TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

Identification Number:

UIL: 501.06-00
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Employer Identification Number:

Legend:

M =
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Dear :

This letter is in reference to the request dated October 26, 2006, as amended and supplemented by letters dated November 27, 2006, December 4, 2006, December 22, 2006, and February 13, 2007, from the authorized representative of M and N, in which M and N requested rulings that the proposed transaction will not affect their exempt status under section 501(c)(6) of the Internal Revenue Code.

M is an organization recognized as exempt from federal income tax under section 501(c)(6) of the Code. M was organized to address the m industry's need for a self-regulatory organization that would have authority to promulgate and enforce business conduct and certain other ethical rules. M's primary responsibilities have included conducting examinations of its member firms, investigating possible violations of applicable federal laws and regulations and of its own rules, conducting disciplinary proceedings, and administering qualifications testing. M states that over time, its scope of authority has expanded to cover transactions in U.S. government and municipal m as well as corporate m. Every m firm in the United States that is transacting business with the public is currently required to be a member of a registered m association, and M is the only such registered association. M currently has approximately p members, and each member is entitled to vote directly on all but one of the non-staff seats on M's board of directors.

N has conducted most of M's regulatory operations. N is recognized as exempt from federal income tax under section 501(c)(6) of the Code, and is a subsidiary of M.

O, a federal agency that supervises the m industry, provides close oversight of the regulatory functions performed by both M and N. M and N provided information which shows that O has expressed policy concerns regarding what it perceives as inherent conflicts in the existing self-regulatory system in the m industry and the inefficiencies of overlapping self-regulatory schemes. M and N have provided information which shows that O has published reports stating that those inherent conflicts can arise both in circumstances where a self-regulatory organization is subject to influence by the members it is supposed to regulate, and also where the regulator is owned by a for-profit entity. O has also identified inefficiencies where regulators have co-extensive regulatory mandates, including conflicting rules, duplicative infrastructure and multiplied compliance costs. O has indicated that reform of the self-regulatory system to alleviate such conflicts and inefficiencies is important if the m industry in the United States is to remain competitive globally.

P is a for-profit publicly traded corporation that is the corporate parent of R and S. R is a limited liability company that maintains an auction-based market for the sale and purchase of m. S, a not-for-profit corporation, is responsible for promulgating and enforcing business conduct and certain other rules applicable to the m business activities conducted through R. S's activities are generally divided into its regulation of firms authorized to do business through R, regulation of entities whose m are available through R, surveillance of activity carried out through R, and enforcement activities. P, R, and S are not recognized by the Service as exempt from federal income tax. O provides oversight of P, R, and S.

M and N have represented that O encouraged discussions between M and P to combine the member regulatory activities currently performed by N and S. With the participation of O, M and P negotiated at arm's-length the terms of a proposed consolidation. In the proposed transaction, S would transfer certain of its member regulatory functions, including both regulatory assets and related personnel, to M and N, while retaining its non-member regulatory assets and employees.

Both M and N expect that the consolidation will result in an expansion of their member regulatory operations in furtherance of their exempt purposes. M has represented that O has encouraged and publicly supported the proposed transaction and the benefits it is expected to produce.

M has represented that P and S have stated that they would not proceed with the proposed transaction unless M changed its one-member, one-vote governance structure. M has represented that the governance reforms required by P and S are intended to minimize member conflict issues presented by the disproportionate concentration of voting power in M presently held by "small firms," defined in M rules as firms with fewer than a certain number of representatives. M represents that as a result of changes in the m industry over recent decades, small firms today account in the aggregate for only 12% of registered m representatives, and only 18% of M's member firm gross revenue, but they hold more than 90% of the voting power in M.

Accordingly, M's Board of Governors has asked its member firms to relinquish their existing ability to vote directly on non-staff seats on M's member Board. A new structure would be implemented to provide for class voting for specific Board seats. This change in the voting structure will require an affirmative vote of the members to amend M's bylaws.

M represents that it believes that the member vote required to change its governance structure and by-laws, and proceed with the proposed transaction, will not succeed if members do not perceive that the reduction of their collective voting power – and the transaction as a whole – is in their best interests and the interests of a well-functioning, well-regulated m industry. In order to improve the chances of a favorable outcome in the member vote and thereby achieve the public benefits that O, M, and N believe will accrue from the combination of member regulatory activities, a pro-rata payment will be made to all of M's members if the proposed transaction is consummated. Therefore, M believes that it is necessary to make the payment in order to achieve the proposed governance reforms and effect the transaction with P.

Accordingly, M represents that if the proposed transaction is consummated, a payment will be paid to each firm that is a member of M, regardless of whether, or how, the firm votes. The payment will be made in compliance with the corporate law of the State in which M is incorporated, and will give rise to taxable ordinary income in the hands of the recipient members. M expects the payment to its members, as well as other costs it expects to incur in connection with the proposed transaction, will be supported entirely by the expected value of the incremental cash flows that will be produced by the proposed transaction, with the remaining surplus to be used to expand its regulatory functions and reduce regulatory costs in support of its exempt purposes.

M has received an opinion of an independent valuation firm determining that the expected value of the proposed consolidation, which is attributable to projected cost savings, is in the range of $q to $r. This is in addition to the assets S would transfer to M at their net book value, an amount M believes reflects the fair market value of those assets, and the final amount

of which will be subject to an independent fairness opinion. M represents that it and P have agreed to structure the proposed transaction so as to leave the parties in a financially neutral position. Accordingly, M will pay P $s of the projected cost savings, an amount negotiated at arm's-length to make the proposed transaction financially neutral to P's public shareholders. M states that it will effectively act in a manner similar to a constructive trustee to the remaining $t to $u in transaction value.

In connection with the change in M's member voting rights and to achieve the governance reform required by P and S as a condition to the proposed transaction, a one-time payment is proposed to be made to each member of M in the amount of $v, or approximately $w to $x in the aggregate, depending on the size of M's membership immediately before the closing of the proposed transaction. M issued a proxy statement to its members describing the proposed transaction, including the proposed member payment. Subsequently, M's membership voted on and approved the governance reforms described in the proxy statement. The governance reforms – and, indirectly, the proposed transaction – remain subject to approval by O following a public comment period.

M believes that the payment to members is supported by the transaction value P has forgone in agreeing to a financially neutral transaction and the remaining transaction value of $t to $u exceeds the expected payment to the members. In addition, the independent valuation states that if the parties did not agree to a financially neutral transaction, P would have received an additional $y to $z. By agreeing to enter into the proposed transaction on a financially neutral basis, P has forgone any share in the remaining transaction value.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations states that the words "private shareholder or individual" in section 501 of the Code refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(6)-1 of the regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 67-251, 1967-2 C.B. 196, holds that the net earnings of an organization exempt under section 501(c)(6) of the Code are inuring to the benefit of private individuals through furnishing financial aid and welfare services to its members. This position holds even though the organization's financial aid to members is minor in relation to its other activities which are directed to improvement of business conditions in a line of business.

An organization is not exempt under section 501(c)(6) of the Code if any part of the organization's net earnings inure to the benefit of any private shareholder or individual. An organization exempt under section 501(c)(6) may not be operated for the profit of its individual members, but members may, nevertheless, receive some kinds of benefits from the organization. A finding of inurement is generally based on a payment being made by the section 501(c)(6) organization. Section 1.501(a)-1(c) of the regulations defines a private shareholder or individual as a person having a personal and private interest in the activities of the organization.

With regard to the payment to M's members, if P made an arm's-length payment to M's members out of P's own assets, that payment would not constitute inurement of M's earnings. Although in form the proposed payment to members will be made by M, the payment is being made to satisfy a condition to the transaction imposed by P and S. The payment to M's members is supported by the value forgone by P by its agreeing to participate in the proposed transaction on a financial neutral basis. The independent valuation shows a transaction value, after making the $s payment to P, in the range of $t to $u, which M has stated that it will hold effectively in a manner similar to a constructive trust for use in achieving the purposes of the proposed transaction. This remaining value exceeds the amount that would be paid to M's members. The payment to M's members has the same practical effect as payment from P to the members in exchange for their agreement to the governance reform.

The effect of the proposed transaction will further M's exempt purpose by producing benefits for both the m industry and, by extension, for the public that relies on M and N to ensure fairness in the industry. M's exempt purpose is to address the m industry's need for self-regulation, and the promulgation and enforcement of business conduct and certain other ethical rules within the m industry. Therefore, we find that the effect of the transaction as a whole furthers M's exempt purpose under section 501(c)(6) of the Code.

Therefore, based on the facts submitted by M and N, we do not find that there was a payment from a section 501(c)(6) organization to a shareholder or individual and thus there can be no inurement. This is based on our understanding that the payment to M's members will be made from value created by the transference of the regulatory functions from S to M. P could have retained this value but chose to have it distributed to M's members. M has indicated that, while it will receive the value, part of the value M holds is in a manner similar to a constructive trustee for the benefit of M's members and to make the payment from P that is necessary to effectuate the transference of the regulatory functions.

Accordingly, based on the facts and circumstances concerning the proposed transaction, we rule that the proposed transaction will not affect M's or N's tax-exempt status under section 501(c)(6) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose.* A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed

deletions, you should follow the instructions in Notice 437.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any such change should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to M's and N's authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling is directed only to the organizations that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2