



# New York State Bar Association

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October 29, 2002

The Honorable Pamela F. Olson  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
Room 1334 MT  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

The Honorable Charles O. Rossotti  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Ladies and Gentlemen:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1021 on proposed regulations under Section 280G of the Internal Revenue Code relating to so-called "excess parachute payments" in the event of a corporate change in control.

In general, the Tax Section believes the new proposed regulations provide welcome clarification as to a number of previously uncertain issues under Section 280G. We believe, however, that several aspects of the New Proposed Regulations, as well as associated Revenue Procedures 2002-13 and 2002-45, merit further consideration.

The attached report is divided into three parts. In the first part, concerning the valuation of stock options, we assess the primary valuation approach adopted by the proposed regulations and Revenue Procedures 2002-13 and 2002-45, which is based on the "Black-Scholes" option valuation model. We identify drawbacks to that approach and suggest several alternatives, such as keeping the transaction "open" until option exercise, or

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providing employees with an election as to whether options should be immediately valued for Section 280G purposes.

In the second section of the report we comment upon various other aspects of the new proposed regulations, including in particular the statutory exception for shareholder-approved payments provided by small or closely held corporations, an exception that we argue should be somewhat liberalized to render it of more practical value. Finally, in the third section of the report, we make certain recommendations with respect to the statute itself, reflecting our experience in applying the provisions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SJD', with a horizontal line extending to the right.

Samuel J. Dimon  
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cc: Eric Solomon  
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