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Memorandum

TO: Premier Financial Concepts

FROM: Richard A. Sirus, Esq.

DATE: October 18, 2024

RE: Capstone Plus Program ("the Program")

Pursuant to your request, we have reviewed the Program materials and the Internal Revenue Code of 1986, as amended (the "Code"), sections related to the Program to assess compliance, and if and how it differs from noncompliant indemnity wellness programs.

The purpose of this correspondence is to provide responses from a practical perspective with limited technical discussion. This correspondence is provided for overall guidance to Capstone, and while Capstone may share its contents with its clients, this correspondence should not be treated as legal advice or creation of an attorney-client relationship with any third-party. This memorandum reviews the basis of the Program and is not a legal opinion, or an opinion regarding the use of the Program by any particular employer.

Our review focused on the hierarchy of the Code, Regulation, Revenue Ruling, Technical Advice Memorandum, Court Cases, Private Letter Rulings, and Opinion pronouncements. The typical criticisms of fixed indemnity plans are based on IRS Opinions which are the least authoritative and not legally binding.

As we understand it, the wellness portion of the Program will be coordinated with the employer sponsored major medical coverage. The Program will be properly documented and administered under the Code, the Employee Retirement Income Security Act of 1974 ("ERISA") and other related statutory requirements. The wellness portion of the Program will operate as fixed-indemnity health insurance coverage qualified as an accident and health plan under Code Sections 105 and 106 with employee paid premiums for the wellness portion of the Program which are actuarially determined. A common law employee may elect to participate in the Program and pay the cost of the wellness portion of the Program on a pre-tax basis through a Code Section 125 cafeteria plan. That payment of the cost of the wellness portion of the Program provides the employee with access to an extensive list of programs and services. In return for using or participating in the programs and services, the employee is provided a wellness payment. In addition, payments will be made based on health-related activity. Benefits received because of the wellness portion of the Program that are not excludible from income under the Code are treated as taxable wages to the employee including for FICA purposes.

The Code sections involved with the Program include Sections 105, 106, 213(d),125 and 132(e). Each of these Code sections provides for the cost of the coverage and/or the benefits received by the employee through the coverage to be non-taxable to the employee provided the requirements are met. Code Sections 105 and 106 determine the tax consequences to the employee of employer

group health coverage. Sections 105 and 106 also address the tax treatment of the cost of the coverage. Section 105 addresses the tax treatment of the benefits received through the coverage that are Section 213(d) medical care. The wellness portion of the Program is intended to qualify as an accident and health plan under Section 106 of the Code.

To be non-taxable the benefit received must be for "medical care" under Code Section 213. "Medical care" is defined in part to include expenses "for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body." Additional special rules add or subtract to the general rule. A significant additional rule relates to expenses for general health and wellbeing, including preventative care. Although health related, expenses that are merely beneficial to general health are not "medical care" under Section 213 of the Code

In addition, the wellness portion of the Program needs to operate like insurance to be treated as coverage under Code Section 106. The premium equivalent needs to recognize risk shifting regarding access to the benefits. The premium equivalent actuarial determination should be based upon the differing usage of the benefits (e.g., programs and services) under the wellness portion of the Program. Participants will use differing amounts of benefits, but they all must pay the same premium equivalent to participate in the Program.

We understand that some payments are earned by accessing and participating in programs or services through the wellness portion of the Program. Taxability of these payments depends on the form of payment:

(i) if paid to the employee in cash, it is taxable wages.

(ii) if the payment is an employer contribution to a health reimbursement arrangement, cafeteria plan, health flexible spending account, or health savings account, qualified under Section 106 of the Code, the payment would be not taxable assuming applicable nondiscrimination requirements under the Code are met.

(iii) if the payment is above unreimbursed medical expenses, it may be taxable. Since a portion of the benefits may be received tax-free, and neither the employer nor the insurer can know what that portion is, only the employee/policyholder will know what amounts, if any, to include in income (excess benefits) and should report such amounts on their personal Form 1040.

Contrary to the Program, many indemnity wellness programs are not insured and not coordinated with employer sponsored major medical coverage plans and pay covered individuals a specified amount of cash for events unrelated to any substantiated medical or wellness event incurred or coordinated with other health coverage.

Based upon the documentation reviewed, the concept of the Program appears to comply with the IRS requirements as those requirements are currently being applied. If any of the information is not accurate, incomplete, or changes, it may impact the determination hereunder. In addition, should the law or the application of it change, it may impact the determination hereunder.

The information in this memorandum is intended for its specific recipient. It should not and cannot be relied upon or used by any other party as legal advice or the creation of any attorney-client relationship. Any unauthorized disclosure or distribution of this memorandum is prohibited.