Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

,

ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B02
PLR-112444-18

Date:
October 04, 2018

Legend

LossCo =

Subsidiary =

Regulator =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Advisor A =

Advisor B =

Advisor C =

x =

Dear :

This letter responds to your authorized representatives' letter dated April 9, 2018 requesting rulings under section 382 of the Internal Revenue Code. Additional information was submitted in a letter dated July 12, 2018. The material information submitted for consideration is summarized below.

Facts

LossCo is a publicly traded State A corporation and is the common parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes. LossCo is a holding company, whose major asset is the stock of Subsidiary, a State B corporation. On Date 1, LossCo filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. On Date 2, the Internal Revenue Service ruled in a private letter ruling that the issuance of LossCo common stock to its creditors under the bankruptcy plan qualified for protection under section 382(l)(5). On Date 3, LossCo emerged from bankruptcy in a transaction that caused LossCo to experience an ownership change under section 382.

LossCo common stock is subject to Securities and Exchange Commission ("SEC") reporting requirements. LossCo relies on the existence and absence of filings of Schedules 13D and 13G with the SEC to identify shareholders that have a direct ownership interest of 5% of more in LossCo. Currently, LossCo has transfer restrictions on its common stock that limit acquisitions to persons that are less than 5% shareholders after the acquisition.

Advisor A is an investment advisor that acts as an investment advisor or sub-advisor. The clients of Advisor A are investment funds and managed accounts (together with Advisor A, "Advisor A Funds"). A majority of the Advisor A funds on behalf of which Advisor A owns LossCo common stock follow an investment strategy whereby Advisor A buys broadly diversified groups of equities in specifically defined asset classes, and securities with similarly expected returns are considered substitutes for each other.

With respect to the period ended Date 4, Advisor A filed a Schedule 13G reporting that it is the beneficial owner of 5% or more of the outstanding shares of LossCo's common stock. Advisor A also filed a Schedule 13G/A with respect to the period ended Date 5. Neither the Advisor A Schedule 13G nor Schedule 13G/A affirmed the existence of a "group" within the meaning of section 13(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act"). As of Date 6, more than half of LossCo's common stock that Adviser A had purchased on behalf of the Advisor A Funds was owned by funds that qualify as "regulated investment companies" within the meaning of the Internal Revenue Code. On Date 6, LossCo received a letter from Advisor A expressing its intent to divest the Advisor A Funds' holdings in LossCo common stock to less than 5%.

Advisor B and Advisor C are both investment advisors that act as managers and/or investment advisors. The clients of Advisor B are investment funds and accounts (together with Advisor B, "Advisor B Funds"). The clients of Advisor C are funds, separately managed accounts, collective trusts, and other pooled investment vehicles, including open-end management investment companies (together with Advisor C, "Advisor C Funds"). As of Date 7, a majority of LossCo's common stock owned on behalf of the Advisor B Funds was, and Advisor B represented that it expects that a significant portion of LossCo's common stock owned on behalf of the Advisor B Funds will be, owned by funds that qualify as "regulated investment companies" within the meaning of the Internal Revenue Code (or qualify for equivalent status under a substantially similar tax regime outside of the United States). As of Date 8, a majority of LossCo's common stock owned on behalf of the Advisor C Funds was, and Advisor C represented that it expects a majority of LossCo's common stock owned on behalf of the Advisor C Funds will be, owned by funds that qualify as "regulated investment companies" within the meaning of the Internal Revenue Code.

Advisor B and Advisor C have separately approached LossCo on several occasions, in their capacity as investment advisors, requesting permission to increase aggregate ownership of LossCo common stock by the Advisor B Funds and the Advisor C Funds, respectively, to more than 5%. Neither Advisor B nor Advisor C has filed any Schedule 13D or 13G with respect to the common stock of LossCo.

Because Subsidiary is engaged in a business that is regulated by State B Regulator, LossCo common stock is subject to State B Regulator reporting requirements. State B Regulator requires that any investor that "controls" a company engaged in the regulated business to disclose such control by filing a form with State B Regulator. There is a presumption of control if an investor holds the power to vote, or holds proxies to vote, more than x% of the voting securities of a company regulated by State B Regulator.

An investor may disclaim control by filing a disclaimer explaining that it lacks actual control or influence over the company and its management, rather than filing a form. The disclaimer is deemed approved unless disallowed by State B Regulator, and filers often reference the statements made in their SEC filings in support of their disclaimers

of control. If an investor cannot make such a disclaimer, it must file a form and obtain the approval of State B Regulator. The LossCo charter prohibits a shareholder that owns common stock representing x% or more of the voting power in LossCo from voting the excess above x% unless its ownership has been approved by State B Regulator. Since Date 3, no shareholder has filed a disclaimer or a form with State B Regulator with respect to LossCo common stock.

Section 382

When a loss corporation experiences an "ownership change" within the meaning of section 382(g), its ability to freely use its losses to offset otherwise taxable income becomes impaired by the section 382 limitation. An ownership change is triggered if one or more "5-percent shareholders" of the loss corporation increase their ownership in the aggregate by more than 50 percentage points during a testing period.

Treas. Reg. § 1.382-2T(g)(1) provides that the term "5-percent shareholder" means any individual or a public group, and under Treas. Reg. § 1.382-2T(f)(13), a public group includes entities. Treas. Reg. § 1.382-3(a)(1)(i) provides that an entity is any corporation, estate, trust, association, company, partnership, or similar organization. The Regulation also treats as an entity a group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of stock. A principal element in determining if such an understanding exists is whether the investment decision of each member of a group is based upon the investment decision of one or more other members.

Treas. Reg. § 1.382-2T(k)(1)(i) provides that a loss corporation may rely on the existence and absence of Schedules 13D and 13G (or any similar schedules) as of any date to identify all of the corporation's shareholders who have a direct ownership interest of 5% or more (both individuals and first tier entities) on such date. The Regulation goes on to provide that a loss corporation may similarly rely on the existence and absence of such filings as of any date with respect to registered stock of any first tier entity or any higher tier entity to identify the 5-percent owners of any such entities on such date who indirectly own 5% or more of the loss corporation stock, and are thus 5-percent shareholders, and to identify any higher tier entities of such entities.

Treas. Reg. § 1.382-2T(k)(2) provides that to the extent the loss corporation has actual knowledge of stock ownership by an individual who would be a 5-percent shareholder but for application of certain presumptions set forth in Treas. Reg. § 1.382-2T, the loss corporation must take that knowledge into account in determining stock ownership for purposes of section 382. If, despite the absence or existence of a SEC filing, a loss corporation has actual knowledge of sufficient weight and probity of stock ownership that differs from the stock ownership presumed by the absence or existence of the filing, the loss corporation must take such actual knowledge into account in determining stock ownership for section 382 purposes. Such actual knowledge may come from the

contents of the filing itself or from outside the filing. In determining whether information is of sufficient weight and probity to counter the holdings reported in the filing, the loss corporation must give due consideration to the source of the information.

In connection with this letter ruling request, LossCo inquired directly with Advisor B and Advisor C regarding their ownership of LossCo common stock. Advisor B and Advisor C responded with certain representations to LossCo. Specifically, each represented that it has procedures for monitoring its respective aggregate ownership of LossCo common stock for complying with SEC requirements. Those procedures are substantially similar to the procedures for monitoring their respective aggregate ownership of LossCo common stock for complying with State B Regulator requirements. A monitoring system, separate and apart from the portfolio managers and the investment-making process, monitors aggregate ownership. A compliance group is notified of the aggregate ownership only after the portfolio managers have made their decision to purchase LossCo common stock, and only if the aggregate ownership of LossCo common stock crosses or could cross the threshold established by Advisor B or Advisor C, as the case may be, with respect to the State B Regulator reporting requirements.

Each of Advisor B and Advisor C also purchases LossCo common stock on behalf of the Advisor B Funds and the Advisor C Funds, respectively, pursuant to parameters and investment objectives of the Advisor B Funds or the Advisor C Funds, as the case may be. A majority of the Advisor B funds on behalf of which Advisor B owns LossCo common stock are index funds and, accordingly, seek to replicate the performance of a specified market index, as opposed to actively managed funds that aim to exceed the returns of a specified market index. A majority of Advisor C funds on behalf of which Advisor C owns LossCo common stock are index funds that buy all (or a representative sample) of the securities of a specific market index with the goal of tracking the performance of a specific market benchmark.

Representations

LossCo makes the following representations:

(a) The stock of LossCo is publicly traded.

(b) LossCo has had no class of stock outstanding other than its common stock since Date 3.

(c) LossCo is a loss corporation as defined in section 382(k)(1).

(d) LossCo has no knowledge of: (1) the specific persons with economic interests in the Advisor A Funds; (2) the existence of any group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of LossCo common stock using investments made through Advisor A;

(3) any SEC filings affirming that Advisor A's clients should be treated as a group; (4) an entity or individual (through application of the attribution rules of section 318 as modified by section 382(l)) that owns 5% or more (by value) of LossCo common stock when such individual or entity's direct ownership in LossCo common stock is combined with its ownership of LossCo common stock acquired through Advisor A; or (5) any activities performed by Advisor A that would be outside the scope of an investment advisor.

(e) LossCo has no knowledge of: (1) the specific persons with economic interests in the Advisor B Funds; (2) the existence of any group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of LossCo common stock using investments made through Advisor B; (3) any SEC filings affirming that Advisor B's clients should be treated as a group; (4) an entity or individual (through application of the attribution rules of section 318 as modified by section 382(l)) that owns 5% or more (by value) of LossCo common stock when such individual or entity's direct ownership in LossCo common stock is combined with its ownership of LossCo common stock acquired through Advisor B; or (5) any activities performed by Advisor B that would be outside the scope of an investment advisor.

(f) LossCo has no knowledge of: (1) the specific persons with economic interests in the Advisor C Funds; (2) the existence of any group of persons who have a formal or informal understanding among themselves to make a coordinated acquisition of LossCo common stock using investments made through Advisor C; (3) any SEC filings affirming that Advisor C's clients should be treated as a group; (4) an entity or individual (through application of the attribution rules of section 318 as modified by section 382(l)) that owns 5% or more (by value) of LossCo common stock when such individual or entity's direct ownership in LossCo common stock is combined with its ownership of LossCo common stock acquired through Advisor C; or (5) any activities performed by Advisor C that would be outside the scope of an investment advisor.

Rulings

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

(1) An individual or entity that has the right to dividends and the right to the proceeds from the sale of stock ("Economic Ownership") is the owner of the stock for purposes of section 382 ("Economic Owner"). Investment advisors often have the power on behalf of their clients to vote and/or dispose of stock ("Beneficial Ownership") but do not have Economic Ownership of the stock. Accordingly, neither Advisor A, nor Advisor B, nor Advisor C is, and will not be, the owner of

any share of LossCo common stock to which it does not have the right to receive dividends and the proceeds of sales.

(2) Neither all the Advisor A Funds together nor any subset thereof (consisting of two or more Advisor A Funds) are an entity within the meaning of Treas. Reg. § 1.382-3(a)(1)(i).

(3) Neither all the Advisor B Funds together nor any subset thereof (consisting of two or more Advisor B Funds) are entity within the meaning of Treas. Reg. § 1.382-3(a)(1)(i).

(4) Neither all the Advisor C Funds together nor any subset thereof (consisting of two or more Advisor C Funds) are an entity within the meaning of Treas. Reg. § 1.382-3(a)(1)(i).

Caveats

We express no opinion on the tax effect of any transaction or item discussed or referenced in this ruling letter under any other provision of the Internal Revenue Code and regulations, or the tax effect of any condition existing at the time of, or effect resulting from, the facts and circumstances herein described that are not specifically covered by the rulings set forth above

Procedural Statements

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

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

A copy of this letter must be attached to any 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 the letter ruling.

Sincerely,

Mark S. Jennings
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)