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Year End Transactions

As we have all been reading in the press, Federal tax rates are scheduled to increase in 2013 across the board. Among the more significant scheduled changes are:

- An increase in the long-term capital gains rate for non-corporate taxpayers from 15% to 20%
- An increase in the rate applicable to "qualified dividends" of non-corporate taxpayers from 15% to 39.6%
- A Medicare tax of 3.8% on certain investment type income, bringing those total Federal tax rates to 23.8% and 43.4%, respectively.
- An increase in top rates generally from 35% to 39.6% (exclusive of the Medicare tax).
- Significant estate and gift tax increases.

While it is difficult to predict what might happen in the lame-duck session of Congress, it seems likely in light of yesterday's election results that some or all of these changes are likely to occur, at least in part, which may suggest renewed focus on getting certain transactions done by year end. In addition, it is possible that carried interest legislation might be reintroduced as part of the process. At the same time, the debt markets have been showing significant strength, which may make funds available for implementing transactions.

While many of our fund and other clients have been actively considering a number of options for quite some time, we thought it would be useful to highlight a few of the options

- Payment of dividends. Paying dividends in 2012 may make sense for corporations that either have excess cash, or can tap borrowing capacity in the capital markets to pay "leveraged recapitalization" dividends. Corporate dividends out of current or accumulated earnings and profits from U.S. and certain foreign corporations are potentially eligible for "qualified dividend" treatment (15% Federal rate) in the hands of non-corporate U.S. investors. You should be aware, however, that dividend treatment is generally less favorable for some shareholders, such as foreign investors other than sovereign wealth funds, particularly if not eligible for treaty benefits, and is neutral for U.S. tax-exempt investors. Amounts distributed in excess of earnings and profits are and will continue to be treated as first a tax-free return of capital and then as capital gains. Capital gains treatment, as noted above, may also be more

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favorable for U.S. non-corporate investors in 2012 than in late years, and is generally tax-free for foreign investors (unless the U.S. FIRPTA rules apply) and tax-exempt investors.

- Accelerating Capital Gains. The most straightforward way to do this, of course, is to sell assets for cash, but many clients are considering transactions to trigger unrealized appreciation for tax purposes without selling the underlying asset.

- Personal Planning. In addition to the points noted above for funds and other business, 2012 may also be an opportune time for personal planning, including possible acceleration of income or gains, timing of deductible expenditures (for which acceleration may or may not make sense) and estate and give tax planning.

If you would like to discuss any of these matters, please call one of the people listed below or another partner at the firm.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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