension Fund were less than the per share amount of the dividends or other distributions issued by the S-Corporation prior to the donation of the shares to the Pension Fund? If not, why not? If so, please identify any instance where the per share amount of the dividends distributed to the Pension Fund was less than the per share amount of the dividends or other distributions issued by the S-Corporation prior to**

the donation of the shares to the Pension Fund, and explain why that situation occurred. What was the explanation provided for the reduction in the per share amount? If the S-Corporation issued one or more resolutions limiting or suspending distributions, please provide a copy of each such resolution.

Answer: No, did not have any reason to.

- c) What happened to the funds allocated by the S-Corporation to the shares of S-Corporation stock held by the Pension Fund that were not distributed to the Pension Fund?

Answer: The Fund does not have information.

4. For each of the twenty S-Corporations that did not provide any dividends to the Pension Fund:

- a) What was the annual amount of income allocated (but not distributed) to the Pension Fund?

Answer: The Fund does not have information in our records on the amount of income allocated to the Fund.

- b) Did the Pension Fund ever examine whether or not the S-Corporation issued dividends or made other distributions prior to the donation of the shares to the Pension Fund? If not, why not? If so, please provide the reasons why no distributions were made after the S-Corporation shares were donated to the Pension Fund.

Answer: No. No reason to.

- c) What happened to the funds allocated by the S-Corporation to the shares of S-Corporation stock held by the Pension Fund that were not distributed to the Pension Fund?

Answer: The Fund does not have that information.

5. With respect to each donation in which the Pension Fund agreed to return or allow the S-Corporation to redeem the shares donated to the Pension Fund prior to the conclusion of the holding period established in the redemption agreement, or to allow the donor to cancel the donation:

- a) Please provide the name of any S-Corporation involved.

Answer: Capital Drywall Inc. (gift revoked), Kett Engineering Corp., Skidmore Holdings, SY Technology Inc. (purchased by another company), John L. Sullivan Investments.

- b) Please identify who sought the early return, redemption or cancellation (the S-corporation, the donor, or the Pension Fund).

Answer: The donors.

- c) If the return, redemption or cancellation was sought by the donor or the S-Corporation, please provide who approached the Pension Fund on the matter. If KPMG approached the Pension Fund, please provide the names and job titles of the individuals.

Answer: KPMG acted on the donors behalf to arrange the transactions. Douglas Duncan, Manager was the person from KPMG that made the arrangements.

- d) Please provide the reasons why the early return, redemption or cancellation was sought and why the Pension Fund agreed to it.

Answer: Except for SY Technology Inc. and John L. Sullivan Investments the companies told us that they had run into financial difficulties. I do not remember why or if John L. Sullivan Investments gave a reason. The Fund agreed to these early returns because a dollar in hand is worth two in the bush.

- e) Please describe any role played by KPMG in the early return, redemption or cancellation and the names of the KPMG employees involved.

Answer: KPMG acted on the donors behalf to arrange the transactions. Douglas Duncan, Manager was the person from KPMG that made the arrangements.

- f) Please describe the direct contacts that the Pension Fund had with the donor or the S-Corporation or their agents related to each such matter.

Answer: I spoke to some of the donors/agents by phone finalizing the purchases, but I don't remember which ones.

- g) **Please describe the remuneration or other benefits, if any, that were promised or provided to the Pension Fund for agreeing to the early return, redemption or cancellation, and the names of the individuals or entities that provided that remuneration.**

Answer: Except in the case of Capital Drywall, the stock was bought back and payment received. Payment was made by the original donor.

- h) **In any instance in which the early return or redemption of the S-Corporation stock was due to the proposed purchase of the S-Corporation or its shares by an outside buyer:**

Answer: SY Technologies, Inc.

- i) **Please provide the identity of the purchaser.**

Answer: Don't have that information.

- ii) **Please provide any analysis performed by or provided to the Pension Fund that shows that it was in the best financial interests of the members of the Pension Fund to allow the early return or redemption of the S-Corporation shares. If the Pension Fund did not perform or receive such an analysis, how did it determine that it was in the best financial interests of its members to allow the return or redemption of the stock rather than wait until the end of the holding period?**

Answer: KPMG said that the price we would receive reflected the new higher value of the firm.

- iii) **What was the price per share received by the Pension Fund for the S-Corporation stock it possessed, and what was the per share price received by the S-Corporation when the shares were sold to the outside purchaser?**

Answer: \$2.70 per share. Don't have that information.

- iv) **Please provide a description of the role of KPMG in the early return or redemption process and the names of the KPMG employees who were involved.**

Answer: KPMG handled some of the paperwork, shuttling it back and forth. It was mainly Douglas Duncan, although there were other people working for KPMG that would drop off or pick up paperwork as well. Bob Huber was one and I think there were two or three others but I don't remember their names.

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Please provide all documentation related to your responses to Question 5.

Answer: The Subcommittee has the documentation the Fund had on these transactions up to the time that the original request for information was made. For consistency, the answers to the questions are as of the date of the hearings. As an update, over the last two weeks of December three donors have purchased back the stock, one of them early, and one donor revoked their gift.

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RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY
SENATOR MARK DAYTON
for
HONORABLE MARK EVERSON
Commissioner
Internal Revenue Service

1. **Provide an update of the administration of the current tax shelter reporting requirements, evaluate its efficacy, and share your views on what would improve enforcement.**

Answer: The new disclosure regulations expand the types of transactions to be disclosed and we are seeing an increase in disclosures as a result of the regulations. This should enhance our ability to detect abusive transactions earlier. Proposed legislation to institute disclosure penalties would be a desirable tool to encourage reporting and improve the quality of disclosures filed.

Existing registration requirements are less broad than the disclosure requirements. Parity between registration requirements and disclosure requirements, as in proposed legislation, would promote the early identification of abusive transactions.

Registrations are required to be filed prior to the date of marketing the transaction. As a result, many registrations are incomplete. There is no requirement to perfect them after the product is marketed and sold. Proposed legislation requiring a complete registration would be useful to assist in the early identification of abusive transactions.

2. **Share your insights on whether the licensing (and therefore monitoring through code of conduct and ethical guidelines) of tax preparers will address the problem of tax shelters.**

Answer: Attorneys, Certified Public Accountants and Enrolled Agents are authorized to represent taxpayers before the Internal Revenue Service, and are subject to a code of ethical conduct set out in Treasury Department Circular 230 when they do so. Attorneys and Certified Public Accountants who provide tax preparation services but do not represent taxpayers before the Internal Revenue Service may not be covered by Circular 230 standards, but are subject to standards set by their State licensing authority.

Circular 230 includes standards for preparation of tax shelter opinions that were written to address the shelter abuses of the early 1980's, and do not effectively address the problems highlighted in recent hearings on the tax shelter industry. Proposed amendments to bring Circular 230 up to date will be issued shortly, adding

another dimension to the overall IRS strategy for addressing tax shelter abuses. When adopted, the new Circular 230 standards for tax shelter opinions will raise the bar for attorneys, Certified Public Accountants and enrolled agents who are covered by Circular 230. We also expect that market forces will drive others who are not covered by Circular 230 to comply with those standards, both as a matter of sound business practice and to meet client expectations.

Investors in tax shelters such as those described in recent hearings tend to be high net worth individuals and corporations, who typically have their returns prepared by attorneys and/or Certified Public Accountants. We have not considered the effect of licensing preparers on tax shelter problems, as the issue of licensing has generally been discussed in the context of preparers who serve "average" taxpayers.

3. Address the means by which the practice of contingency fee arrangements made between tax consultants and taxpayers can be prohibited and enforced.

Answer: Many business transactions are based on contingency fee arrangements. Some of these are abusive, but many are not, so it may be difficult to entirely prohibit them. However, identifying this practice as an indicator of an abusive transaction could be a deterrent to using them in connection with the promotion of a tax shelter, especially if penalties were specifically tied to fees received.

4. Discuss whether the problem of inversion transactions can be/is addressed by the tax-shelter reporting regulations. If not, then what are the essential elements that legislation should address.

Answer: Corporate restructuring does not fall under the existing registration or disclosure reporting requirements and is probably too broad of a category to include. We cannot comment on the essential elements of legislation that would address this problem because tax policy is not within the jurisdiction of the IRS, but rather the Treasury Department's office of Tax Policy.