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PLR-131418-10

Date: March 3, 2011

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

PLR-131418-10

2

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

PLR-131418-10

3

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

PLR-131418-10

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Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

Sub 32 =

Sub 33 =

Sub 34 =

Sub 35 =

Sub 36 =

Sub 37 =

PLR-131418-10

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Sub 38 =

Sub 39 =

Sub 40 =

Sub 41 =

Sub 42 =

Sub 43 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

PLR-131418-10

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DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

DRE 10 =

DRE 11 =

DRE 12 =

DRE 13 =

DRE 14 =

DRE 15 =

DRE 16 =

PLR-131418-10

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DRE 17 =

DRE 18 =

DRE 19 =

DRE 20 =

DRE 21 =

DRE 22 =

DRE 23 =

DRE 24 =

DRE 25 =

PLR-131418-10

8

DRE 26 =

DRE 27 =

DRE 28 =

DRE 29 =

DRE 30 =

Company A =

Group 1 =

Group 2 =

Group 3 =

Distributing Series =  
A-1 Stock

Distributing Series =  
A-2 Stock

Distributing Series =  
A-3 Stock

Distributing Series =  
B-1 Stock



Distributing Series =  
B-2 Stock

Distributing Series =  
B-3 Stock

Controlled Series =

A-1 Stock

Controlled Series =  
A-2 Stock

Controlled Series =

B-1 Stock

Controlled Series =  
B-2 Stock

Distributing =

Business

Controlled =  
Business

DRE 1 =  
Debentures

Transition Services =

Transition Period =

Country A =

a =  
b =  
c =  
d =  
e =  
f =  
g =

Dear

This letter responds to your July 28, 2010 request for rulings on certain federal income tax consequences of a series of proposed and partially completed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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 Split-off (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is 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 the distributing or the controlled corporation (see § 355(e) and § 1.355-7).

#### Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (collectively, the "group"). Distributing has a series of publicly-traded common stock outstanding that include Distributing Series A-1 Stock and Distributing Series B-1 Stock that reflect the economic performance of its

Group 1 activities, Distributing Series A-2 Stock and Distributing Series B-2 Stock that reflect the economic performance of its Group 2 activities, and Distributing Series A-3 Stock and Distributing Series B-3 Stock that reflect the economic performance of its Group 3 activities.

Distributing, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Distributing SAG”), is engaged in various business activities, including the Distributing Business and the Controlled Business. Following the Split-off, the Distributing SAG will continue to conduct the Distributing Business.

Distributing wholly owns DRE 1, which wholly owns Sub 5, Sub 6, Sub 8, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, Sub 31, Sub 32, Sub 33, Sub 34, Sub 35, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, Sub 41, Sub 42, DRE 2, DRE 3, DRE 11, DRE 12, DRE 13, DRE 17, DRE 20, DRE 21, DRE 22, DRE 23, DRE 24, DRE 25, DRE 26, DRE 27, DRE 28 and DRE 29. DRE 2 wholly owns Sub 7, Sub 43, DRE 4, DRE 8, DRE 9, DRE 10 and DRE 30. DRE 3 wholly owns Sub 2 and Sub 13. DRE 4 owns b% of Sub 14 and wholly owns DRE 5, DRE 18 and DRE 19. DRE 5 wholly owns Sub 1. DRE 6 wholly owns DRE 7. DRE 8, DRE 9 and DRE 10, which own c%, d% and e%, respectively, together own all of the stock of Controlled. DRE 13 wholly owns DRE 14. DRE 17 wholly owns Sub 9, Sub 10, Sub 15, Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, DRE 15 and DRE 16. DRE 18 and DRE 29 own f% and g%, respectively, of Company A. DRE 19 wholly owns Sub 3, which wholly owns Sub 4. Prior to certain steps described below, DRE 1 wholly owned Sub 11 and Sub 12, and DRE 4 wholly owned DRE 6. Each of DRE 1 through DRE 30 is an entity disregarded as separate from its owner under § 301.7701-3. All of the above described entities are domestic, except for DRE 24, which is organized under the laws of Country A. Together, Sub 5, Sub 6, Sub 7, Sub 8, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, Sub 31, Sub 32, Sub 33, Sub 34, Sub 35, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, Sub 41, Sub 42, Sub 43, DRE 3, DRE 4, DRE 8, DRE 9, DRE 10, DRE 17, DRE 20, DRE 21, DRE 22, DRE 23, DRE 24, DRE 25, DRE 26, DRE 27, DRE 28, DRE 29, DRE 30 and Company A, are referred to hereinafter as the “Contributed Entities.”

Controlled currently has outstanding a single class of common stock. Prior to the Split-off, Controlled will, pursuant to step (xxiv) below, reorganize its common stock into Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock and Controlled Series B-2 Stock. Following the Split-off, Controlled, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled SAG”), will conduct the Controlled Business.

Financial information has been submitted which indicates that the Distributing Business and the Controlled Business each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Management of Distributing (“management”) believes that the Split-off will help achieve the following corporate business purposes: (i) increase the value of Distributing’s stock so that it may be used more efficiently and effectively for acquisition purposes, to raise capital, and to compensate officers and employees, (ii) increase the value of Controlled’s stock so that it may be used more efficiently and effectively for acquisition purposes, to raise capital, and to compensate officers and employees, (iii) improve Sub 1’s and Distributing’s credit rating which, in turn, will help provide Sub 1 and Distributing with a lower cost of borrowing and greater financial flexibility, and (iv) provide Controlled with debt capacity to fund acquisitions and organic growth (collectively, the “Corporate Business Purposes”).

### The Transactions

To effectuate the Split-off, management has therefore proposed and partially completed the following series of transactions (collectively, the “Transactions”):

- (i) DRE 1 contributed its entire interest in Sub 11 and Sub 12 to DRE 2.
- (ii) DRE 2 contributed its entire interest in Sub 11 and Sub 12 to DRE 8, DRE 9 and DRE 10 in proportion to the percentage interest that DRE 8, DRE 9 and DRE 10 each owned in Controlled (c%, d% and e%, respectively).
- (iii) Each of DRE 8, DRE 9 and DRE 10 contributed its entire interest in Sub 11 and Sub 12 to Controlled in exchange for stock constructively issued by Controlled (“Contribution 1”).
- (iv) In a transaction that management believes was described under § 368(a)(1)(F), Controlled changed its name.
- (v) DRE 4 distributed its entire interest in DRE 6 to DRE 2.
- (vi) DRE 2 contributed its entire interest in DRE 6 to DRE 8, DRE 9 and DRE 10 in proportion to the percentage interest that DRE 8, DRE 9 and DRE 10 each owned in Controlled (c%, d% and e%, respectively).
- (vii) Each of DRE 8, DRE 9 and DRE 10 contributed its entire interest in DRE 6 to Controlled in exchange for (i) the assumption by Controlled of certain liabilities and (ii) stock constructively issued by Controlled (“Contribution 2”).
- (viii) All of the outstanding DRE 1 Debentures, a number of shares (the “Shares”) of certain unrelated entities into which the outstanding DRE 1 Debentures are exchangeable, and cash were reattributed from Distributing’s Group 1 to Group 3. All of the cash that was reattributed pursuant to this step was held by Distributing or one or more of its

disregarded entities. No cash or other property was transferred from Controlled to Distributing in connection with this reattribution.

- (ix) Sub 7, DRE 8 and DRE 9 distributed to DRE 2 an aggregate number of Shares equal to the number of Shares reattributed pursuant to step (viii) above, and DRE 2 then distributed all of such Shares to DRE 1.
- (x) In a transaction that management believes will be described under § 368(a)(1)(F), Controlled will change its name.
- (xi) DRE 4 will distribute its entire interest in each of DRE 5, DRE 18 and Sub 14 to DRE 2.
- (xii) DRE 2 will merge into DRE 1.
- (xiii) DRE 8, DRE 9 and DRE 10 will each distribute its entire interest in Controlled to DRE 1.
- (xiv) DRE 11, DRE 12, DRE 13, DRE 14, DRE 15 and DRE 16 will merge into DRE 17.
- (xv) In transactions that management believes will be described under § 368(a), Sub 16, Sub 17, Sub 18, Sub 19 and Sub 20 will merge into Sub 15.
- (xvi) DRE 18 will distribute its entire interest in Company A to DRE 1.
- (xvii) In a transaction that management believes will be described under § 332, Sub 4 will merge into Sub 3.
- (xviii) All intercompany payables and receivables existing between Distributing or DRE 1, on the one hand, and any of the Contributed Entities (other than Company A) or Controlled or their respective subsidiaries, on the other hand, will be netted, and Distributing will cause (i) the full amount of any net intercompany receivables due to Distributing or DRE 1, on the one hand, from any of the Contributed Entities (other than Company A) or their respective subsidiaries, on the other hand, to be contributed to the capital of such Contributed Entity (or, in the case of a subsidiary of a Contributed Entity, to the applicable Contributed Entity that is the direct or indirect parent of such subsidiary), and (ii) the full amount of any net intercompany receivables due to any of the Contributed Entities (other than Company A) or their respective subsidiaries, on the one hand, from Distributing or DRE 1, on the other hand, either to be paid by Distributing or DRE 1 (as applicable) or to be distributed by such Contributed Entity to DRE 1 (or, in the case of a subsidiary of a Contributed Entity, to its parent, and from that

entity to its parent, until such net intercompany receivable is distributed to DRE 1), after which it will immediately be extinguished. All of the intercompany receivables have arisen within, and have at all times been held by a member (or a disregarded entity of such member) of the group. In addition, the adjusted basis in each such receivable is equal to its adjusted issue price and its face amount, and management expects that the adjusted basis in each such receivable will also be equal to its fair market value.

- (xix) DRE 1 will contribute its entire interest in the Contributed Entities, cash, other assets and the full amount of any net intercompany receivable due to Distributing or DRE 1 from Controlled or any of its subsidiaries (collectively, the "Contributed Assets") to Controlled in exchange for (i) the assumption by Controlled of certain liabilities and (ii) stock constructively issued by Controlled ("Contribution 3" and collectively with Contribution 1 and Contribution 2, the "Contribution").
- (xx) Controlled will contribute to each of Sub 5, Sub 6, Sub 7 and Sub 8 cash and/or other assets having an aggregate basis equal to or greater than the excess loss account ("ELA") in the stock of each such corporation. Controlled will also contribute to DRE 17 and DRE 3 cash and/or other assets necessary to effect steps (xxi) and (xxii) below.
- (xxi) DRE 17 will contribute to each of Sub 9 and Sub 10 cash and/or other assets having an aggregate basis equal to or greater than the ELA in the stock of each such corporation.
- (xxii) DRE 3 will contribute to Sub 2 and Sub 13 cash and/or other assets having an aggregate basis equal to or greater than the ELA in the stock of each such corporation (this step, together with the contributions to Sub 5, Sub 6, Sub 7, Sub 8, Sub 9 and Sub 10 described in steps (xx) and (xxi) above, the "Subsidiary Contributions"). Hereinafter, Sub 2, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10 and Sub 13 will be referred to, collectively, as the "ELA Members."
- (xxiii) DRE 1 will distribute all of the stock of Controlled to Distributing.
- (xxiv) In a transaction that management believes will be described under § 368(a)(1)(E), Controlled will file an amended and restated certificate of incorporation pursuant to which its common stock will be recapitalized into Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock and Controlled Series B-2 Stock, and Controlled will issue to Distributing a sufficient number of shares of each such series necessary to effectuate the Split-off.

- (xxv) Distributing will distribute (i) all of the Controlled Series A-1 Stock to the holders of Distributing Series A-1 Stock in exchange for all of their Distributing Series A-1 Stock, (ii) all of the Controlled Series B-1 Stock to the holders of Distributing Series B-1 Stock in exchange for all of their Distributing Series B-1 Stock, (iii) all of the Controlled Series A-2 Stock to the holders of Distributing Series A-2 Stock in exchange for all of their Distributing Series A-2 Stock, and (iv) all of the Controlled Series B-2 Stock to the holders of Distributing Series B-2 Stock in exchange for all of their Distributing Series B-2 Stock (collectively, the “Split-off”).

In connection with the Split-off, Distributing and Controlled (and/or their subsidiaries, as applicable) will enter into agreements to provide for (i) Transition Services during the Transition Period (the “Services Agreement”), (ii) the allocation and sharing of tax liabilities and related obligations, (iii) the use of certain facilities, and (iv) airplane and other aviation equipment usage ((iii) and (iv), together with the Services Agreement, the “Ancillary Agreements”). Distributing and Controlled will also enter into a reorganization agreement to provide for the principal corporate transactions required to effect the Split-off and related restructuring transactions (together with the agreements in (i) through (iv) above, the “Transition Agreements”). The Transition Agreements will include certain indemnification provisions that may require Distributing and Controlled to make indemnity payments to each other following the Split-off (any such payments, the “Indemnity Payments”).

As a result of the Split-off, each of the compensatory stock options, restricted shares of stock and stock appreciation rights (together, the “Employee Rights”) with respect to Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock, and Distributing Series B-2 Stock that are outstanding at the time of the Split-off will be converted (collectively, the “Employee Rights Conversions”) into corresponding Employee Rights with respect to the number of shares of Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock, or Controlled Series B-2 Stock, as applicable, that a holder would have received in the Split-off had such holder held, immediately prior to the Split-off, the number of shares of Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock, or Distributing Series B-2 Stock underlying such outstanding Employee Right.

### Representations

The following representations have been made regarding the Contribution and the Split-off:

1. Any indebtedness owed by Controlled to Distributing after the Split-off will not constitute stock or securities.
2. No part of the consideration to be distributed by Distributing in the Split-off will be received by a shareholder as a creditor, employee, or in any capacity other than that

of a shareholder of Distributing, except as contemplated by the Employee Rights Conversions.

3. The fair market value of the respective shares of Controlled stock to be received by each holder of Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock and Distributing Series B-2 Stock in the Split-off will be approximately equal to the fair market value of the respective shares of Distributing stock to be surrendered by such holder in the Split-off.

4. Distributing and Controlled will treat all members of their respective "separate affiliated groups" (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

5. The five years of financial information submitted on behalf of the Distributing Business conducted by the Distributing SAG is representative of the present business operations of the Distributing Business conducted by the Distributing SAG, and with regard to the Distributing Business, there have been no substantial operational changes since the date of the last financial statements submitted.

6. The five years of financial information submitted on behalf of the Controlled Business conducted by the Distributing SAG is representative of the present business operations of such business conducted by the Distributing SAG, and with regard to the Controlled Business, there have been no substantial operational changes since the date of the last financial statements submitted.

7. Neither the Distributing Business nor control of an entity conducting this business was acquired by the Distributing SAG during the five-year period ending on the date of the Split-off 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 Split-off, the Distributing SAG has been the principal owner of the goodwill and significant assets of the Distributing Business. The Distributing SAG will be the principal owner of the goodwill and significant assets of the Distributing Business following the Split-off.

8. Neither the Controlled Business nor control of an entity conducting this business was acquired by the Distributing SAG during the five-year period ending on the date of the Split-off 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 Split-off, the Distributing SAG has been the principal owner of the goodwill and significant assets of the Controlled Business. The Controlled SAG will be the principal owner of the goodwill and significant assets of the Controlled Business following the Split-off.



9. Following the Split-off and except as contemplated by the Services Agreement, the Distributing SAG will continue the active conduct of the Distributing Business, independently and with its separate employees, and the Controlled SAG will conduct the active conduct of the Controlled Business, independently and with its separate employees.

10. The Split-off is being carried out for the Corporate Business Purposes. The Split-off is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.

11. The Split-off is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

12. The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 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 recognition of gain) received by Distributing in the exchange. The fair market value of the assets of Controlled will exceed the amount of Controlled liabilities immediately after the Contribution.

13. The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

14. The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equals or exceeds the sum of any liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject; and any liabilities assumed in the Contribution, and any liabilities to which the transferred assets are subject, were incurred in the ordinary course of business and are associated with the assets being transferred.

15. No investment tax credit determined under § 46 has been, or will be, claimed for any property that will be transferred to Controlled in the Contribution.

16. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Split-off, except for payables arising under the Transition Agreements or indebtedness otherwise arising in the ordinary course of business.

17. Immediately before the Split-off, 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 the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by

T.D. 8597). Any excess loss account Distributing may have in the Controlled stock (or a member may have 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 Split-off to the extent required by the regulations (§ 1.1502-19).

18. All payments made under the Ancillary Agreements are intended to be at arm's length and on a fair market value basis.

19. All payments made in connection with the Transition Services are intended to be at arm's length and on a fair market value basis.

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

21. For purposes of § 355(d), immediately after the Split-off, 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 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 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 Split-off.

22. For purposes of § 355(d), immediately after the Split-off, 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 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 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 Split-off or (ii) attributable to distributions on Distributing 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 Split-off.

23. The Split-off 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 or Controlled (including any predecessor or successor of any such corporation). For purposes of this representation, any increase in ownership of Distributing stock or Controlled stock, by vote or value, by a Distributing shareholder which occurs solely as a result of the Split-off will not be considered an acquisition that is taken into account for purposes of § 355(e)(2)(A)(ii) (except to the extent that the Distributing stock held before the Split-off by such shareholder was acquired pursuant to a plan (or series of related transactions) with the Split-off as described in § 355(e)(2)(A)(ii)).

24. Immediately after the Split-off (taking into account § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)) in the

stock of Distributing or Controlled, who did not hold such an interest immediately before the Split-off, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

25. Distributing, Controlled and the shareholders of Distributing will each pay their respective expenses, if any, incurred in connection with the Contribution and the Split-off.

26. The Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock, Distributing Series B-2 Stock, Distributing Series A-3 Stock and Distributing Series B-3 Stock constitute stock of Distributing for U.S. federal income tax purposes.

27. The Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock, and Controlled Series B-2 Stock will constitute stock of Controlled for U.S. federal income tax purposes.

28. To the best knowledge and belief of Distributing, each of the Subsidiary Contributions will qualify as a transaction described in § 351.

#### Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Contribution and the Split-off:

(1) The Contribution, followed by the Split-off, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the holding period during which Distributing held the asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Split-off (§ 361(c)).

(7) No gain or loss will be recognized by the holders of Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock and Distributing Series B-2 Stock (and no income will otherwise be included in the income of those holders) upon their receipt of the respective shares of Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock and Controlled Series B-2 Stock in the Split-off (§ 355(a)(1)).

(8) The aggregate basis of the Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock, and Controlled Series B-2 Stock received in the Split-off by each holder of Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock, and Distributing Series B-2 Stock, as applicable, will be the same as such holder's aggregate basis in the Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock and Distributing Series B-2 Stock, respectively, that is surrendered in exchange therefor, allocated in the manner described in § 1.358-2(a)(2) (§ 358(a)(1)).

(9) The holding period of the Controlled Series A-1 Stock, Controlled Series B-1 Stock, Controlled Series A-2 Stock and Controlled Series B-2 Stock received in the Split-off by each holder of Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock and Distributing Series B-2 Stock, as applicable, will include the holding period of the Distributing Series A-1 Stock, Distributing Series B-1 Stock, Distributing Series A-2 Stock, and Distributing Series B-2 Stock, respectively, that is surrendered in exchange therefor, provided that such shares of the applicable series of Distributing stock are held as a capital asset by such holder on the date of the Split-off (§ 1223(1)).

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

(11) Except for purposes of § 355(g), any Indemnity Payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Split-off or for a taxable period beginning on or before and ending after the Split-off and (ii) will not have become fixed and ascertainable until after the Split-off will be treated as occurring immediately before the Split-off (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

(12) Following the Split-off, Controlled will not be considered a successor to Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its subsidiaries that are "includible corporations" under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

(13) The ELA with respect to the stock of each ELA Member will be adjusted by its shareholder prior to the Split-off to account for the applicable Subsidiary Contribution.

### Caveats

No opinion is expressed about the federal income tax treatment of the Transactions under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Split-off satisfies the business purpose requirement of § 1.355-2(b),
- (ii) Whether the Split-off is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)),
- (iii) Whether the Split-off is 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 the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7),
- (iv) The federal income tax consequences of the Employee Rights Conversions, and
- (v) Except as otherwise necessary to the rulings herein, the federal income tax consequences of steps (i), (ii), (iv), (v), (vi), (viii) through (xviii), (xxiii) and (xxiv).

### Procedural Matters

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

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

Sincerely,

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