

**Internal Revenue Service**

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PLR-144390-10  
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LEGEND

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-144390-10

2

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

PLR-144390-10

3

Sub 15 =

Sub 16 =

DRE 1 =

DRE 2 =

DRE 3 =

PRS 1 =

PRS 2 =

Business A =

Business B =

State C =

State D =

Product A =

PRS 1 Obligation =

PRS 2 Obligation =

Closing Agreement =

Controlled 2 Stock =

X Liability =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Dear :

This letter responds to your letter dated October 27, 2010, requesting rulings under sections 332, 355 and 368 and related provisions with respect to a proposed

transaction described below (the “Proposed Transaction”). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Internal Distribution and the External Distribution (each as defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1, Controlled 2 or Controlled 1 or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing 2, Distributing 1, Controlled 2 or Controlled 1 (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing 2 is a publicly traded corporation and the common parent of an affiliated group of corporations filing a consolidated federal income tax return with its eligible members (the “Distributing 2 Group”). Distributing 2 has a single class of common stock outstanding. Distributing 2 also has outstanding compensatory options to acquire shares of its common stock and compensatory common stock units. The Distributing 2 Group is engaged in the conduct of Business A and owns, directly or indirectly, stock of various subsidiaries (and other entities) engaged in the conduct of Business A (such entities, including Distributing 2, the “Business A Subgroup”). The Distributing 2 Group is also engaged in the conduct of Business B and owns, directly or indirectly, stock of various subsidiaries (and other entities) engaged in the conduct of Business B (the “Business B Subgroup”).

Distributing 2 directly owns all of the stock of Sub 1, Sub 2, Sub 3, Sub 4, and Distributing 1. Distributing 1 is the principal operating company within the Business A Subgroup and directly and indirectly owns a number of entities engaged in Business A.

Sub 1, Sub 2, and Sub 3 (and entities owned directly and indirectly by Sub 3) are all part of the Business B Subgroup. Sub 3 owns all of the stock of Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, and Controlled 1 and all of the interests in DRE 1, DRE 2, and DRE 3. DRE 1, DRE 2, and DRE 3 are entities disregarded as separate from Sub 3. DRE 3 holds certain investment credit property subject to the Closing Agreement. Sub 2 has various intercompany payables (principally to Distributing 1) and receivables (principally from Sub 3). Controlled 1 owns a number of entities, including Sub 12, Sub 13, Sub 14, Sub 15, and Sub 16. Controlled 1 and its subsidiaries are part

of the Business B Subgroup and conduct Business B principally in State C (the “State C Business B”). Sub 9 and Sub 10 together own approximately a percent of PRS 1, and unrelated parties own the remaining interests therein. Sub 11 owns general and limited partnership interests, and Distributing 1 owns the remaining limited partnership interests, in PRS 2.

Sub 4 has acted as a finance company for certain arrangements among members of the Distributing 2 Group. Currently, Sub 4’s liabilities include the PRS 1 Obligation and the PRS 2 Obligation and its assets currently include a significant amount of receivables from Distributing 1. Distributing 2 has guaranteed the PRS 1 Obligation and the PRS 2 Obligation.

The taxpayer has submitted financial information indicating that (i) the respective Business A operations conducted by the Business A Subgroup have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years, (ii) the respective Business B operations conducted by the Business B Subgroup have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years, and (iii) the respective State C Business B operations conducted by Controlled 1 and its subsidiaries has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2’s management has determined that the separation of Business B from Business A will serve a number of corporate business purposes including, (i) improving management focus, (ii) enhancing employee hiring and retention, (iii) improving strategic focus, (iv) facilitating access to capital, (v) eliminating a competition for capital, and (vi) enhancing acquisition currency (together, the “Corporate Business Purposes”).

### **Proposed Transaction**

For what are represented to be valid business reasons, Distributing 2 proposes to undertake the following steps (the “Proposed Transaction”):

- (i) Distributing 2 has formed Controlled 2 as a direct, wholly owned subsidiary with cash necessary to meet minimum capital requirements.
- (ii) Sub 3 will convert from a corporation to a limited liability company (“Sub 3 LLC”) under State D law and will be disregarded as separate from Distributing 2 (the “Sub 3 Conversion”).
- (iii) Sub 3 LLC will distribute all of the stock of Sub 8 to Distributing 2.

(iv) Sub 2 will convert from a corporation to a limited liability company ("Sub 2 LLC"; together with Sub 3 LLC, the "LLCs") under State D law and will be disregarded as separate from Distributing 2 (the "Sub 2 Conversion"; together with the Sub 3 Conversion, the "Conversions"). Subsequent to the Conversions, Distributing 2 may assume a portion of the intercompany obligations owed by the LLCs to members of the Distributing 2 Group. In addition, Sub 2 LLC may repay a portion of its payable to Distributing 1 by transferring its receivable from Sub 3 LLC to Distributing 1.

(v) Controlled 1 will amend its corporate charter to provide for the issuance of common stock divided into Class A shares (the "Controlled 1 Class A Stock") and Class B shares (the "Controlled 1 Class B Stock"). The Controlled 1 Class A Stock will be voting stock, which as a class will be entitled to cast b percent of the total votes to be cast in the election of members of Controlled 1's Board of Directors. The Controlled 1 Class B Stock will be voting stock, which as a class will be entitled to cast c percent of the total votes to be cast for the election of directors. Aside from the difference in voting rights, there will be no differences between the Controlled 1 Class A Stock and the Controlled 1 Class B Stock with regard to dividends, liquidation, or any other rights, preferences, or limitations. The existing Controlled 1 common stock will be recapitalized into Controlled 1 Class B Stock (the "Recapitalization").

(vi) Distributing 1 will transfer its interest in PRS 2 to Controlled 1 in exchange for Controlled 1 Class A Stock of equal value ("Contribution 1").

(vii) Distributing 1 will distribute all of the Controlled 1 Class A Stock to its sole shareholder, Distributing 2 (the "Internal Distribution").

(viii) Distributing 2 will form New Sub 4 as a direct, wholly owned subsidiary and will contribute to New Sub 4 all of the stock of Sub 4 in exchange for stock of New Sub 4.

(ix) Sub 4 will convert from a corporation to a limited liability company ("Sub 4 LLC") under State D law and will be disregarded as separate from New Sub 4 (together with step (viii), the "Sub 4 Reorganization").

Sub 4 LLC will distribute to New Sub 4 all of its assets and liabilities, except for (1) an approximately \$d receivable from Sub 2 LLC, (2) the PRS 1 Obligation, and (3) the PRS 2 Obligation. In connection with the Proposed Transaction, Distributing 1 will repay approximately \$d of its payables to Sub 4 by transferring to Sub 4 an equal amount of Distributing 1's receivables from Sub 2 LLC.

(x) New Sub 4 will distribute all of its member interests in Sub 4 LLC to Distributing 2.

(xi) Distributing 2 will contribute the Controlled 1 Class A Stock, the stock of Sub 8, the stock of Sub 1, the member interests of Sub 4 LLC, the member interests in the LLCs and possibly cash to Controlled 2 in exchange for Controlled 2 Stock, the deemed assumption of liabilities owed by Sub 4 LLC and the LLCs, and potentially cash to be funded out of the proceeds of the note issuance in step (xii) below (“Contribution 2”). Distributing 2 will use any cash received by it to pay its external creditors and possibly to pay quarterly dividends to shareholders before the External Distribution (defined below) or within approximately 12 months after the External Distribution. Liabilities paid with the cash so received by Distributing 2 may include certain long-term indebtedness previously incurred by Distributing 2 (including associated fees, such as consent fees), ordinary course liabilities, and borrowings under a revolving credit facility (currently undrawn) that may be incurred by Distributing 2 prior to the completion of the Proposed Transaction.

(xii) Controlled 2 will issue notes to unrelated third-party creditors in exchange for cash (the “Notes”). This step (xii) may occur earlier in the sequence.

(xiii) Controlled 2 will contribute cash (funded out of the issuance of the Notes) to one or both of the LLCs, which will use such cash to repay intercompany payables owed to Distributing 1.

(xiv) One or more investment banks (the “Financial Institutions”), acting as principals for their own account, will purchase Distributing 2 debt in the open market or short-term debt directly from Distributing 2 (“Distributing 2 Short-Term Debt”). The Financial Institutions may also serve as financial advisors to Distributing 2. If Distributing 2 Short-Term Debt is issued, Distributing 2 will use the proceeds raised by the issuance for general corporate purposes (which may include the payment of debt). The Financial Institutions may enter into hedging arrangements with respect to the Distributing 2 debt, provided that neither Distributing 2 nor any member of its affiliated group will be a party to such arrangements.

(xv) The Financial Institutions and Distributing 2 expect to enter into an exchange agreement pursuant to which the Financial Institutions will exchange an amount of Distributing 2 debt for an e percent, or smaller, interest in Controlled 2 Stock (the “Debt-Equity Exchange Agreement”). The Debt-Equity Exchange Agreement will also establish the exchange ratio for the Debt-Equity Exchange, which will be set based on the expected fair market value of the Distributing 2 Short Term Debt and Controlled 2 Stock as of the closing date for the exchange in step (xvi). The Debt-Equity Exchange Agreement will be entered into no earlier than a date after which f business days will elapse before the closing date of the Debt-Equity Exchange. On the same date that the Debt-Equity Exchange Agreement is entered into, the Financial Institutions will sign an underwriting agreement with Controlled 2 and Distributing 2 to conduct a secondary public offering of the Controlled 2 Stock to be received by the Financial Institutions in the Debt-Equity Exchange (the “Offering”).



The Debt-Equity Exchange Agreement will also grant to the Financial Institutions the option to acquire additional Controlled 2 Stock in exchange for Distributing 2 Short Term Debt to cover any over-allotment of Controlled 2 Stock (the “Over-Allotment Option” or so-called “greenshoe”). The Over-Allotment Option will be subject to the same exchange ratio set forth in the Debt-Equity Exchange Agreement and will be exercisable by the Financial Institutions at any time for 30 days following the date on which the parties enter into the Debt-Equity Exchange Agreement. In the event the Over-Allotment Option is exercised by the Financial Institutions, the exchange of Controlled 2 Stock for Distributing 2 Short Term Debt pursuant to the Over-Allotment Option will close after f business days have elapsed between the date of such exercise and the date of such closing. Any Distributing 2 debt exchanged by the Financial Institutions for Controlled 2 Stock pursuant to the Over-Allotment Option will have been held by the Financial Institutions for at least g days.

Steps (xiv) and (xv) may occur earlier in the sequence if Distributing 2 desires to have the Debt-Equity Exchange close closer in time or contemporaneously with the debt issuance in step (xii).

(xvi) Pursuant to the Debt-Equity Exchange Agreement (and as described in step (xv)), Distributing 2 and the Financial Institutions will close the Debt-Equity Exchange (i.e., exchange shares of Controlled 2 Stock for Distributing 2 Short Term Debt) at a time when f business days will have elapsed from the date the Debt-Equity Exchange Agreement was entered into. In no event will Distributing 2 close the Debt-Equity Exchange prior to such time when at least g days will have elapsed between the date on which the Financial Institutions acquire the Distributing 2 Short Term Debt as principal for their own account and the date that the Debt-Equity Exchange closes.

(xvii) The Financial Institutions are expected to close the Offering (i.e., to sell the shares of Controlled 2 Stock to third parties) on the same day as the closing of the Debt-Equity Exchange.

(xviii) Distributing 2 will distribute at least h percent of the shares of Controlled 2 Stock, on a pro-rata basis, to its shareholders (the “External Distribution”). The exact distribution ratio has not yet been determined. The number of outstanding shares of Controlled 2 Stock may be adjusted via stock split or otherwise in the course of the Proposed Transaction in order to have the appropriate number of shares of Controlled 2 Stock outstanding at the time of the External Distribution. Shareholders otherwise entitled to receive fractional shares will receive cash in lieu thereof from an exchange agent who will aggregate and sell the fractional shares. The External Distribution is expected to occur approximately i months (but in no event more than j months) following the Debt-Equity Exchange.

Various intercompany payables and receivables between the Business A Subgroup and the Business B Subgroup will be eliminated in connection with the External Distribution through contribution, distribution, set-off, or cash payment.

In connection with the External Distribution, Distributing 2 and Controlled 2 and certain of their respective subsidiaries will maintain certain existing relationships between Distributing 2 and its subsidiaries and Controlled 2 and its subsidiaries and will enter into certain new agreements relating to the separation of Business A and Business B (the "Continuing Arrangements"). The Continuing Arrangements will include a commercial arrangement relating to the purchase of Product A by Distributing 2 or its affiliates from Sub 5, guarantees and indemnities by Distributing 2 under various agreements, a Separation and Distribution Agreement, Transition Services Agreements, and a Tax Sharing Arrangement.

## **Representations**

### Sub 3 Conversion

The taxpayer makes the following representations regarding the Sub 3 Conversion:

(a1) Distributing 2 and Sub 3 will adopt a plan of liquidation by conversion into a limited liability company (the "Sub 3 Conversion Plan of Liquidation"), and the Sub 3 Conversion will occur pursuant to the Sub 3 Conversion Plan of Liquidation.

(b1) Distributing 2, on the date of adoption of the Sub 3 Conversion Plan of Liquidation (the "Sub 3 Conversion Plan Date"), and at all times until the Sub 3 Conversion is completed, will own 100 percent of the single outstanding class of Sub 3 stock.

(c1) No shares of Sub 3 stock will have been redeemed during the three years preceding the Sub 3 Conversion Plan Date.

(d1) By operation of law, all transfers from Sub 3 to Distributing 2 will occur on the effective date of the Sub 3 Conversion.

(e1) As soon as the Sub 3 Conversion is effective, Sub 3 will cease to be a going concern, and it will cease to conduct any activity as a corporation, for federal income tax purposes.

(f1) Effective as of the Sub 3 Conversion, all of the stock of Sub 3 will be canceled, and it will cease to exist as a corporation, for federal income tax purposes.

(g1) Sub 3 (as a corporation) will retain no assets following the Sub 3 Conversion.

(h1) Sub 3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Sub 3 Conversion Plan Date.

(i1) No assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Distributing 2, except for dispositions in the ordinary course of business, and dispositions occurring more than three years prior to the Sub 3 Conversion Plan Date.

(j1) Except for Contribution 2, the Sub 3 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub 3, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(k1) Following the Sub 3 Conversion, there is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for federal income tax purposes under §301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest), that will prevent Sub 3 from being treated as disregarded from the owner of its membership interests for federal income tax purposes under §§301.7701-2 and 301.7701-3.

(l1) Prior to the Sub 3 Conversion Plan Date, no assets of Sub 3 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business, (ii) Sub 3's distribution of Distributing 1 receivables, and (iii) transactions occurring more than three years prior to the Sub 3 Conversion Plan Date.

(m1) Sub 3 will report all earned income represented by assets that will be distributed to Distributing 2 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(n1) The fair market value of the assets of Sub 3 will exceed its liabilities both at the Sub 3 Conversion Plan Date and immediately prior to the time the Sub 3 Conversion is effective.

(o1) There is no intercorporate debt existing between Distributing 2 and Sub 3, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 3 Conversion Plan Date.

(p1) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(q1) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 3 Conversion have been fully disclosed.

### Sub 2 Conversion

The taxpayer makes the following representations regarding the Sub 2 Conversion:

(a2) Distributing 2 and Sub 2 will adopt a plan of liquidation by conversion into a limited liability company (the "Sub 2 Conversion Plan of Liquidation"), and the Sub 2 Conversion will occur pursuant to the Sub 2 Conversion Plan of Liquidation.

(b2) Distributing 2, on the date of adoption of the Sub 2 Conversion Plan of Liquidation (the "Sub 2 Conversion Plan Date"), and at all times until the Sub 2 Conversion is completed, will own 100 percent of the single outstanding class of Sub 2 stock.

(c2) No shares of Sub 2 stock will have been redeemed during the three years preceding the Sub 2 Conversion Plan Date.

(d2) By operation of law, all transfers from Sub 2 to Distributing 2 will occur on the effective date of the Sub 2 Conversion.

(e2) As soon as the Sub 2 Conversion is effective, Sub 2 will cease to be a going concern, and it will cease to conduct any activity as a corporation, for federal income tax purposes.

(f2) Effective as of the Sub 2 Conversion, all of the stock of Sub 2 will be canceled, and it will cease to exist as a corporation, for federal income tax purposes.

(g2) Sub 2 (as a corporation) will retain no assets following the Sub 2 Conversion.

(h2) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Sub 2 Conversion Plan Date.

(i2) No assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing 2, except for dispositions in the ordinary course of business, and dispositions occurring more than three years prior to the Sub 2 Conversion Plan Date.

(j2) Except for Contribution 2, the Sub 2 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(k2) Following the Sub 2 Conversion, there is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for federal income tax purposes under §301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest), that will prevent Sub 2 from being treated as disregarded from the owner of its membership interests for federal income tax purposes under §§301.7701-2 and 301.7701-3.

(l2) Prior to the Sub 2 Conversion Plan Date, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the Sub 2 Conversion Plan Date.

(m2) Sub 2 will report all earned income represented by assets that will be distributed to Distributing 2 such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(n2) The fair market value of the assets of Sub 2 will exceed its liabilities both at the Sub 2 Conversion Plan Date and immediately prior to the time the Sub 2 Conversion is effective.

(o2) There is no intercorporate debt existing between Distributing 2 and Sub 2, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 2 Conversion Plan Date.

(p2) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(q2) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 2 Conversion have been fully disclosed.

#### Contribution 1 and Internal Distribution

The taxpayer makes the following representations regarding Contribution 1 and the Internal Distribution:

(a3) The Recapitalization will qualify as a nonrecognition transaction pursuant to § 368(a)(1)(E) or § 1036.

(b3) There is no plan or intent to amend Controlled 1's corporate charter to alter the rights associated with the Controlled 1 Class A Stock or Controlled 1 Class B Stock.

(c3) The indebtedness, if any, owed by Controlled 1 to Distributing 1 after the Internal Distribution will not constitute stock or securities.

(d3) No part of the consideration to be distributed in the Internal Distribution will be received by any shareholder of Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(e3) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Distributing 1 will treat all members of its separate affiliated group (the "Distributing 1 SAG") as defined in § 355(b)(3)(B), as one corporation.

(f3) The five years of financial information submitted on behalf of the Distributing 1 SAG is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(g3) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Controlled 1 will treat all members of its separate affiliated group (the "Controlled 1 SAG") as defined in § 355(b)(3)(B), as one corporation.

(h3) The five years of financial information submitted on behalf of the Controlled 1 SAG is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(i3) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Distributing 1 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Internal Distribution.

(j3) Other than in Contribution 1, neither the State C Business B nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was

recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Controlled 1 SAG has been the principal owner of the goodwill and significant assets of the State C Business B and will continue to be the principal owner following the Internal Distribution.

(k3) Following the Internal Distribution, the Distributing 1 SAG will continue the active conduct of Business A and the Controlled 1 SAG will continue the active conduct of the State C Business B, independently and with their separate employees (except as provided pursuant to the Continuing Arrangements).

(l3) The Internal Distribution will be carried out for the following corporate business purposes: facilitating a complete separation of Business B from Business A by transferring Distributing 1's valuable interest in PRS 2 to the Business B Subgroup, thereby achieving the benefits associated with the External Distribution. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(m3) The Internal Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both. See § 355(a)(1)(B).

(n3) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.

(o3) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.

(p3) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest

(within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(q3) No person will hold, immediately after the Internal Distribution, a 50 percent or greater interest in any disqualified investment corporation (as defined in § 355(g)(2)), that such person did not hold before the Internal Distribution (taking into account § 355(g)(3) and (g)(4)).

(r3) The total adjusted bases of the assets transferred to Controlled 1 by Distributing 1 in Contribution 1 will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 1 and (ii) the total amount of money and the fair market value of other property (within the meaning of § 361(b)) received by Distributing 1 and transferred by it to its creditors and shareholders in connection with the plan of reorganization.

(s3) The liabilities assumed, if any, (within the meaning of § 357(d)) by Controlled 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(t3) The total fair market value of the assets transferred by Distributing 1 to Controlled 1 in Contribution 1 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

(u3) Except for indebtedness that may be created in the ordinary course of business or in connection with the Continuing Arrangements, no intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the Internal Distribution.

(v3) At the time of the Internal Distribution, Distributing 1 will not have an excess loss account in the Controlled 1 stock.

(w3) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income immediately before the External Distribution.



(x3) Except with respect to certain payments made pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(y3) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(z3) Distributing 1 and Controlled 1, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Internal Distribution.

#### Sub 4 Reorganization

The taxpayer makes the following representations regarding the Sub 4 Reorganization:

(a4) Distributing 2 will receive solely New Sub 4 stock in the Sub 4 Reorganization.

(b4) The fair market value of the New Sub 4 stock received by Distributing 2 in the Sub 4 Reorganization will be approximately equal to the fair market value of the Sub 4 stock surrendered in the exchange.

(c4) Immediately following the Sub 4 Reorganization, Distributing 2 will own all of the outstanding New Sub 4 stock and will own such stock solely by reason of its ownership of Sub 4 stock immediately prior to the Sub 4 Reorganization.

(d4) Immediately following the Sub 4 Reorganization, New Sub 4 will possess the same assets and liabilities, except for assets used to pay expenses incurred in connection with the Sub 4 Reorganization, as those possessed by Sub 4 immediately prior to the Sub 4 Reorganization. The assets used to pay expenses will be less than one percent of the fair market value of the net assets of Sub 4 immediately prior to the Sub 4 Reorganization. No assets will be distributed in the Sub 4 Reorganization.

(e4) At the time of the Proposed Transaction, Sub 4 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 4.

(f4) With regard to the assets transferred from Sub 4 to New Sub 4 in the Sub 4 Reorganization, the fair market value of the assets will exceed the sum of the liabilities (as determined under § 357(d)) assumed by New Sub 4.

(g4) At all times prior to acquiring the assets of Sub 4 in the Sub 4 Reorganization: (i) New Sub 4 will have been engaged in no business activity; (ii) New Sub 4 will have had no federal income tax attributes (including attributes described in § 381(c)); and (iii) New Sub 4 will have held no assets (except for minimal assets necessary to maintain its corporate existence in accordance with applicable law).

(h4) All liabilities to which Sub 4's assets will be subject at the time of the Sub 4 Reorganization, and all the liabilities of Sub 4 that will be properly treated as being assumed by New Sub 4 in the Sub 4 Reorganization (as determined under § 357(d)) will be liabilities that were incurred by Sub 4 in the ordinary course of its business and are associated with the assets transferred from Sub 4 to New Sub 4.

(i4) Distributing 2, Sub 4, and New Sub 4 will each pay its own expenses incurred in connection with the Sub 4 Reorganization.

(j4) Sub 4 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(k4) Sub 4 LLC will be eligible to be treated as a disregarded entity under §§ 301.7701-2 and 301.7701-3 and will make no election to be treated as a corporation for federal income tax purposes.

#### Contribution 2 and External Distribution

The taxpayer makes the following representations regarding Contribution 2 and the External Distribution:

(a5) The indebtedness, if any, owed by Controlled 2 to Distributing 2 after the External Distribution will not constitute stock or securities.

(b5) Except with respect to Controlled 2 options or common stock units received in respect of Distributing 2 options or common stock units, no part of the consideration to be distributed by Distributing 2 in the External Distribution will be received by any shareholder of Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(c5) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Distributing 2 will treat all members of its separate affiliated group (the "Distributing 2 SAG") as defined in § 355(b)(3)(B), as one corporation.

(d5) The five years of financial information submitted on behalf of the Distributing 2 SAG is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(e5) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Controlled 2 will treat all members of its separate affiliated group (the “Controlled 2 SAG”) as defined in § 355(b)(3)(B), as one corporation.

(f5) The five years of financial information submitted on behalf of the Controlled 2 SAG is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(g5) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Distributing 2 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the External Distribution.

(h5) Neither Business B nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Controlled 2 SAG has been the principal owner of the goodwill and significant assets of Business B and will continue to be the principal owner following the External Distribution.

(i5) Following the External Distribution, the Distributing 2 SAG will continue the active conduct of Business A and the Controlled 2 SAG will continue the active conduct of Business B, independently and with their separate employees (except as provided pursuant to the Continuing Arrangements).

(j5) The External Distribution will be carried out for the Corporate Business Purposes. The External Distribution is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.

(k5) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both. See § 355(a)(1)(B).

(l5) The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 2 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the Distributing 2 shareholders will not exceed one percent of the total

consideration that will be distributed in the External Distribution. It is also intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 Stock. Controlled 2 is not aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled 2 through the purchase of the bundled Controlled 2 shares sold in connection with the issuance of cash in lieu of fractional shares.

(m5) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(n5) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 Stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 Stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(o5) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(p5) Immediately after the External Distribution (taking into account § 355(g)(4)), neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(q5) The total adjusted bases of the assets transferred to Controlled 2 by Distributing 2 in Contribution 2 will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 2 and (ii) the total amount of money and the fair market value of other property (within the meaning of § 361(b)) received by Distributing 2 and transferred by it to its creditors and shareholders in connection with the plan of reorganization. For purposes of this representation, the X Liability will not be treated as an assumed liability.

(r5) The liabilities assumed, if any, (within the meaning of § 357(d)) by Controlled 2 were incurred in the ordinary course of business and are associated with the assets being transferred.

(s5) The total fair market value of the assets transferred by Distributing 2 to Controlled 2 in Contribution 2 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(t5) With regard to the proposed transfer of investment tax credit property to Controlled 2 in the Proposed Transaction, all required adjustments, if any, will be made so as to properly reflect such transfer, in accord with §§ 50(a)(1) or (a)(2), any other applicable provisions, and the Closing Agreement.

(u5) Except for indebtedness that may be created in the ordinary course of business or in connection with the Continuing Arrangements, no intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the External Distribution.

(v5) The sum of the amount of Distributing 2 debt exchanged for Controlled 2 Stock in step (xvi) of the Proposed Transaction plus the amount of Distributing 2 debt repaid with any cash distribution from Controlled 2 in step (xi) of the Proposed Transaction will be less than the weighted quarterly average of all of Distributing 2's debt owed to unrelated third parties for the 12 months ending on the day before its board first discussed the proposed divestiture of Business B.

(w5) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the Controlled 2 Stock, if any, will be included in income immediately before the External Distribution (see §1.1502-19).

(x5) Except with respect to certain payments made pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(y5) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(z5) Distributing 2 and Controlled 2, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the External Distribution.

## **Rulings**

### Sub 3 Conversion

Based solely on the information and representations submitted, we rule as follows on the Sub 3 Conversion:

- (1) The Sub 3 Conversion will be treated as a distribution by Sub 3 in complete liquidation under § 332.
- (2) No gain or loss will be recognized by Distributing 2 on the deemed receipt of the assets and liabilities of Sub 3 pursuant to the Sub 3 Conversion (§ 332(a)).
- (3) No gain or loss will be recognized by Sub 3 on the deemed distribution of its assets and liabilities to Distributing 2 in the Sub 3 Conversion (§ 337(a)).
- (4) The basis of each asset of Sub 3 deemed received by Distributing 2 pursuant to the Sub 3 Conversion will be the same as the basis of that asset in the hands of Sub 3 immediately before the Sub 3 Conversion (§ 334(b)(1)).
- (5) The holding period of each asset of Sub 3 deemed received by Distributing 2 in the Sub 3 Conversion will include the period during which Sub 3 held such asset (§ 1223(2)).
- (6) Distributing 2 will succeed to and take into account the items of Sub 3 described in § 381(c) (§§ 381(a)(1) and 1.381(a)-1), subject to the conditions and limitations specified in §§ 381, 382, 383, 384 and the regulations thereunder.
- (7) Except to the extent Sub 3's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 3 as of the date of the Sub 3 Conversion (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 3 will be used only to offset earnings and profits accumulated after the date of the Sub 3 Conversion (§ 381(c)(2)(B)).

### Sub 2 Conversion

Based solely on the information and representations submitted, we rule as follows on the Sub 2 Conversion:

(8) The Sub 2 Conversion will be treated as a distribution by Sub 2 in complete liquidation under § 332.

(9) No gain or loss will be recognized by Distributing 2 on the deemed receipt of the assets and liabilities of Sub 2 pursuant to the Sub 2 Conversion (§ 332(a)).

(10) No gain or loss will be recognized by Sub 2 on the deemed distribution of its assets and liabilities to Distributing 2 in the Sub 2 Conversion (§ 337(a)).

(11) The basis of each asset of Sub 2 deemed received by Distributing 2 pursuant to the Sub 2 Conversion will be the same as the basis of that asset in the hands of Sub 2 immediately before the Sub 2 Conversion (§ 334(b)(1)).

(12) The holding period of each asset of Sub 2 deemed received by Distributing 2 in the Sub 2 Conversion will include the period during which Sub 2 held such asset (§ 1223(2)).

(13) Distributing 2 will succeed to and take into account the items of Sub 2 described in § 381(c) (§§ 381(a)(1) and 1.381(a)-1), subject to the conditions and limitations specified in §§ 381, 382, 383, 384 and the regulations thereunder.

(14) Except to the extent Sub 2's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of the Sub 2 Conversion (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 2 will be used only to offset earnings and profits accumulated after the date of the Sub 2 Conversion (§ 381(c)(2)(B)).

#### Contribution 1 and Internal Distribution

Based solely on the information and representations submitted, we rule as follows on Contribution 1 and the Internal Distribution:

(15) Contribution 1 followed by the Internal Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be "a party to a reorganization" within the meaning of § 368(b).

(16) Distributing 1 will recognize no gain or loss on Contribution 1 (§§ 357(a) and 361(a)).

(17) Controlled 1 will recognize no gain or loss on Contribution 1 (§ 1032(a)).

(18) Controlled 1's basis in each of the assets received will be the same as the basis of the asset in the hands of Distributing 1 immediately before Contribution 1 (§ 362(b)).

(19) Controlled 1's holding period in each of the assets received will include the period during which Distributing 1 held such asset (§ 1223(2)).

(20) Distributing 1 will recognize no gain or loss on the Internal Distribution (§ 361(c)).

(21) Distributing 2 will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Controlled 1 stock in the Internal Distribution (§ 355(a)(1)).

(22) The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after the Internal Distribution will be the same as the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before the Internal Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each in accordance with § 1.358-2(a) (§ 358(a), (b), and (c)).

(23) Distributing 2's holding period in the Controlled 1 stock received in the Internal Distribution will include the holding period of the Distributing 1 stock on which the Internal Distribution is made, provided that Distributing 2 holds such Distributing 1 stock as a capital asset on the date of the Internal Distribution (§ 1223(1)).

(24) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

#### Sub 4 Reorganization

Based solely on the information and representations submitted, we rule as follows on the Sub 4 Reorganization:

(25) The Sub 4 Reorganization will be a reorganization within the meaning of § 368(a)(1)(F). Sub 4 and New Sub 4 will each be "a party to a reorganization" within the meaning of § 368(b).

(26) No gain or loss will be recognized by Sub 4 on the deemed transfer of all of its assets to New Sub 4 in exchange for New Sub 4 stock and the assumption of liabilities (§§ 357(a) and 361(a)).



(27) No gain or loss will be recognized by New Sub 4 on the receipt of the Sub 4 assets in exchange for New Sub 4 stock (§ 1032(a)).

(28) New Sub 4's bases in the assets acquired from Sub 4 will be the same as Sub 4's bases in such assets immediately before the Sub 4 Reorganization (§ 362(b)).

(29) New Sub 4's holding period for the assets acquired from Sub 4 will include the period during which such assets were held by Sub 4 (§ 1223(2)).

(30) No gain or loss will be recognized by Sub 4 on the distribution to Distributing 2 of the New Sub 4 stock (§ 361(c)(1)).

(31) No gain or loss will be recognized by Distributing 2, as the shareholder of Sub 4, on the receipt of the New Sub 4 stock in exchange for the Sub 4 stock (§ 354(a)(1)).

(32) Distributing 2's basis in the New Sub 4 stock received in exchange for Sub 4 stock will be equal to the basis of the Sub 4 stock treated as exchanged therefor (§ 358(a)(1)).

(33) The holding period for the New Sub 4 stock in the hands of Distributing 2 will include the period during which Distributing 2 held the Sub 4 stock exchanged therefor, provided that the Sub 4 stock is held as a capital asset in the hands of Distributing 2 on the date of the exchange (§ 1223(1)).

(34) As provided by § 381(a), New Sub 4 will succeed to the tax attributes of Sub 4 enumerated in § 381(c).

#### Contribution 2 and External Distribution

Based solely on the information and representations submitted, we rule as follows on Contribution 2 and the External Distribution:

(35) Contribution 2 followed by the External Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be "a party to a reorganization" within the meaning of § 368(b).

(36) Distributing 2 will recognize no gain or loss on Contribution 2 (§§ 357(a) and 361(a) and (b)).

(37) Controlled 2 will recognize no gain or loss on Contribution 2 (§ 1032(a)).

(38) Controlled 2's basis in each of the assets received will be the same as the basis of the asset in the hands of Distributing 2 immediately before Contribution 2 (§ 362(b)).

(39) Controlled 2's holding period in each of the assets received will include the period during which Distributing 2 held such asset (§ 1223(2)).

(40) Distributing 2 will recognize no gain or loss on the External Distribution or the Debt-Equity Exchange other than (i) deductions attributable to the fact that the Distributing 2 Short Term Debt may be redeemed at a premium, (ii) income attributable to the fact that the Distributing 2 Short Term Debt may be redeemed at a discount and (iii) interest expense accrued with respect to the Distributing 2 Short Term Debt (§ 361(c)).

(41) Distributing 2's shareholders will recognize no gain or loss (and no amount will be includible in their income) on the receipt of Controlled 2 Stock in the External Distribution (§ 355(a)(1)).

(42) The aggregate basis of the Controlled 2 Stock and the Distributing 2 stock in the hands of Distributing 2 shareholders immediately after the External Distribution (including any fractional share interest in Controlled 2 Stock to which the shareholder may be entitled) will be the same as the aggregate basis of the Distributing 2 stock held by the Distributing 2 shareholders immediately before the External Distribution, allocated between the stock of Distributing 2 and Controlled 2 in proportion to the fair market value of each in accordance with § 1.358-2(a) (§ 358(a), (b), and (c)).

(43) The holding period of the Controlled 2 Stock received by each Distributing 2 shareholder (including any fractional share interest in Controlled 2 Stock to which the shareholder may be entitled) will include the holding period of the Distributing 2 stock held by each such shareholder, provided the Distributing 2 stock was held as a capital asset on the date of the External Distribution (§ 1223(1)).

(44) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h), and §§ 1.312-10(a) and 1.1502-33(e)(3).

(45) The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 Stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing 2 shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized, if any (determined using the bases allocated to the fractional shares in ruling (42)), will be treated as capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001). Such gain or loss will be short-term or long-term capital gain (or loss) (determined using the holding period provided in ruling (43)).

(46) Except for purposes of § 355(g), payments made between any of Distributing 2 and Controlled 2 and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution and (ii) will not become fixed and ascertainable until after the External Distribution, will be viewed as occurring before the External Distribution (cf. Arrowsmith v. Commissioner, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).

### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

(i) Whether the Internal Distribution and the External Distribution satisfy the business purpose requirement of § 1.355-2(b);

(ii) Whether the Internal Distribution and the External Distribution are used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1, Controlled 2 or Controlled 1 or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether the Internal Distribution and the External Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and

(iv) The federal income tax consequences of step (x) of the Proposed Transaction and payments made pursuant to the Continuing Arrangements described in representations (x3) and (x5).

(v) The taxpayer has not represented that Distributing 2 has not been a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the date of the External Distribution, that Distributing 2 will not be a United States real property holding corporation immediately after the External Distribution, or that no foreign person will hold greater than five percent of the stock of Distributing 2 on the date of the External Distribution. Therefore, no opinion is expressed regarding the federal tax consequences to any greater than five percent foreign shareholder under § 897 as a result of the External Distribution.

### **Procedural Statements**

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

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: