July 30, 2024

Mr. Grid Glyer
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Certain Issues Relating to Debt Reallocations in Connection with Divisive Reorganizations Reflected in Rev. Proc. 2024-24 and Notice 2024-38

Dear Mr. Glyer:

The Securities Industry and Financial Markets Association ("SIFMA")[1] welcomes the opportunity to submit comments on certain aspects of the recently issued Rev. Proc. 2024-24 (the "Rev. Proc.") and the associated Notice 2024-38 (the "Notice"), relating to IRS standards for issuing private letter rulings under Section 361[2] in connection with so-called debt-for-debt and debt-for equity exchanges, as well as leveraged distributions, in each case in connection with divisive reorganizations under Sections 368(a)(1)(D) and 355.

SIFMA's interest in these issues arises not from the prospect of any of our members engaging in a divisive reorganization, but rather because our members regularly provide financing and other assistance to our clients in executing divisive reorganizations, particularly in connection with transactions intended to allocate debt and other liabilities of Distributing[3] between Distributing and Controlled. We particularly appreciate the invitation for "Intermediaries" like our members to provide feedback to "help ensure that future [IRS] guidance is responsive to the business and market-risk considerations that inform the mechanics of intermediated exchanges and direct issuance transactions."[4]

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).
[2] All Section references are to the Internal Revenue Code of 1986, as amended (the "Code"), except as otherwise indicated.
[3] We use the defined terms set forth in the Rev. Proc., unless otherwise indicated.
[4] The Notice Section 2.02(5).

I. Executive Summary

Tax-free reallocation of liabilities has long been a central component of divisive reorganizations. As the IRS's views of such transactions – and concerns about potential abuses of such transactions - have evolved, guidance, both formal and informal, as to the basis on which the IRS will issue private letter rulings in this area has changed over time. The Rev. Proc. and Notice represent the IRS's latest attempt to provide such guidance, including provisions that represent a departure from prior practice. SIFMA members are significant participants in these transactions, as lenders, underwriters and intermediaries, and it is from this perspective that we offer some comments on this guidance. Specifically, the IRS must:

- Reconsider its rejection of the so-called "direct issuance" transaction.
- Offer more specific guidance on so-called Intermediated Transactions, taking into account the incremental difficulty and costs of such transactions, as compared to Direct Issuance transactions.
- Make clear that debt issued by Distributing to refinance pre-existing debt should be treated as a continuation of that debt.
- Adopt less restrictive rules than those proposed in the Rev. Proc. regarding the incurrence of new debt by Distributing.
- Establish more realistic guidelines for information and documentation to be provided in connection with ruling requests for Intermediated transactions, recognizing that much of that information and documentation will not be available until such transactions are actually entered into.

II. Detailed Comments on the Proposals

As provided in the Treasury Regulations, "[t]he purpose of the reorganization provisions of the Code is to except from the general rule [of gain recognition] certain specifically described exchanges incident to such readjustments of corporate structures made in one of the particular ways specified in the Code, as are required by business exigencies and which effect only a readjustment of continuing interest in property under modified corporate forms."[5] For any business, but particularly for the large, complex, multinational, often widely-held and publicly-traded corporations that are our core client base, this readjustment will necessarily entail

[5] Treas. Reg. Section 1.368-1(b). *See also* Treas. Reg. 1.355-2(b) ("The principal reason for this business purpose requirement is to provide nonrecognition treatment only to distributions that are incident to readjustments of corporate structures required by business exigencies and that effect only readjustments of continuing interests in property under modified corporate forms.")

an appropriate allocation of debt and other liabilities between the parties. The provisions of Sections 357 and 361 are generally intended to facilitate that allocation on a tax-free basis, subject to the limitations provided therein.[6]

The IRS is understandably and appropriately concerned that, without proper guardrails, some taxpayers could use the form of a divisive reorganization to pursue a transaction that could be more properly characterized as a taxable sale (*e.g.*, a new borrowing shortly before a spin-off, with Distributing keeping the cash and either the debt assumed by Controlled or satisfied with Controlled securities or stock). The intention of those guardrails should be to ensure that the transactions will "result in an allocation of historic Distributing Debt between Distributing and Controlled."[7] That was the purpose of Rev. Proc. 2018-53, and the purpose of Rev. Proc. 2024-24 is to further strengthen those protections. Some of the positions reflected in the Rev. Proc. and the Notice, however, may go too far in attempting to forestall abusive transactions, with the result that legitimate, arm's-length transactions intended to achieve an appropriate allocation of liabilities between the parties to the divisive reorganization will be discouraged, and thus are arguably at odds with the purpose of the statutory and regulatory scheme.

Accordingly, we propose that the IRS modify its guidance, as follows:

- Reinstate the use of so-called Direct Issuance transactions, possibly with a longer required minimum hold period and other modifications.
- If the IRS is not prepared to revisit its guidance on Direct Issuance transactions but is prepared to countenance Intermediated transactions in which a bank purchases Distributing Debt from third parties and then enters into an exchange agreement with Distributing, provide realistic guidelines for how long the bank must hold the debt before it can enter into the Exchange Agreement.
- Clarify that debt that is incurred after the Earliest Possible Date to refinance debt that was outstanding prior to the Earliest Possible Date should be treated for all purposes as a continuation of the original debt.
- Adopt less restrictive rules on Distributing's ability to incur new debt after it has caused Distributing Debt to be assumed or satisfied in a transaction governed by Section 357 or 361.

[6] *See* discussion at pp. 4-6 NYSBA Tax Section Report 1491 (Mar. 4, 2024) (the "NYSBA Report") regarding the legislative history and purposes of Sections 361(b)(3) and (c)(3).
[7] Rev. Proc 2018-53. We understand that Rev. Proc. 2024-24 supersedes Rev. Proc. 2018-53, but we assume that the basic policy quoted above persists.

- Modify certain aspects of Representation 20 under the Rev. Proc., which calls for the taxpayer to provide information that will not, as a practical matter be available at the time a ruling request is submitted, and may well not be available by the time a ruling is issued.

A. Discussion of Specific Proposals

1. Direct Issuance Transactions— With so much corporate debt — both term loans and bonds — being publicly traded, it would be impractical if not impossible for a taxpayer undertaking a divisive reorganization to access the debt-for-debt and debt-for-equity exchange rules through a direct tender offer to holders. A public tender would invoke application of the tender offer rules under the Securities and Exchange Act of 1934, resulting in substantial expense and delay, as well as an uncertain outcome.[8] Moreover, even in a more narrowly focused offering that did not invoke the tender offer rules, Distributing would be faced with negotiating an acceptable premium to induce a holder to tender, using a currency — the Controlled stock or securities — that did not have an established market value. In addition, many institutional holders of corporate debt, such as bond funds, under their organizational documents, are not permitted to hold equities, and thus could not in any event participate in a debt-for-equity exchange.

It is because of these difficulties that market participants have for many years sought a more manageable alternative that the IRS would find acceptable. From 2006 to 2018, taxpayers relied on so-called "5 and 14" rulings from the IRS — an Intermediary would purchase Distributing Debt for cash, hold it for 5 days before entering into an exchange agreement, and then complete the exchange 9 days later. The bank would, in turn, place the Controlled stock or securities into the market through a public offering or private placement. Such transactions present significant challenges and complexities for issuers of Distributing Debt trying to coordinate a repurchase of that debt with a contemporaneous disposal of Controlled Debt or Equity. For example, in many cases, Distributing will be subject to significant blackout periods during which a disposal of Controlled stock or securities would be in violation of the securities laws, because they are in possession of material non-public information regarding quarterly earnings releases and other information. It is challenging enough to time a simple disposal of Controlled stock or securities at an appropriate price within the remaining available windows and subject to the IRS ruling requirement that the transaction happen within twelve months of the spin-off, or sooner; to coordinate that with selecting and negotiating a repurchase of Distributing Debt multiplies the difficulty of achieving the sanctioned result of reallocating debt between Distributing and

[8] Section 14E and Regulation 14E promulgated thereunder would require a 20 business day duration for a debt-for-equity tender offer and based on current market practice, a 10 business day duration for a debt-for-debt tender offer, introducing all kinds of viability and pricing volatility issues when dealing with securities of two different corporations.

Controlled. In addition, because the internal risk management and operational challenges of purchasing debt using a bank's balance sheet can be daunting,[9] some institutions were loath to expose themselves for a 14 day period — and possibly longer if the exchange was never done and the bank had to sell the debt — to an investment that was effectively being made as an accommodation to a client, but without the client's ability to protect the bank against loss. In theory the bank might hedge the risk. That would be an incremental cost, passed on to the borrower, but more importantly, there often will not be a sufficient depth of market participation to sustain a hedging transaction. In addition, some institutions were very reluctant to hold any debt over a quarter end, because of the resulting capital charges. Under a 5/14 construct, this materially restricts the windows during which a debt-for-debt or debt-for-equity exchange can be effected.

After the issuance of Rev. Proc. 2018-53, parties began to rely on Direct Issuance transactions: a bank makes a short-term loan to Distributing; Distributing uses the proceeds to repay Distributing Debt; one day later the parties enter into an Exchange Agreement, with pricing set on the date the Exchange Agreement is entered into.[10] This was a much more manageable process. Because the timing of the satisfaction of Distributing Debt held by third parties was decoupled from the timing of disposal of the Controlled stock or securities, while still fulfilling, on its face, the statutory requirements of Section 361, Distributing's treasury function could optimize the terms on which the Distributing Debt was satisfied, as well as the terms on which the Controlled stock and securities were disposed of. Similarly, with the bank's exposure limited to a short-term loan to a known credit, the holders of Distributing's debt being paid in cash, and a pricing mechanism that insured the Distributing Debt would be satisfied based on a market valuation, market participants were prepared to participate in these transactions at lower fees.

We recognize the IRS's concern that the short duration of the loan may indicate that the loan should be disregarded, and the transaction simply treated as a sale of the Controlled stock or securities for cash in a fully taxable transaction. These concerns, however, are not well-founded, particularly in the context where the lender is a regulated financial institution, such as our members. Others, including the NYSBA Tax Section, have provided you with extensive technical arguments as to why the short-term loan used in a Direct Issuance transaction should be respected as debt, and why the step-transaction doctrine should not be applied to disregard the loan or recharacterize the transaction as a sale of the Controlled stock or securities in the public

[9] For example, there is a divergence between the legal entities within a banking group that can own and/or sell equity versus those that can issue debt pursuant to banks' charters and as a result of regulatory overlay. A regulated bank typically has restrictions that make its ability to effect the Intermediated exchanges more challenging.

[10] The pricing will be based on the bank's pre-marketing of the securities or the trading price of Controlled stock, which it will subsequently sell in a public offering or private placement.

offering or private placement as a sale by Distributing.[11] We will not repeat those arguments here, although we do agree with them. But beyond the technical analysis, it is important for the IRS to understand that from a lending institution's point of view, the short-term loan is treated just like any other loan. Credit Committee approval, including a full credit analysis of Distributing is required, just as it is for a multi-year term loan. The short tenor of the loan is certainly taken into account, but the bank must evaluate the transaction on the basis that the Exchange Agreement may never be entered into. The bank is fully exposed to the credit risk of Distributing, and even with a relatively short duration, the magnitude of the typical transaction — hundreds of millions of dollars —ensures that the banks will not treat the transaction as something to be disregarded or taken lightly.

The advent of the Direct Issuance transaction made the completion of debt reallocations in connection with divisive reorganizations much more practicable. Financial institutions are well versed in assessing the credit risk and appropriate terms for loans, including short-term loans, and they are equally well versed in undertaking public offerings and private placements of debt and equity. The Direct Issuance transaction plays to those strengths, and allows Distributing to appropriately manage the terms and timing of the disposal of Controlled stock and securities while satisfying Distributing Debt and allowing the banks to manage the risk of entering into large transactions from their own balance sheets. Equally importantly, the Direct Issuance transaction affords Distributing a flexibility and efficiency in executing its liability management objectives which are not present in Intermediated transactions (discussed below). For example, although Distributing may have the ability to call certain types of debt at par (*e.g.*, Term Loan B), if a bank tried to repurchase such debt on the market in furtherance of an Intermediated transaction, the bank would almost certainly be required to pay a premium. In addition, affording Distributing a meaningful time period (*e.g.*, 12 months after the Distribution) in which to use the proceeds of a Direct Issuance transaction to retire Distributing Debt enables Distributing to leave certain longer dated instruments in place (versus having to tender for them) and helps avoid friction costs associated with a bond tender.

In short, the Direct Issuance transaction opened up the market for corporations to get the full benefit of the flexibility provided by the Code to undertake divisive transactions, including the ability to appropriately reallocate Distributing Debt between Distributing and Controlled. The guidelines provided by Rev. Proc. 2018-53 ensured that only historic Distributing Debt was satisfied, and that the lending and exchange transactions were on arm's-length terms. The guidelines are not perfect, and perhaps they might be reinforced. For example, some modest extension of the period between funding the loan and entering into the Exchange Agreement may

[11] The NYSBA Report pp. 23-4.

create greater analytical comfort. Perhaps there might be tougher requirements for the counterparty to the transaction, with a presumption in favor of a regulated financial institution. Such a presumption would provide comfort to the IRS that, with the scrutiny of external regulators as well as internal risk managers, even a short-term loan would be debt as an economic matter, sustaining its treatment as debt for tax purposes. But such enhancements would be preferable from a market perspective to eliminating Direct Issuance transactions, either with no practical replacement or reversion to the practical difficulties presented by the 5/14 transactions.

2. Intermediated Transactions— As described above, prior to the advent of the Direct Issuance transaction, some taxpayers relied on — and the IRS was prepared to rule favorably on — Intermediated 5/14 transactions. We understand the IRS's concern in issuing such rulings was that the bank was merely acting as Distributing's agent, and that the transactions, taken together, were simply a sale of Controlled stock or securities for cash. The reluctance of some banks to enter into such transactions, and the limited number that were actually executed, speaks to the fact that financial institutions did not consider themselves to be mere agents. In addition to practical, operational and regulatory impediments to having to purchase and hold an asset that they would not otherwise want to acquire, they were being asked to take exposure —possibly for 5 days, possibly for longer if the exchange did not materialize — to a financial asset subject to all of the valuation vagaries of publicly-traded securities. Presumably there is some transaction pricing that would compensate the bank for taking on the exposure while still being an acceptable cost to Distributing, but it is undoubtedly greater than the pricing for Direct Issuance transactions. We understand that cost is not the only factor to consider in looking at possible approaches, but at some point, that cost will discourage market participants from entering into a transaction. Again, the constraints of the form prevent taxpayers otherwise eligible to take advantage of the options for reallocating debt in connection with a divisive reorganization from taking advantage of the opportunity, undermining the Congressional purpose to allow a certain amount of flexibility in separating corporate businesses, so long as the substantive rules for divisive reorganizations are satisfied.

If, however, the IRS is firm in its view that Direct Issuance transactions as reflected in recent private letter rulings, cannot be comfortably distinguished from sales of Controlled stock or securities, another workable path must be identified. Since financial institutions take quite seriously the risk of buying and holding Distributing debt, even for a short period of time, the IRS should take those risks equally seriously and recognize that the institutions are indeed the owners of the debt for federal income tax purposes. Perhaps a shortening of the time period between purchase and exchange agreement, and elimination of an extended holding requirement before the exchange is completed, coupled with rules to ensure that the terms of the arrangement

are arm's-length might be considered. And again, special scrutiny of the Intermediary, with a presumption that a regulated financial institution is in fact the owner of the Distributing debt prior to entering into the Exchange Agreement might be appropriate in this case as well.

3. <u>Refinancings—</u> The text of Representation 3.05(6) required by Rev. Proc. 2024-24 effectively follows Representation 3.04(6) in Rev. Proc. 2018-53, both requiring that the Distributing Debt to be satisfied with Section 361 Consideration or assumed by Controlled be "old and cold," that is, that it was in place prior to what Rev. Proc. 2024-24 calls the Earliest Possible Date; *i.e.*, the date on which it is clear that Distributing is beginning to proceed in a serious way with a spin-off. Relying on Rev. Rul. 79-258, Rev. Proc. 2018-53, however, goes on to provide in effect that if Distributing Debt that would have satisfied the timing requirement is refinanced after the Earliest Possible Date, the refinancing debt will be considered to satisfy the required representation. Rev. Proc. 2024-24 is silent on this subject, as is Notice 2024-38.

The refinancing exception is, of course, a key component of the Direct Issuance transaction, but failure to recognize the refinancing exception would have an impact well beyond the IRS's rejection of the efficacy of such transactions. Again, our concern stems from our role in providing financing to our clients. Our members regularly assist our clients in meeting their debt financing needs by making term loans and revolving credit loans, syndicating such loans, and underwriting or otherwise assisting in the issuance into the market of debt on a wide variety of terms and with a range of maturities. They are a key part of a global system that has brought ever increasing flexibility and liquidity to the debt markets. Failure by the IRS to continue to recognize the refinancing exception would effectively deny some taxpayers seeking to allocate "old and cold" debt between Distributing and Controlled as part of a divisive reorganization the very flexibility that the statutory scheme intended.

There is, of course, substantial precedent for Treasury and the IRS to take the view that refinancing debt should be treated as a continuation of the refinanced debt.[12] It is not clear why that approach is not appropriate in a divisive reorganization context. For example, why should a taxpayer that has $1 billion of debt outstanding at the Earliest Possible Date that is repaid with Section 361 consideration at the time of the spin-off be treated any differently from a taxpayer that has such debt outstanding at the Earliest Possible Date but has to refinance such debt because it would otherwise mature prior to the time of the spin-off. As an economic matter, both taxpayers are simply reallocating pre-existing debt between Distributing and Controlled.

[12] *See, e.g.* Rev. Rul. 79-58, 1979-2 C.B. 143, Treas. Reg. Section 1.707-5(c), Temporary Treas. Reg. Section 1.163-8T(c). Section 304(b)(3)(B)(ii), Section 221(d)(1), Section 2031(c)(4)(B)(ii), Section 163(h)(3)(B), and Section 279(h)."

Part of our members' role in working with our clients is to provide them with appropriate liquidity when necessary or appropriate. Refinancings occur for all kinds of reasons — maturities, changes in market interest rates, availability of less restrictive covenants — and there would seem to be no reason for the IRS to artificially constrain a taxpayer's access to refinancings, unless it is in furtherance of strengthening the guardrails against abusive transactions. It is not, however, and instead could lead to economically distortive results. As an example, in the absence of the refinancing exception, the taxpayer whose loan will mature after the Earliest Possible Date but well before the spin-off will have to negotiate an extension of the loan if it expects to satisfy the debt with Section 361 consideration; the taxpayer will be limited to one counterparty, denying it the opportunity seek more favorable alternatives in the debt markets. Moreover, in many cases term loans will have been syndicated or bonds will have been issued to the public, and there is no "lender" with which the taxpayer can negotiate an extension. Even if an extension could be negotiated, such extension could result in a "significant modification" of the Distributing Debt under Treasury Regulations Section 1.1001-3, potentially removing such debt from the "old and cold" category and forcing Distributing instead to repay Distributing Debt with a longer tenor and potentially more favorable coupons, a highly undesirable and distortive economic result. More broadly, a lack of a refinancing exception could inappropriately distort companies' interaction with market participants. It inappropriately links a company's stakeholder communications with its strategic and financing strategy. Companies have control over when they communicate a plan to engage in a divisive organization, but there are often external factors (shareholder demands, need to open the employee tent to continue the separation work, etc.) that will drive when they need to make a public announcement. The refinancing exception is needed to ensure companies don't tip their hand by engaging in difficult to explain financing transactions or force a delayed announcement (*e.g.*, until certain outstanding debt matures and can be refinanced) that could have negative impacts unrelated to the financing.

We urge the IRS to re-affirm its recognition of the Refinancing Exception in appropriate cases to avoid these uneconomic outcomes in transactions that are otherwise consistent with purposes of the statutory scheme, subject to the IRS guardrails properly intended to prevent abuse of the form of the statutory scheme.

4. <u>Incurrence of New Debt—</u> A similar concern arises from the addition of Representation 3.05(12) under Rev. Proc. 2024-24. It provides in substance that neither Distributing (nor any related person) will replace, directly or indirectly any Distributing Debt that will be satisfied with Section 361 Consideration with borrowing that Distributing anticipates or is committed to before the Distribution. The only permissible exceptions are (i) borrowing under a revolver entered into in the ordinary course of business that is unrelated to and would have been incurred without

regard to the divisive reorganization and (ii) a non-ordinary course borrowing arising from changed circumstances that were not anticipated prior to the Distribution and that is not related to the divisive reorganization. This stands in stark contrast to the corresponding representation called for by Rev. Proc 2018-53 that only required that the Distributing Debt not be replaced with a previously committed borrowing, other than an ordinary course revolving credit agreement.

The IRS is not wrong to be concerned that taxpayers could appear to reallocate Distributing Debt to Controlled through a Section 357 or 361 transaction, and then promptly replace that debt with new debt, effectively using a divisive reorganization to replicate the pre-tax economics of a sale of Controlled, and it is understood that the new required representation is intended to prevent such planning. But it is also the case that the wording of the representation is so broad that it may also forestall other non-abusive transactions. For example, at the same time that it is pursuing a spin-off, Distributing may be contemplating an acquisition of another business or making a substantial capital investment to grow its own business. It is difficult to know whether such debt, should be viewed as "replacing" — within the meaning of the Rev. Proc. — the relevant Distributing Debt, but it is certainly the case that such new debt may well be "anticipated" or even "committed" prior to the Distribution, even though the incurrence of such debt is unrelated to the Distribution. It may be that incurrence of the new debt would have occurred whether or not the Distribution occurred, but it may also be the case the Distributing is using the divisive reorganization to realign its remaining businesses, and would not have entered into a leveraged acquisition, for example, unless it knew it had extracted the Controlled business from its group.

It is also the case that, in general, widely held public companies, with boards that are well aware of their fiduciary duties to their shareholders, and market participants that keep a watchful eye over excessive leverage, will only incur debt if there is a good business purpose for doing so. The new representation places inappropriate constraints on companies' ability to manage their acquisitions, investments, and capital structures in a way that makes the most sense as part of their overall planning. The fact that one of their strategies entails undertaking a divisive reorganization that includes reallocation of historic Distributing Debt between the parties should not prevent them from having the freedom to act in their own best interests. The representations required by Rev. Proc. 2018-53 allowed them the flexibility to do that. We would urge either reverting to that standard, or, in the alternative, requiring a representation that there is a good business purpose for any anticipated post-spin borrowing, with a description of that business purpose provided so that the IRS can evaluate whether entering into the borrowing is abusive or is simply a bona fide corporate transaction.

5. <u>Representation 20—</u> The Rev. Proc. requires that, in connection with a request for a ruling relating to an Intermediated transaction, the taxpayer submit "[t]he name of each Intermediary and a description of the terms of all agreements, understandings, and arrangements pertaining to the proposed transactions or any related transactions between the Intermediary and Distributing (or Controlled or any Distributing Related Person or Controlled Related Person). The description of the terms must include — (A) The terms of any Distributing Debt, Distributing stock, or Section 361 Consideration to be acquired by the Intermediary; and (B) The terms of all agreements, understandings, and arrangements relating to those acquisitions. (ii) A description of any co-obligation, guarantee, indemnity, surety, make-well, keep-well, or similar arrangement, including-- (A) Security provided to the Intermediary by Distributing (or by Controlled, or any Distributing Related Person or Controlled Related Person); or (B) Any other undertaking that results in the protection of the Intermediary against the risk of loss with regard to the Section 361 Consideration or Distributing Debt. (iii) The length of time expected to elapse between the Intermediary's acquisition of a Distributing Debt and the satisfaction of that Debt with Section 361 Consideration."

As a practical matter, none of this information will be available at the time a ruling request is submitted, and in most cases will not be available at the time a ruling is issued. The terms of Controlled securities and Controlled equity — determined as they are by market considerations — will not be established until fairly close to the time of the Initial Distribution. Moreover, the Intermediated Exchange transactions contemplated by this representation are market-driven transactions, and the choice of Intermediary, as well as the precise terms of the transaction and even the selection of Distributing Debt to be satisfied, will depend on circumstances — both from Distributing's and the Intermediary's perspective — close to the time of the exchange transaction, which may not occur until 6-12 months after the Initial Distribution. It is anticipated that the fundamental form of the transaction will be known and can be described, as will the anticipated length of time between the Intermediary's acquisition of Distributing Debt and completion of the exchange, in each case based on IRS guidance as to the kind of transaction that will be acceptable. It certainly can be expected that the taxpayer will represent that all transactions with the Intermediary will be on arm's-length terms. Moreover, a taxpayer should be expected either to represent that there will be no arrangements protecting an Intermediary against risk of loss or to obtain a ruling describing the parameters of acceptable protection, if appropriate. But beyond that, it would be literally impossible for a taxpayer to submit the information requested in support of Representation 20. We would suggest that it be modified to reflect market realities.

III. Conclusion

SIFMA appreciates the opportunity to be able to share its collective views and concerns on the recently issued Rev. Proc. 2024-24 (the "Rev. Proc.") and the associated Notice 2024-38 (the "Notice"). Please do not hesitate to contact me at 202-962-7311 or paustin@sifma.org, or our outside counsel, Jeff Samuels (jsamuels@paulweiss.com) and Alyssa Wolpin (awolpin@paulweiss.com) if you have any questions or if we can be of further assistance.

Respectfully Submitted,

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