

**Internal Revenue Service**

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PLR-152204-11  
Date:  
April 23, 2012

**Legend:**

Distributing 4 =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Controlled 4 =

Controlled 3 =

Controlled 2 =

Controlled 1 =

FSub 1 =

PLR-152204-11

2

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

FSub 12 =

FSub 13 =

FSub 14 =

FSub 15 =

FSub 16 =

FSub 17 =

FSub 18 =

FSub 19 =

FSub 20 =

FSub 21 =

FSub 22 =

FSub 23 =

FSub 24 =

Sub 1 =

Sub 2 =

Sub 3 =

LLC 1 =

LLC 2 =

LLC 3 =

Business A =

Business B =

a =

b =

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e =

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k =

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m =

State A =

State B =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country G =

Country H =

Country I =

Prior Transactions =

Country J  
Contribution =

Distributing 1  
Contribution =

Distribution  
Agreements =

Dear \_\_\_\_\_ :

This letter responds to your representative's letter dated December 15, 2011, requesting rulings on certain federal income tax consequences of a series of proposed transactions. The material information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Moreover, no determination has been made regarding whether any of Distributions 1 through 4 (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 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 corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

### **SUMMARY OF THE FACTS**

Distributing 4 is a publicly traded State A corporation and is the common parent of an affiliated group of corporations that elects to file consolidated federal income tax returns. Distributing 4 is engaged, directly and through its affiliates, in Business A and Business B. Distributing 4 wholly owns (i) LLC 1, a limited liability company that is disregarded as an entity separate from its owner for federal tax purposes (a "disregarded entity"); (ii) Sub 1; (iii) Sub 2; (iv) Sub 3; (v) Distributing 3; (vi) Controlled 3; (vii) FSub 23; (viii) FSub 24; and (ix) a number of subsidiaries engaged solely in Business B (the "Business B Subsidiaries"). Controlled 3 is a dormant entity with nominal assets.

In addition, Distributing 4 owns (i) a percent of the stock of FSub 1; (ii) b percent of stock of Distributing 1; (iii) c percent of the stock of FSub 2; and (iv) d percent of the stock of FSub 3.

LLC 1 wholly owns Distributing 2. Distributing 2 wholly owns Controlled 2 and FSub 4, a disregarded entity, and owns e percent of the stock of Distributing 1.

FSub 4 wholly owns (i) FSub 5, a disregarded entity; (ii) FSub 6, a disregarded entity; (iii) FSub 7, a disregarded entity; (iv) FSub 8, a disregarded entity; (v) FSub 9, a disregarded entity; and (vi) FSub 10.

FSub 8 wholly owns FSub 11, a disregarded entity. FSub 11 wholly owns FSub 12, a disregarded entity.

Sub 1 wholly owns (i) LLC 2, a disregarded entity; (ii) FSub 13; (iii) FSub 14; and (iv) FSub 15, a disregarded entity. In addition, Sub 1 owns f percent of the stock of FSub 16 and g percent of the interests in FSub 17, a disregarded entity. LLC 2 owns the remaining h percent of the interests in FSub 17. Sub 1 also operates branches or representative offices in a number of countries outside the United States.

FSub 14 wholly owns FSub 18.

FSub 3 owns i percent of the stock of FSub 19.

Distributing 1 wholly owns FSub 20 and FSub 21.

Distributing 3 wholly owns FSub 22 and directly conducts both Business A and Business B.

Except as noted above, each of the entities listed above is classified as a corporation for federal tax purposes.

## PROPOSED TRANSACTIONS

For the purpose of separating Business A and Business B, Distributing 4 proposed the following steps, some of which are completed:

- (i) Distributing 4 formed Controlled 4 as a corporation under State B law.
- (ii) Distributing 1 formed Controlled 1 under the laws of Country B, and Controlled 1 made an initial election under Treas. Reg. § 301.7701-3 to be treated as a disregarded entity.
- (iii) Sub 2 formed LLC 3, a disregarded entity, under State B law.
- (iv) Distributing 1 will contribute (i) all of its directly held Business B assets, (ii) all of the stock of FSub 20, and (iii) all of the stock of FSub 21 to Controlled 1.
- (v) Controlled 1 will elect under Treas. Reg. § 301.7701-3 to be treated as a corporation for federal tax purposes (“Contribution 1”).

- (vi) Distributing 1 will distribute all of the stock of Controlled 1 pro rata to Distributing 4 and Distributing 2 (“Distribution 1”).
- (vii) Distributing 2 will contribute the stock of Controlled 2 to FSub 4.
- (viii) FSub 6, FSub 7, FSub 5, and FSub 9 each will separate its Business B assets from its Business A assets through a transfer between such entity and one or more other companies that are disregarded entities under Distributing 2. All such transfers will be disregarded for federal income tax purposes.
- (ix) FSub 12 will sell its Business B assets to a newly formed subsidiary of Controlled 2 that will be a disregarded entity in exchange for a note (the “Transitory Controlled 2 Note”) and will immediately distribute the Transitory Controlled 2 Note through FSub 11 and FSub 8 to FSub 4. FSub 4 will contribute all of its assets relating to Business B, including the stock of FSub 10, the interests in disregarded entities conducting Business B, and the Transitory Controlled 2 Note, to Controlled 2 (the “FSub 4 Contribution”).
- (x) FSub 4 will distribute all of the stock of Controlled 2 to Distributing 2.
- (xi) Distributing 2 will contribute its e-percent interest in Controlled 1 to Controlled 2 (together with the FSub 4 Contribution, “Contribution 2”).
- (xii) Distributing 2 will distribute all of the stock of Controlled 2 to LLC 1 (“Distribution 2”).
- (xiii) LLC 1 will distribute all of the stock of Controlled 2 to Distributing 4.
- (xiv) Distributing 3 will sell all of its Business A assets, including directly held assets and the stock of FSub 22, to Controlled 3 in exchange for a note (the “Controlled 3 Note”).
- (xv) Distributing 3 will distribute the Controlled 3 Note to Distributing 4.
- (xvi) Distributing 4 will contribute the Controlled 3 Note to Controlled 3 in exchange for shares of Controlled 3 stock with a value equal to the amount of the Controlled 3 Note. The Controlled 3 shares received by Distributing 4 in this step will constitute 80 percent or more of the single outstanding class of Controlled 3 shares. As described below, Steps (xiv) through (xvi) will be treated for federal income tax purposes as if Distributing 3 contributes its Business A assets to



Controlled 3 in exchange for Controlled 3 stock (“Contribution 3”) and then distributes such Controlled 3 stock to Distributing 4 (“Distribution 3”).

- (xvii) FSub 14 will contribute all of its Business A assets to FSub 18 in exchange for additional shares of FSub 18 stock.
- (xviii) FSub 14 will distribute all of the stock of FSub 18 to Sub 1.
- (xix) Sub 1 will contribute all of its interests in FSub 15 and FSub 16 to LLC 2.
- (xx) Sub 1’s branches or representative offices, other than Sub 1’s Country A representative office and Sub 1’s Country I branch, that hold both Business B assets and Business A assets will transfer their Business A assets to LLC 2 or to a disregarded entity owned by Distributing 4.
- (xxi) Sub 1’s branch located in Country I will sell its Business A assets to a disregarded entity owned by Distributing 2 in exchange for cash.
- (xxii) LLC 2 will form a new company under the laws of Country C (“Country C NewCo”) that will be treated as a corporation for federal tax purposes and contribute cash thereto.
- (xxiii) LLC 2 will form a new company under the laws of Country D (“Country D NewCo”) that will be treated as a corporation for federal tax purposes and contribute cash thereto.
- (xxiv) FSub 13 will sell all of its Business A assets to Country C NewCo in exchange for cash.
- (xxv) Sub 1’s branch located in Country D will sell its Business A assets to Country D NewCo in exchange for cash.
- (xxvi) One of Distributing 4’s U.S. affiliates will form a new representative office in Country A, and Sub 1 will sell its Business A assets located in Country A to the new representative office and/or to one or more existing Country A subsidiaries of Distributing 4 in exchange for cash.
- (xxvii) Distributing 4 will form a new State B limited liability company that will be a disregarded entity (“Sub 1 LLC”), and Sub 1 will merge under State A and State B law with and into Sub 1 LLC, with Sub 1 LLC surviving (“Liquidation 1”).

- (xxviii) Sub 1 LLC will distribute (i) all of the interests in LLC 2, (ii) all of the stock of FSub 18, and (iii) its g-percent interest in FSub 17 to Distributing 4.
- (xxix) Distributing 4 will form a new company under the laws of Country E (“Country E NewCo”) and contribute cash thereto. Distributing 4 will own j percent of the stock of Country E NewCo. LLC 2 will own the remaining k percent of the stock of Country E NewCo.
- (xxx) FSub 3 and FSub 19 will sell their Business A assets to Country E NewCo in exchange for cash.
- (xxxi) Sub 2 will transfer the Business B assets of its Country F branch to LLC 3.
- (xxxii) Distributing 4 will form a new State B limited liability company that will be a disregarded entity (“Sub 2 LLC”), and Sub 2 will merge under State A and State B law with and into Sub 2 LLC, with Sub 2 LLC surviving (“Liquidation 2”).
- (xxxiii) Sub 2 LLC will distribute all of the interests in LLC 3 to Distributing 4.
- (xxxiv) Distributing 4 will contribute all of the stock of FSub 2 and Distributing 4’s b-percent interest in Controlled 1 to Controlled 2 (“Contribution 4”).
- (xxxv) Controlled 2 will contribute all of the stock of FSub 2 received in the preceding step to Controlled 1 (“Contribution 5”).
- (xxxvi) Sub 3 will transfer its Business B assets to Distributing 4 in partial repayment of debt.
- (xxxvii) Distributing 4 will contribute its assets related to Business B, including all of its stock of or interests in the following entities, to Controlled 4: the Business B Subsidiaries, FSub 23, FSub 24, Controlled 2, Sub 1 LLC, FSub 1, LLC 3, Distributing 3, and FSub 3.
- (xxxviii) Controlled 4 may borrow cash from a third-party lender and distribute the cash to Distributing 4 (together with Step (i) and the immediately preceding step, “Contribution 6”). It is anticipated that the amount of cash will not exceed \$l.
- (xxxix) Distributing 4 will distribute all of the stock of Controlled 4 to Distributing 4’s shareholders pro rata (“Distribution 4”). No

fractional shares of Controlled 4 stock will be distributed in Distribution 4. Instead, the distribution agent will aggregate all fractional shares into whole shares and sell the whole shares in the open market at prevailing market prices. The distribution agent will then distribute the aggregate cash proceeds of the sales, net of brokerage fees and other costs, pro rata to each stockholder of Distributing 4 who would otherwise have been entitled to receive a fractional share in Distribution 4.

- (xl) Distributing 4 will use any cash received from Controlled 4 in Step (xxxviii) to repay a portion of its publicly held debt, to make a distribution to shareholders, and/or to repurchase shares, in each case within m months of Distribution 4.

## **REPRESENTATIONS**

The following representations have been made with respect to Contribution 1 and Distribution 1:

- (a) The total adjusted basis of the assets transferred to Controlled 1 by Distributing 1 in Contribution 1 will equal or exceed the sum of any liabilities assumed (within the meaning of section 357(d)) by Controlled 1.
- (b) The total fair market value of the assets transferred to Controlled 1 in Contribution 1 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 in 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 section 361(a) without recognition of gain) received by Distributing 1 in the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of Controlled 1's liabilities immediately after Contribution 1.
- (c) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 in Contribution 1 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (d) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing 1 to Controlled 1 pursuant to Contribution 1.

- (e) No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (f) Each of the parties to Distribution 1 will pay its own expenses, if any, incurred in connection with Distribution 1.
- (g) The five years of financial information submitted on behalf of the Country B Business A conducted by the Distributing 1 SAG is representative of the present business operations of the Country B Business A, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Except pursuant to the Prior Transactions, neither the Country B Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (i) The five years of financial information submitted on behalf of the Country B Business B conducted by the Distributing 1 SAG is representative of the present business operations of the Country B Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (j) Except pursuant to the Prior Transactions, neither the Country B Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (k) Following Distribution 1, the Distributing 1 SAG will continue the active conduct of the Country B Business A, independently and with its separate employees.
- (l) Following Distribution 1, the Controlled 1 SAG will continue the active conduct of the Country B Business B, independently and with its separate employees.

- (m) Distribution 1 is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (n) Distribution 1 is being carried out for the corporate business purpose of facilitating Distribution 4 and is motivated, in whole or substantial part, by this corporate business purpose.
- (o) Other than indebtedness arising from (i) the provision of shared services in the ordinary course of business prior to Distribution 4 or (ii) transition services following Distribution 4, all of which will be resolved in the ordinary course of business or pursuant to the terms of a transition services agreement, no intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, Distribution 1.
- (p) 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.
- (q) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (r) For purposes of section 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of section 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 sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 1.
- (s) For purposes of section 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of section 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 sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined

after applying section 355(d)(6)) ending on the date of Distribution 1.

- (t) Distribution 1 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons (other than persons described in section 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 1 or Controlled 1 (including any predecessor or successor of Distributing 1 or Controlled 1).
- (u) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)) in the stock of Distributing 1 or Controlled 1, who did not hold such an interest immediately before Distribution 1, or (ii) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (v) Neither Distributing 1 nor Controlled 1 has been a United States real property holding corporation (within the meaning of section 897(c)(2)) (“USRPHC”) at any time during the five-year period ending on the date of Distribution 1, and neither Distributing 1 nor Controlled 1 will be a USRPHC immediately after Distribution 1.
- (w) Neither Distributing 1 nor Controlled 1 will hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Contribution 1 and Distribution 1.
- (x) Distributing 1’s contribution of stock and assets to Controlled 1 in Contribution 1 is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (y) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied with respect to Contribution 1 and Distribution 1.
- (z) Immediately before and after Contribution 1 and Distribution 1, Distributing 1 and Controlled 1 each will be a controlled foreign corporation (within the meaning of section 957(a)) (“CFC”) with respect to which Distributing 4 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (aa) At all times before and immediately after Contribution 1 and Distribution 1, neither Distributing 1 nor Controlled 1 has been or

will be a passive foreign investment company (within the meaning of section 1297(a)) ("PFIC").

- (bb) Distribution 1 will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

The following representations have been made with respect to Contribution 2 and Distribution 2:

- (cc) The total adjusted basis of the assets transferred to Controlled 2 by Distributing 2 in Contribution 2 will equal or exceed the sum of any liabilities assumed (within the meaning of section 357(d)) by Controlled 2.
- (dd) The total fair market value of the assets transferred to Controlled 2 in Contribution 2 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 2 in 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 section 361(a) without recognition of gain) received by Distributing 2 in the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of Controlled 2's liabilities immediately after Contribution 2.
- (ee) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 2 in Contribution 2 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (ff) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing 2 to Controlled 2 pursuant to Contribution 2.
- (gg) No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (hh) Each of the parties to Distribution 2 will pay its own expenses, if any, incurred in connection with Distribution 2.

- (ii) The five years of financial information submitted on behalf of the Country G Business A conducted by the Distributing 2 SAG is representative of the present business operations of the Country G Business A, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (jj) Neither the Country G Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (kk) The five years of financial information submitted on behalf of the Country G Business B conducted by the Distributing 2 SAG is representative of the present business operations of the Country G Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ll) Neither the Country G Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (mm) Following Distribution 2, the Distributing 2 SAG will continue the active conduct of the Country G Business A, independently and with its separate employees.
- (nn) Following Distribution 2, the Controlled 2 SAG will continue the active conduct of the Country G Business B, independently and with its separate employees.
- (oo) Distribution 2 is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
- (pp) Distribution 2 is being carried out for the corporate business purpose of facilitating Distribution 4 and is motivated, in whole or substantial part, by this corporate business purpose.
- (qq) Other than indebtedness arising from (i) the provision of shared services in the ordinary course of business prior to Distribution 4 or (ii) transition services following Distribution 4, all of which will be



resolved in the ordinary course of business or pursuant to the terms of a transition services agreement, no intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, Distribution 2.

- (rr) 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.
- (ss) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (tt) For purposes of section 355(d), immediately after Distribution 2, no person (determined after applying the aggregation rules of section 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 sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 2.
- (uu) For purposes of section 355(d), immediately after Distribution 2, no person (determined after applying the aggregation rules of section 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 sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 2.
- (vv) Distribution 2 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons (other than persons described in section 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 2 or Controlled 2 (including any predecessor or successor of Distributing 2 or Controlled 2).

- (ww) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)) in the stock of Distributing 2 or Controlled 2, who did not hold such an interest immediately before Distribution 2, or (ii) neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (xx) Neither Distributing 2 nor Controlled 2 has been a USRPHC at any time during the five-year period ending on the date of Distribution 2, and neither Distributing 2 nor Controlled 2 will be a USRPHC immediately after Distribution 2.
- (yy) Neither Distributing 2 nor Controlled 2 will hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Contribution 2 and Distribution 2.
- (zz) Distributing 2's contribution of stock and assets to Controlled 2 in Contribution 2 is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (aaa) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied with respect to Contribution 2 and Distribution 2.
- (bbb) Immediately before and after Contribution 2 and Distribution 2, Distributing 2 and Controlled 2 each will be a CFC with respect to which Distributing 4 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (ccc) At all times before and immediately after Contribution 2 and Distribution 2, neither Distributing 2 nor Controlled 2 has been or will be a PFIC.
- (ddd) With respect to any existing gain recognition agreement entered into by Distributing 4 in connection with a prior transfer of stock or securities to Distributing 2, Distributing 4 will comply with Treas. Reg. §§ 1.367(a)-8T and 1.367(a)-8, as applicable.
- (eee) There is no regulatory, legal, contractual, or economic compulsion or requirement that Distributing 4 make part or all of the Country J Contribution or the Distributing 1 Contribution as a condition to Distribution 2. The fact that the value of Distributing 2 will decrease as a result of Distribution 2 is not a consideration in the decision to contribute property to Distributing 2. Distribution 2 is not contingent

on there being contributed to Distributing 2 assets having a specified (or a roughly specified) value.

The following representations have been made with respect to Contribution 3 and Distribution 3:

- (fff) The total adjusted basis of the assets transferred to Controlled 3 by Distributing 3 in Contribution 3 will equal or exceed the sum of any liabilities assumed (within the meaning of section 357(d)) by Controlled 3.
- (ggg) The total fair market value of the assets transferred to Controlled 3 in Contribution 3 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 3 in the exchange, (ii) the amount of any liabilities owed to Controlled 3 by Distributing 3 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 section 361(a) without recognition of gain) received by Distributing 3 in the exchange. The fair market value of the assets of Controlled 3 will exceed the amount of Controlled 3's liabilities immediately after Contribution 3.
- (hhh) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 3 in Contribution 3 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (iii) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing 3 to Controlled 3 pursuant to Contribution 3.
- (jjj) No part of the consideration to be distributed by Distributing 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.
- (kkk) Each of the parties to Distribution 3 will pay its own expenses, if any, incurred in connection with Distribution 3.
- (lll) The five years of financial information submitted on behalf of the Country H Business B conducted by the Distributing 3 SAG is representative of the present business operations of the Country H Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (mmm) Neither the Country H Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (nnn) The five years of financial information submitted on behalf of the Country H Business A conducted by the Distributing 3 SAG is representative of the present business operations of the Country H Business A, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ooo) Neither the Country H Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (ppp) Following Distribution 3, the Distributing 3 SAG will continue the active conduct of the Country H Business B, independently and with its separate employees.
- (qqq) Following Distribution 3, the Controlled 3 SAG will continue the active conduct of the Country H Business A, independently and with its separate employees.
- (rrr) Distribution 3 is not being used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 3 or both.
- (sss) Distribution 3 is being carried out for the corporate business purpose of facilitating Distribution 4 and is motivated, in whole or substantial part, by this corporate business purpose.
- (ttt) Other than indebtedness arising from (i) the provision of shared services in the ordinary course of business prior to Distribution 4 or (ii) transition services following Distribution 4, all of which will be resolved in the ordinary course of business or pursuant to the terms of a transition services agreement, no intercorporate debt will exist between Distributing 3 and Controlled 3 at the time of, or subsequent to, Distribution 3.
- (uuu) Payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled 3 will be for fair market

value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (vvv) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (www) For purposes of section 355(d), immediately after Distribution 3, no person (determined after applying the aggregation rules of section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 3 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 3.
- (xxx) For purposes of section 355(d), immediately after Distribution 3, no person (determined after applying the aggregation rules of section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 3 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 3 stock that was either (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 3 or (ii) attributable to distributions on Distributing 3 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 3.
- (yyy) Distribution 3 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons (other than persons described in section 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in either Distributing 3 or Controlled 3 (including any predecessor or successor of Distributing 3 or Controlled 3).
- (zzz) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)) in the stock of Distributing 3 or Controlled 3, who did not hold such an interest immediately before Distribution 3, or (ii) neither Distributing 3 nor Controlled 3 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

- (aaaa) Neither Distributing 3 nor Controlled 3 has been a USRPHC at any time during the five-year period ending on the date of Distribution 3, and neither Distributing 3 nor Controlled 3 will be a USRPHC immediately after Distribution 3.
- (bbbb) Neither Distributing 3 nor Controlled 3 will hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Contribution 3 and Distribution 3.
- (cccc) Distributing 3's contribution of stock and assets to Controlled 3 in Contribution 3 is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (dddd) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied with respect to Contribution 3 and Distribution 3.
- (eeee) Immediately before and after Contribution 3 and Distribution 3, Distributing 3 and Controlled 3 each will be a CFC with respect to which Distributing 4 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (ffff) At all times before and immediately after Contribution 3 and Distribution 3, neither Distributing 3 nor Controlled 3 has been or will be a PFIC.
- (gggg) Distribution 3 will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

The following representations have been made with respect to Liquidation 1:

- (hhhh) Distributing 4, on the date of adoption of the plan of Liquidation 1 (the "Liquidation 1 Plan Date"), and at all times thereafter until Liquidation 1 is completed, will own 100 percent of the single outstanding class of Sub 1 stock.
- (iii) No shares of Sub 1 stock will have been redeemed during the three years preceding the Liquidation 1 Plan Date.
- (jjjj) Except for acquisitions occurring more than three years prior to the Liquidation 1 Plan Date, Sub 1 will not have acquired assets in any nontaxable transaction at any time.

- (kkkk) No assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing 4, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to the Liquidation 1 Plan Date, (iii) sales of branch assets to unrelated parties, and (iv) dispositions pursuant to the proposed transactions.
- (llll) Liquidation 1 will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 1 to another corporation (i) that is the alter ego of Sub 1 and (ii) that, directly or indirectly, will be owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock of Sub 1. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3).
- (mmmm) Prior to the Liquidation 1 Plan Date, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing 4, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the Liquidation 1 Plan Date.
- (nnnn) Sub 1 will report all earned income represented by assets that will be distributed to Distributing 4, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (oooo) The fair market value of the assets of Sub 1 will exceed its liabilities both at the Liquidation 1 Plan Date and immediately prior to the effective time of Liquidation 1.
- (pppp) There is no intercorporate debt existing between Sub 1 and Distributing 4 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years prior to the Liquidation 1 Plan Date and (ii) indebtedness arising from (a) the provision of services in the ordinary course of business prior to Distribution 4 or (b) transition services following Distribution 4. Any indebtedness arising under the transition services agreement will be satisfied in accordance with the terms of the transition services agreement. All other indebtedness will be resolved prior to Contribution 6.
- (qqqq) Distributing 4 is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.

- (rrrr) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, Liquidation 1 have been fully disclosed.

The following representations have been made with respect to Liquidation 2:

- (ssss) Distributing 4, on the date of adoption of the plan of Liquidation 2 (the "Liquidation 2 Plan Date"), and at all times thereafter until Liquidation 2 is completed, will own 100 percent of the single outstanding class of Sub 2 stock.
- (tttt) No shares of Sub 2 stock will have been redeemed during the three years preceding the Liquidation 2 Plan Date.
- (uuuu) Except for acquisitions occurring more than three years prior to the Liquidation 2 Plan Date, Sub 2 will not have acquired assets in any nontaxable transaction at any time.
- (vvvv) No assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing 4, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to the Liquidation 2 Plan Date, and (iii) dispositions pursuant to the proposed transactions.
- (wwww) Liquidation 2 will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 2 to another corporation (i) that is the alter ego of Sub 2 and (ii) that, directly or indirectly, will be owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock of Sub 2. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3).
- (xxxx) Prior to the Liquidation 2 Plan Date, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing 4, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the Liquidation 2 Plan Date.
- (yyyy) Sub 2 will report all earned income represented by assets that will be distributed to Distributing 4, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.



- (zzzz) The fair market value of the assets of Sub 2 will exceed its liabilities both at the Liquidation 2 Plan Date and immediately prior to the effective time of Liquidation 2.
- (aaaaa) There is no intercorporate debt existing between Sub 2 and Distributing 4 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years prior to the Liquidation 2 Plan Date and (ii) indebtedness arising from the provision of services in the ordinary course of business.
- (bbbbb) Distributing 4 is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
- (ccccc) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, Liquidation 2 have been fully disclosed.

The following representations have been made with respect to Contribution 4:

- (dddd) No stock or securities will be issued for services rendered to or for the benefit of Controlled 2 in connection with Contribution 4 and no stock or securities will be issued for indebtedness of Controlled 2 that is not evidenced by a security or for interest on indebtedness of Controlled 2 that accrued on or after the beginning of the holding period of Distributing 4 for the debt.
- (eeee) None of the stock to be transferred in Contribution 4 is "section 306 stock" within the meaning of section 306(c).
- (ffff) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (gggg) Distributing 4 will not retain any rights in the property transferred to Controlled 2.
- (hhhh) The total adjusted basis of the property to be transferred by Distributing 4 to Controlled 2 in Contribution 4 will equal or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by Controlled 2.
- (iiii) The total fair market value of the assets transferred to Controlled 2 in Contribution 4 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 2 in the exchange, (ii) the amount of any liabilities owed

to Controlled 2 by Distributing 4 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 permitted to be received under section 351(a) without recognition of gain) received by Distributing 4 in the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after Contribution 4.

- (jjjjj) The liabilities of Distributing 4 to be assumed (within the meaning of section 357(d)) by Controlled 2 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (kkkkk) The aggregate fair market value of the property to be transferred by Distributing 4 to Controlled 2 in Contribution 4 will equal or exceed Distributing 4's aggregate adjusted basis in such property.
- (lllll) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing 4 to Controlled 2 pursuant to Contribution 4.
- (mmmmm) There is no indebtedness between Controlled 2 and Distributing 4 and there will be no indebtedness created in favor of Distributing 4 as a result of Contribution 4.
- (nnnnn) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (ooooo) All exchanges will occur on approximately the same date.
- (ppppp) There is no plan or intention on the part of Controlled 2 to redeem or otherwise reacquire any stock to be issued in Contribution 4.
- (qqqqq) Except pursuant to Contribution 6, there is no plan or intention on the part of Distributing 4 to dispose of any of the Controlled 2 stock received in Contribution 4.
- (rrrrr) Taking into account any issuance of additional shares of Controlled 2 stock; any issuance of stock for services; the exercise of any Controlled 2 stock rights, warrants, or subscriptions; a public offering of Controlled 2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled 2 to be received in Contribution 4, Distributing 4 will be in "control" of Controlled 2 within the meaning of section 368(c).

- (sssss) Distributing 4 will receive stock of Controlled 2 with a value approximately equal to the fair market value of the property transferred to Controlled 2.
- (ttttt) There is no plan or intention by Controlled 2 to dispose of the transferred property other than in the normal course of business operations.
- (uuuuu) Controlled 2 will remain in existence and will retain and use the property transferred to it in a trade or business.
- (vvvvv) Each of the parties to Contribution 4 will pay its own expenses, if any, incurred in connection with Contribution 4.
- (wwwww) Controlled 2 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (xxxxx) Distributing 4 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (yyyyy) Controlled 2 will not be a “personal service corporation” within the meaning of section 269A.
- (zzzzz) Immediately before and after Contribution 4, Controlled 2, FSub 2, and Controlled 1 each will be a CFC with respect to which Distributing 4 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (aaaaa) At all times before and immediately after Contribution 4, none of Controlled 2, FSub 2, and Controlled 1 has been or will be a PFIC.
- (bbbbbb) Distributing 4’s contribution of the stock of FSub 2 and Controlled 1 to Controlled 2 in exchange for Controlled 2 stock that will be issued (or deemed issued) in Contribution 4 is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (ccccc) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied with respect to Contribution 4.
- (dddddd) Distributing 4 will comply with Treas. Reg. § 1.367(b)-4(d) with respect to subsequent exchanges of Controlled 2 equity interests, as applicable.

- (eeeeee) Distributing 4 will enter into a gain recognition agreement satisfying the requirements of Treas. Reg. § 1.367(a)-8 with respect to the transfer by Distributing 4 of the stock of each of FSub 2 and Controlled 1 to Controlled 2 in Contribution 4, and such gain recognition agreements will be included in Distributing 4's timely filed return for the taxable year in which Contribution 4 occurs. Distributing 4's gain recognition agreement with respect to the stock of FSub 2 will properly reflect Controlled 2's transfer of FSub 2 to Controlled 1 in Contribution 5. In addition, Controlled 4 will, in accordance with Treas. Reg. § 1.367(a)-8(k)(1)(iii), enter into a new gain recognition agreement as described in Treas. Reg. § 1.367(a)-8(c)(5) with respect to the stock of each of FSub 2 and Controlled 1 that designates Controlled 4 as the U.S. transferor for purposes of Treas. Reg. § 1.367(a)-8; such new gain recognition agreements will properly reflect Distributing 4's transfer of Controlled 2 to Controlled 4 in Contribution 6 and, in accordance with Treas. Reg. § 1.367(a)-8(d)(3), will be filed by Distributing 4 on Controlled 4's behalf. Further, Controlled 4 will, in accordance with Treas. Reg. § 1.367(a)-8(k)(10), enter in a new gain recognition agreement as described in Treas. Reg. § 1.367(a)-8(c)(5) with respect to the stock of each of FSub 2 and Controlled 1; such new gain recognition agreements will properly reflect Controlled 4's deconsolidation in Distribution 4 and will be included in Controlled 4's timely filed tax return for the taxable year in which Distribution 4 occurs.

The following representations have been made with respect to Contribution 5:

- (ffffff) No stock or securities will be issued for services rendered to or for the benefit of Controlled 1 in connection with Contribution 5 and no stock or securities will be issued for indebtedness of Controlled 1 that is not evidenced by a security or for interest on indebtedness of Controlled 1 that accrued on or after the beginning of the holding period of Controlled 2 for the debt.
- (gggggg) None of the stock to be transferred in Contribution 5 is "section 306 stock" within the meaning of section 306(c).
- (hhhhhh) The transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (iiiiii) Controlled 2 will not retain any rights in the property transferred to Controlled 1.

- (jjjjj) The total adjusted basis of the property to be transferred by Controlled 2 to Controlled 1 in Contribution 5 will equal or exceed the sum of the liabilities to be assumed (within the meaning of section 357(d)) by Controlled 1.
- (kkkkkk) The total fair market value of the assets transferred to Controlled 1 in Contribution 5 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 in the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Controlled 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 permitted to be received under section 351(a) without recognition of gain) received by Controlled 2 in the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after Contribution 5.
- (lllll) The liabilities of Controlled 2 to be assumed (within the meaning of section 357(d)) by Controlled 1 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (mmmmmm) The aggregate fair market value of the property to be transferred by Controlled 2 to Controlled 1 in Contribution 5 will equal or exceed Controlled 2's aggregate adjusted basis in such property.
- (nnnnnn) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Controlled 2 to Controlled 1 pursuant to Contribution 5.
- (oooooo) There is no indebtedness between Controlled 1 and Controlled 2 and there will be no indebtedness created in favor of Controlled 2 as a result of Contribution 5.
- (pppppp) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (qqqqqq) All exchanges will occur on approximately the same date.
- (rrrrrr) There is no plan or intention on the part of Controlled 1 to redeem or otherwise reacquire any stock to be issued in Contribution 5.
- (ssssss) There is no plan or intention on the part of Controlled 2 to dispose of any of the Controlled 1 stock received in Contribution 5.

- (tttttt) Taking into account any issuance of additional shares of Controlled 1 stock; any issuance of stock for services; the exercise of any Controlled 1 stock rights, warrants, or subscriptions; a public offering of Controlled 1 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled 1 to be received in Contribution 5, Controlled 2 will be in “control” of Controlled 1 within the meaning of section 368(c).
- (uuuuuu) Controlled 2 will receive stock of Controlled 1 with a value approximately equal to the fair market value of the property transferred to Controlled 1.
- (vvvvvv) There is no plan or intention by Controlled 1 to dispose of the transferred property other than in the normal course of business operations.
- (wwwwww) Controlled 1 will remain in existence and will retain and use the property transferred to it in a trade or business.
- (xxxxxx) Each of the parties to Contribution 5 will pay its own expenses, if any, incurred in connection with Contribution 5.
- (yyyyyy) Controlled 1 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (zzzzzz) Controlled 2 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (aaaaaaa) Controlled 1 will not be a “personal service corporation” within the meaning of section 269A.
- (bbbbbbb) Immediately before and after Contribution 5, Controlled 2, FSub 2 and Controlled 1 each will be a CFC with respect to which Distributing 4 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (ccccccc) At all times before and immediately after Contribution 5, neither FSub 2 nor Controlled 1 has been or will be a PFIC.
- (ddddddd) Controlled 2’s contribution of the stock of FSub 2 to Controlled 1 in exchange for Controlled 1 stock that will be issued (or deemed issued) in Contribution 5 is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).

- (eeeeeee) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied with respect to Contribution 5.
- (ffffff) Controlled 2 will comply with Treas. Reg. § 1.367(b)-4(d) with respect to subsequent exchanges of Controlled 1 equity interests, as applicable.

The following representations have been made with respect to Contribution 6 and Distribution 4:

- (ggggggg) The total adjusted basis of the assets transferred to Controlled 4 by Distributing 4 in Contribution 6 will equal or exceed the sum of (i) any liabilities assumed (within the meaning of section 357(d)) by Controlled 4 and (ii) the total amount of money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 4 from Controlled 4 and transferred to Distributing 4's shareholders or creditors pursuant to the plan of reorganization.
- (hhhhhhh) The total fair market value of the assets transferred to Controlled 4 in Contribution 6 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 4 in the exchange, (ii) the amount of any liabilities owed to Controlled 4 by Distributing 4 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 section 361(a) without recognition of gain) received by Distributing 4 in the exchange. The fair market value of the assets of Controlled 4 will exceed the amount of Controlled 4's liabilities immediately after Contribution 6.
- (iiiiiii) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 4 in Contribution 6 will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (jjjjjjj) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing 4 to Controlled 4 pursuant to Contribution 6.
- (kkkkkkk) No part of the consideration to be distributed by Distributing 4 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

- (lllllll) Each of the parties to Distribution 4 will pay its own expenses, if any, incurred in connection with Distribution 4.
- (mmmmmmm) The five years of financial information submitted on behalf of the Country G Business A conducted by the Distributing 4 SAG is representative of the present business operations of the Country G Business A, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (nnnnnnn) Neither the Country G Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (ooooooo) The five years of financial information submitted on behalf of the Country G Business B conducted by the Distributing 4 SAG is representative of the present business operations of the Country G Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ppppppp) Neither the Country G Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (qqqqqqq) Following Distribution 4, the Distributing 4 SAG will continue the active conduct of the Country G Business A, independently and with its separate employees.
- (rrrrrrr) Following Distribution 4, the Controlled 4 SAG will continue the active conduct of the Country G Business B, independently and with its separate employees.
- (sssssss) Distribution 4 is not being used principally as a device for the distribution of the earnings and profits of Distributing 4 or Controlled 4 or both.
- (ttttttt) Distribution 4 is being carried out for the corporate business purposes of (i) enhancing management focus on the specific needs and strategies of each company, (ii) enabling each company to adopt an appropriate capital structure, (iii) enabling each company



to adopt an appropriate cost structure, (iv) enhancing investor focus through the creation of two pure-play companies, and (v) enhancing the attractiveness of the stock of both Distributing 4 and Controlled 4 as an acquisition currency. Distribution 4 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(uuuuuuu) No intercorporate debt will exist between Distributing 4 and Controlled 4 at the time of, or subsequent to, Distribution 4, other than indebtedness arising from (i) the provision of shared services by Distributing 4 to Controlled 4 in the ordinary course of business prior to Distribution 4 or (ii) transition services following Distribution 4, all of which will be resolved in the ordinary course of business or pursuant to the terms of a transition services agreement.

(vvvvvvv) Payments made in connection with all continuing transactions, if any, between Distributing 4 and Controlled 4 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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

(xxxxxxx) For purposes of section 355(d), immediately after Distribution 4, no person (determined after applying the aggregation rules of section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 4 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 4.

(yyyyyyy) For purposes of section 355(d), immediately after Distribution 4, no person (determined after applying the aggregation rules of section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 4 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 4 stock that was either (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of Distribution 4 or (ii) attributable to distributions on Distributing 4 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined

after applying section 355(d)(6)) ending on the date of Distribution 4.

- (zzzzzzz) Distribution 4 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in either Distributing 4 or Controlled 4 (including any predecessor or successor of Distributing 4 or Controlled 4).
- (aaaaaaaa) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)) in the stock of Distributing 4 or Controlled 4, who did not hold such an interest immediately before Distribution 4, or (ii) neither Distributing 4 nor Controlled 4 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (bbbbbbbb) Immediately before Distribution 4, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 4's excess loss account, if any, with respect to its shares of Controlled 4 stock, or any direct or indirect subsidiaries of Controlled 4, will be included in income immediately before Distribution 4.
- (cccccccc) Neither Distributing 4 nor Controlled 4 has been a USRPHC at any time during the five-year period ending on the date of Distribution 4, and neither Distributing 4 nor Controlled 4 will be a USRPHC immediately after Distribution 4.
- (dddddddd) Distributing 4 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing 3, FSub 1, FSub 3, FSub 14, FSub 23, FSub 24, and Controlled 2 immediately before Contribution 6, and Controlled 4 will be a section 1248 shareholder with respect to each of Distributing 3, FSub 1, FSub 3, FSub 14, FSub 23, FSub 24, and Controlled 2 immediately thereafter.
- (eeeeeeee) Each of Distributing 3, FSub 1, FSub 3, FSub 14, FSub 23, FSub 24, and Controlled 2 will be a CFC immediately before and after Contribution 6.
- (ffffff) The amount of Distributing 4 debt to be paid by Distributing 4 with cash received from Controlled 4 in Step (xxxviii) of the proposed

transactions, if any, will not exceed the weighted quarterly average of the Distributing 4 debt owed to third parties for the 12-month period ending at the close of business on the last full business day before the date on which the Distributing 4 Board of Directors initially discussed the potential separation of Controlled 4 from Distributing 4.

(gggggggg)

The receipt by Distributing 4 shareholders of cash in lieu of fractional shares of Controlled 4 stock resulting from the open market sale of the fractional shares has been arranged solely for the purpose of avoiding the expense and inconvenience to Distributing 4 and Controlled 4 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of Distributing 4 from the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in Distribution 4. It is also intended that no Distributing 4 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 4 common stock.

### **RULINGS**

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

- (1) Contribution 1, followed by Distribution 1, will qualify as a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be a “party to a reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing 1 on Contribution 1 (sections 357(a) and 361(a)).
- (3) No gain or loss will be recognized by Controlled 1 on Contribution 1 (section 1032(a)).
- (4) The basis of each asset received by Controlled 1 in Contribution 1 will equal the basis of such asset in the hands of Distributing 1 immediately before Contribution 1 (section 362(b)).
- (5) The holding period of each asset received by Controlled 1 in Contribution 1 will include the period during which Distributing 1 held such asset (section 1223(2)).

- (6) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 4 and Distributing 2 on their receipt of Controlled 1 shares in Distribution 1 (section 355(a)(1)).
- (7) No gain or loss will be recognized by Distributing 1 as a result of Distribution 1 (section 361(c)(1)).
- (8) The basis of the stock of Distributing 1 and Controlled 1 in the hands of each shareholder of Distributing 1 after Distribution 1 will be the same as the basis of the Distributing 1 stock held by such shareholder immediately before Distribution 1 (section 358(a)(1) and Treas. Reg. § 1.358-1(a)), allocated in proportion to the fair market value of the Distributing 1 shares and the Controlled 1 shares held by such shareholder in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (9) The holding period of the Controlled 1 shares received by each of Distributing 4 and Distributing 2 in Distribution 1 will include the holding period of the Distributing 1 shares with respect to which Distribution 1 will be made, provided that such Distributing 1 shares are held as capital assets on the date of Distribution 1 (section 1223(1)).
- (10) As provided in section 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 1 will be made under Treas. Reg. § 1.312-10(a).
- (11) Contribution 1 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of Contribution 1.
- (12) Distribution 1 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing 4's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing 1 or Controlled 1, Distributing 4's basis in such stock immediately after Distribution 1 must be reduced by the amount of the difference. However, Distributing 4's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing 4 must instead include such amount in income as a deemed dividend from such corporation. If

Distributing 4 reduces the basis in the stock of Distributing 1 or Controlled 1 (or has an inclusion with respect to such stock), Distributing 4 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

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

- (13) Contribution 2, followed by Distribution 2, will qualify as a reorganization under section 368(a)(1)(D). Distributing 2 and Controlled 2 each will be a “party to a reorganization” within the meaning of section 368(b).
- (14) No gain or loss will be recognized by Distributing 2 on Contribution 2 (sections 357(a) and 361(a)).
- (15) No gain or loss will be recognized by Controlled 2 on Contribution 2 (section 1032(a)).
- (16) The basis of each asset received by Controlled 2 in Contribution 2 will equal the basis of such asset in the hands of Distributing 2 immediately before Contribution 2 (section 362(b)).
- (17) The holding period of each asset received by Controlled 2 in Contribution 2 will include the period during which Distributing 2 held such asset (section 1223(2)).
- (18) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 4 on its receipt of Controlled 2 shares in Distribution 2 (section 355(a)(1)).
- (19) No gain or loss will be recognized by Distributing 2 as a result of Distribution 2 (section 361(c)(1)).
- (20) The basis of the stock of Distributing 2 and Controlled 2 in the hands of Distributing 4 after Distribution 2 will be the same as the basis of the Distributing 2 stock held immediately before Distribution 2 (section 358(a)(1) and Treas. Reg. § 1.358-1(a)), allocated in proportion to the fair market value of the Distributing 2 shares and the Controlled 2 shares in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (21) The holding period of the Controlled 2 shares received by Distributing 4 in Distribution 2 will include the holding period of the Distributing 2 shares with respect to which Distribution 2 will be

made, provided that such Distributing 2 shares are held as capital assets on the date of Distribution 2 (section 1223(1)).

- (22) As provided in section 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 2 will be made under Treas. Reg. § 1.312-10(a).
- (23) Contribution 2 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of Contribution 2.
- (24) Distribution 2 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing 4's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 2 or Controlled 2 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing 2 or Controlled 2, Distributing 4's basis in such stock immediately after Distribution 2 must be reduced by the amount of the difference. However, Distributing 4's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing 4 must instead include such amount in income as a deemed dividend from such corporation. If Distributing 4 reduces the basis in the stock of Distributing 2 or Controlled 2 (or has an inclusion with respect to such stock), Distributing 4 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 3 and Distribution 3:

- (25) For federal income tax purposes, Steps (xiv) through (xvi) of the proposed transactions will be treated as if (i) Distributing 3 contributed its Business A assets and the stock of FSub 22 to Controlled 3 in exchange for all of the shares of Controlled 3 (Contribution 3) and (ii) Distributing 3 distributed all of its shares of Controlled 3 stock to Distributing 4 (Distribution 3) (Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 77-191, 1977-1 C.B. 94).
- (26) Contribution 3, followed by Distribution 3, will qualify as a reorganization under section 368(a)(1)(D). Distributing 3 and Controlled 3 each will be a "party to a reorganization" within the meaning of section 368(b).

- (27) No gain or loss will be recognized by Distributing 3 on Contribution 3 (sections 357(a) and 361(a)).
- (28) No gain or loss will be recognized by Controlled 3 on Contribution 3 (section 1032(a)).
- (29) The basis of each asset received by Controlled 3 in Contribution 3 will equal the basis of such asset in the hands of Distributing 3 immediately before Contribution 3 (section 362(b)).
- (30) The holding period of each asset received by Controlled 3 in Contribution 3 will include the period during which Distributing 3 held such asset (section 1223(2)).
- (31) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 4 on its receipt of Controlled 3 shares in Distribution 3 (section 355(a)(1)).
- (32) No gain or loss will be recognized by Distributing 3 as a result of Distribution 3 (section 361(c)(1)).
- (33) The basis of the stock of Distributing 3 and Controlled 3 in the hands of Distributing 4 after Distribution 3 will be the same as the basis of the Distributing 3 stock held immediately before Distribution 2 (section 358(a)(1) and Treas. Reg. § 1.358-1(a)), allocated in proportion to the fair market value of the Distributing 3 shares and the Controlled 3 shares distributed in Distribution 3 held by Distributing 4 in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (34) The holding period of the Controlled 3 shares received by Distributing 4 in Distribution 3 will include the holding period of the Distributing 3 shares with respect to which Distribution 3 will be made, provided that such Distributing 3 shares are held as capital assets on the date of Distribution 3 (section 1223(1)).
- (35) As provided in section 312(h), proper allocation of earnings and profits between Distributing 3 and Controlled 3 will be made under Treas. Reg. § 1.312-10(a).
- (36) Contribution 3 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of Contribution 3.

- (37) Distribution 3 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing 4's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 3 or Controlled 3 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing 3 or Controlled 3, Distributing 4's basis in such stock immediately after Distribution 3 must be reduced by the amount of the difference. However, Distributing 4's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing 4 must instead include such amount in income as a deemed dividend from such corporation. If Distributing 4 reduces the basis in the stock of Distributing 3 or Controlled 3 (or has an inclusion with respect to such stock), Distributing 4 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

Based solely on the information submitted and the representations set forth above, we rule as follows on Liquidation 1:

- (38) Liquidation 1 will be treated as a distribution by Sub 1 to Distributing 4 in complete liquidation under section 332(a).
- (39) No gain or loss will be recognized by Distributing 4 on the receipt of all of the assets and assumption of the liabilities of Sub 1 in Liquidation 1 (section 332(a)).
- (40) No gain or loss will be recognized by Sub 1 on the distribution of its assets and liabilities to Distributing 4 in Liquidation 1 (section 337(a)).
- (41) Distributing 4's basis in each asset received from Sub 1 in Liquidation 1 will equal the basis of such asset in the hands of Sub 1 immediately before Liquidation 1 (section 334(b)(1)).
- (42) Distributing 4's holding period in each asset received from Sub 1 in Liquidation 1 will include the period during which such asset was held by Sub 1 (section 1223(2)).
- (43) Distributing 4 will succeed to and take into account the items of Sub 1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).



- (44) Except to the extent Sub 1's earnings and profits are reflected in Distributing 4's earnings and profits, Distributing 4 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of Liquidation 1 (section 381(c)(2)(A), Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 1 can be used only to offset earnings and profits accumulated after the date of Liquidation 1 (section 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, we rule as follows on Liquidation 2:

- (45) Liquidation 2 will be treated as a distribution by Sub 2 to Distributing 4 in complete liquidation under section 332(a).
- (46) No gain or loss will be recognized by Distributing 4 on the receipt of all of the assets and assumption of the liabilities of Sub 2 in Liquidation 2 (section 332(a)).
- (47) No gain or loss will be recognized by Sub 2 on the distribution of its assets and liabilities to Distributing 4 in Liquidation 2 (section 337(a)).
- (48) Distributing 4's basis in each asset received from Sub 2 in Liquidation 2 will equal the basis of such asset in the hands of Sub 2 immediately before Liquidation 2 (section 334(b)(1)).
- (49) Distributing 4's holding period in each asset received from Sub 2 in Liquidation 2 will include the period during which such asset was held by Sub 2 (section 1223(2)).
- (50) Distributing 4 will succeed to and take into account the items of Sub 2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
- (51) Except to the extent Sub 2's earnings and profits are reflected in Distributing 4's earnings and profits, Distributing 4 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 Liquidation 2 (section 381(c)(2)(A), Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 2 can be used only to offset earnings and profits accumulated after the date of Liquidation 2 (section 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 4:

- (52) Distributing 4 will not recognize any gain or loss on Contribution 4 (sections 351(a) and 357(a); Rev. Rul. 2003-51, 2003-1 C.B. 938).
- (53) Controlled 2 will not recognize any gain or loss on Contribution 4 (section 1032(a)).
- (54) The basis of each asset received by Controlled 2 will be the same as the basis of such asset in the hands of Distributing 4 immediately prior to Contribution 4 (section 362(a)).
- (55) The basis of the Controlled 2 stock received by Distributing 4 in Contribution 4 will be the same as the basis of the assets transferred by Distributing 4 to Controlled 2, decreased by the sum of liabilities assumed by Controlled 2 (section 358(a) and (d)).
- (56) Distributing 4's holding period in the Controlled 2 stock received in Contribution 4 will include the holding period of the assets transferred in exchange therefor, provided that such assets are held by Distributing 4 as capital assets on the date of the transfer (section 1223(1)).
- (57) Controlled 2's holding period in each asset received in Contribution 4 will include the period during which Distributing 4 held such asset (section 1223(2)).
- (58) Contribution 4 qualifies for an exception to section 367(a)(1) under Treas. Reg. § 1.367(a)-3(b)(1).
- (59) Distributing 4 qualifies for an exception to section 367(a) upon entering into a 5-year gain recognition agreement pursuant to Treas. Reg. § 1.367(a)-8.
- (60) Contribution 4 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of Contribution 4.

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 5:

- (61) Controlled 2 will not recognize any gain or loss on Contribution 5 (sections 351(a) and 357(a)).

- (62) Controlled 1 will not recognize any gain or loss on Contribution 5 (section 1032(a)).
- (63) The basis of each asset received by Controlled 1 will be the same as the basis of such asset in the hands of Controlled 2 immediately prior to Contribution 5 (section 362(a)).
- (64) The basis of the Controlled 1 stock received by Controlled 2 in Contribution 5 will be the same as the basis of the assets transferred by Controlled 2 to Controlled 1, decreased by the sum of liabilities assumed by Controlled 1 (section 358(a) and (d)).
- (65) Controlled 2's holding period in the Controlled 1 stock received in Contribution 5 will include the holding period of the assets transferred in exchange therefor, provided that such assets are held by Controlled 2 as capital assets on the date of the transfer (section 1223(1)).
- (66) Controlled 1's holding period in each asset received in Contribution 5 will include the period during which Controlled 2 held such asset (section 1223(2)).
- (67) Contribution 5 will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of Contribution 5.

Based solely on the information submitted and the representations set forth above, we rule as follows on Contribution 6 and Distribution 4:

- (68) Contribution 6, followed by Distribution 4, will qualify as a reorganization under section 368(a)(1)(D). Distributing 4 and Controlled 4 each will be a "party to a reorganization" within the meaning of section 368(b).
- (69) No gain or loss will be recognized by Distributing 4 on Contribution 6 (sections 357(a) and 361(a) and (b)).
- (70) No gain or loss will be recognized by Controlled 4 on Contribution 6 (section 1032(a)).
- (71) The basis of each asset received by Controlled 4 in Contribution 6 will equal the basis of such asset in the hands of Distributing 4 immediately before Contribution 6 (section 362(b)).

- (72) The holding period of each asset received by Controlled 4 in Contribution 6 will include the period during which Distributing 4 held such asset (section 1223(2)).
- (73) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) the shareholders of Distributing 4 on their receipt of Controlled 4 shares in Distribution 4 (section 355(a)(1)).
- (74) No gain or loss will be recognized by Distributing 4 as a result of Distribution 4 (section 361(c)(1)).
- (75) The basis of the stock of Distributing 4 and Controlled 4 in the hands of each shareholder of Distributing 4 after Distribution 4 will be the same as the basis of the Distributing 4 stock held by such shareholder immediately before Distribution 4 (section 358(a) and Treas. Reg. § 1.358-1(a)), allocated in proportion to the fair market value of the Distributing 4 shares and the Controlled 4 shares held by such shareholder in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (76) The holding period of the Controlled 4 shares received by the shareholders of Distributing 4 in Distribution 4 will include the holding period of the Distributing 4 shares with respect to which Distribution 4 will be made, provided that such Distributing 4 shares are held as capital assets on the date of Distribution 4 (section 1223(1)).
- (77) As provided in section 312(h), proper allocation of earnings and profits between Distributing 4 and Controlled 4 will be made under Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (78) Distributing 4 shareholders who receive cash in lieu of fractional shares of Controlled 4 stock will recognize gain or loss measured by the difference between the amount of the cash received and the basis allocated to the fractional share (section 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of Distribution 4 (sections 1221 and 1222).

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (79) Payments made between the Distributing 4 group and the Controlled 4 group under the Distribution Agreements that (i) have

arisen or will arise for a taxable period ending on or before Distribution 4 or for a taxable period beginning before and ending after Distribution 4 and (ii) will not have become fixed and ascertainable until after Distribution 4, will be treated as if occurring immediately before Distribution 4 (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, this office has not reviewed any information pertaining to and has made no determination regarding the following:

- (i) Whether any of Distributions 1 through 4 satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any of Distributions 1 through 4 is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any of Distributions 1 through 4 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 section 355(e) and Treas. Reg. § 1.355-7);
- (iv) The federal income tax treatment of Steps (ii)-(iv), (vii), (viii), (x), (xiii), (xvii)-(xxvi), (xxviii)-(xxxi), (xxxiii), and (xxxvi);
- (v) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any one of the transactions to which section 367(a) or (b) apply; and
- (vi) To the extent not otherwise specifically ruled upon above, any other consequences under section 367 with respect to any transaction described in this letter ruling.

### PROCEDURAL STATEMENTS

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

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. 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 the 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,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)