

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-133731-18

Date:

May 13, 2019

TY:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

FSub 1 =

LLC 1 =

LLC 2 =

Business A =

Business B =

Distributing  
Preferred Stock =

Other Property =

Accelerated Share  
Repurchase  
Program =

Hook Stock =

Compensation Plan  
Equity =

State A =

Country A =

Country B =

Country C =

Country D =

Exchange =

a =

b =

c =

d =

e =

f =

g

h =

i =

k =

l =

m =

Dear :

This letter responds to your representative's November 14, 2018 letter, as supplemented on February 22, 2019, March 14, 2019, April 15, 2019, May 3, 2019, and May 9, 2019, requesting rulings under Sections 355 and 368(a)(1)(D), and related provisions of the Internal Revenue Code of 1986, as amended, and related regulations with respect to the proposed transaction described below (the "Proposed Transaction").

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.

This letter is issued pursuant to Rev. Proc. 2019-1, 2019-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered Transaction. This office expresses no opinion as to the overall tax consequences of the Proposed Transaction or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distribution (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 § 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, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing is a State A corporation and the parent of a worldwide group of entities (the "Distributing Worldwide Group") and is also the common parent of a group of affiliated corporations that join in filing a consolidated U.S. federal income tax return (the "Distributing Group"). The outstanding capital stock of Distributing consists of Distributing common stock, which is publicly traded on Exchange and widely held, and Distributing Preferred Stock.

Immediately prior to the Proposed Transactions, Distributing will wholly own (i) Sub 1, a State A corporation, (ii) Sub 2, a State A corporation, (iii) LLC 1, a State A limited

liability company, that for U.S. federal income tax purposes will be disregarded as an entity separate from Distributing, and (iv) Controlled, a State A corporation. Controlled will have no assets or activities prior to the Proposed Transactions.

Sub 1 will wholly own (i) FSub 1, a Country A corporation, and (ii) Sub 3, a State A corporation. Sub 3 will wholly own LLC 2, a State A limited liability company, that for U.S. federal income tax purposes will be disregarded as an entity separate from Sub 3. Distributing, directly and indirectly through its subsidiaries, is engaged in, among other things, Business A and Business B. Immediately prior to the Proposed Transactions, Sub 1, Sub 2, Sub 3, FSub 1, LLC 1 and LLC 2, directly and indirectly through their subsidiaries, will be engaged in Business B.

Financial information has been submitted in accordance with Revenue Procedure 2017-52.

### **Proposed Transaction**

Distributing proposes to carry out the Proposed Transaction to separate Business B from Business A, which is comprised of the following steps:

1. Controlled will incur third-party debt financing through a combination of bonds and/or term loans (the "Permanent Debt"), and if Controlled undertakes both the First IPO and the Second IPO (each as defined below), a short-term loan (the "Bridge Loan," and together with the Permanent Debt, the "Controlled Debt").
2. Distributing will transfer the stock of Sub 1 and Sub 2, the membership interests of LLC 1 and cash (the "Contributed Assets") to Controlled in exchange for (i) shares of Controlled common stock, (ii) all or a portion of the cash proceeds of the Controlled Debt (such portion, the "Debt Cash Proceeds"), (iii) if Controlled undertakes the First IPO, all or a portion of the cash proceeds from such First IPO (and together with the Debt Cash Proceeds, the "Cash Proceeds"), and (iv) the assumption by Controlled of any liabilities of Distributing that are related to Business B (the "Contribution").
3. Immediately following the Contribution, Controlled may issue shares of Controlled common stock to the public in the first of up to two public offerings (the "First IPO"). One such public offering would be on the Exchange (the "Country D IPO"), and if the Country D IPO is undertaken, Controlled may also undertake a public offering on the Country B stock exchange (the "Country B IPO"). The Country D IPO and the Country B IPO may be undertaken in either order (or not at all). The cash proceeds from the First IPO, if any, will be transferred to Distributing as part of the consideration for the Contribution in step (2).

4. On Date a, Controlled may issue shares of Controlled common stock to the public in a second IPO (the "Second IPO" and together with the First IPO, the "IPOs"). Controlled will use all or a portion of the cash proceeds from the Second IPO, if any, to repay the Bridge Loan. Following the IPOs, Distributing will own at least b% of the Controlled common stock and Controlled will have no other classes of stock outstanding.
5. On Date c, Distributing will either (i) distribute all of the Controlled common stock owned by Distributing pro rata to its shareholders (other than with respect to Hook Stock or the Compensation Plan Equity) (the "Regular Spin"); or (ii) offer to its shareholders to exchange Distributing common stock for Controlled common stock (the "Split-Off") and, if necessary, distribute as soon as possible after the closing of the Split-Off any remaining Controlled common stock owned by Distributing pro rata to its shareholders (other than with respect to Hook Stock or the Compensation Plan Equity) in a clean-up spin-off (the "Clean-Up Spin," and the Regular Spin or the Split-Off and the Clean-Up Spin, as the case may be, the "Distribution"). If Controlled does not undertake any IPOs, Distributing will distribute all of the Controlled common stock owned by Distributing through a Regular Spin shortly after the Contribution in step (2).
6. No later than d days after the first distribution of Controlled common stock in the Distribution, Distributing will (i) use some or all of the Cash Proceeds to (A) repurchase common stock of Distributing, including potentially through an Accelerated Share Repurchase Program, or (B) make pro rata special cash distributions to its shareholders, and (ii) use the remaining Cash Proceeds to repay or repurchase debt (including principal, interest and associated premiums and fees) from third-party lenders, including by repurchasing commercial paper (such debt, the "Distributed Purged Debt," and all such uses of the Cash Proceeds, the "Cash Boot Purge," and the Cash Boot Purge along with the Contribution and the Distribution, the "Reorganization").

In connection with the Proposed Transactions, Distributing and Controlled will enter into continuing commercial arrangements (the "Continuing Commercial Arrangements"), Delayed Asset Transfer Arrangements, as defined below, and other customary agreements including a separation and distribution agreement, a transition services agreement, a tax matters agreement, and an employee matters agreement (the "Continuing Arrangements"). All of the Continuing Commercial Arrangements and the Continuing Arrangements will be based on arm's-length terms and conditions, including arm's-length pricing, except for (i) certain arrangements that may be priced at cost or cost-plus for up to e years after the Distribution and (ii) certain Delayed Asset Transfer Arrangements.

Pursuant to the Continuing Commercial Arrangements, Controlled will provide to Distributing f services at arm's-length terms and conditions and Distributing will provide to Controlled g services at arm's-length terms and conditions, in each case except as described above.

In certain countries, local separations of Business B from Business A will not occur until after the Distribution primarily due to local regulatory requirements and the need to obtain consents from local governments. In these countries, the Continuing Arrangements will include one or more agreements providing for the conduct of certain continuing relationships and the delayed transfer of certain assets (the "Delayed Asset Transfer Arrangements"). These Delayed Asset Transfer Arrangements will be terminated in a particular country once the necessary consents from local governments are received, generally expected within h - i years after the Distribution, though in Country C, it is expected that this relationship may last for up to approximately k - l years.

### Representations

Distributing makes all of the representations in section 3 of the Appendix to Revenue Procedure 2017-52, except with respect to (i) representations 20, 24, 25, 39, and 40 of section 3 of the Appendix to Revenue Procedure 2017-52, which are inapplicable to the Proposed Transaction, (ii) representation 6 is only made with respect to the Regular Spin and any Clean-Up Spin, and representation 7 is only made with respect to the Split-Off, (iii) representations 2, 5, 8, 19, 32, 33, and 46 of section 3 of the Appendix to Revenue Procedure 2017-52, which Distributing has modified below, and subject to the additional representation (9), below. With respect to the representations that allow for alternative representations to be made and are not otherwise modified below, Distributing makes representations 3(a), 11(a), 15(a), 22(b), 31(a), and 41(a).

1. Representation 2: In the Distribution, Distributing will distribute on the same day all of the stock and securities of Controlled that it holds immediately before the Distribution; *provided* that in the case of a Split-Off that is undersubscribed, the Clean-Up Spin with respect to such Split-Off will occur as promptly as practical after such Split-Off taking into account applicable stock exchange and clearing agency (e.g., DTC) requirements.
2. Representation 5: None of the stock or securities of Controlled or Other Property to be distributed in the Distribution will be received in any capacity other than that of a shareholder of Distributing; except that Distributing may transfer Cash Proceeds to holders of Distributing Purged Debt in the Cash Boot Purge.
3. Representation 8: Distributing has securities outstanding, but it will not distribute stock or securities of Controlled or Other Property to any holder of such securities in the Distribution in satisfaction thereof; except that Distributing may

transfer Cash Proceeds to holders of Distributing Purged Debt that qualifies as a security in the Cash Boot Purge.

4. Representation 19: Any Other Property issued or transferred by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization, except to the extent transferred by Distributing to repay or repurchase the Distributing Purged Debt as described herein.
5. Representation 32: No intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to the Distribution, except for payables and receivables arising by reason of the Continuing Arrangements or payables and receivables incurred in the ordinary course of business.
6. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Reorganization will be for fair market value based on arm's-length terms, except for payments contemplated by certain Continuing Commercial Arrangements and Continuing Arrangements made no more than m months after the Distribution.
7. Representation 46: Other than in connection with (i) the IPOs and (ii) the Controlled Debt, Controlled will not issue stock or securities to any person other than Distributing in connection with the Reorganization.

Except with respect to (i) representation 6 of section 3 of the Appendix to Revenue Procedure 2018-53, which is inapplicable to the Proposed Transaction, and (ii) representation 4 of section 3 of the Appendix to Revenue Procedure 2018-53, which Distributing has modified below, and subject to the additional representation (9), below, Distributing makes all of the representations in section 3 of the Appendix to Revenue Procedure 2018-53.

8. Representation 4: Distributing incurred the Distributing Debt that will be assumed or satisfied (i)(A) before the date hereof and (B) no later than 60 days before the earliest of the following dates: (x) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Reorganization or a similar transaction, (y) the date of the entry by Distributing into a binding agreement to engage in the Reorganization or similar transaction by the Distributing board of directors, and (z) the date of approval of the Reorganization or a similar transaction by the Distributing board of directors, or (ii) on a date later than such date described in clause (i) and the proceeds of such Distributing Debt were used to repay Distributing Debt incurred prior to the relevant date described in clause (i) ("Distributing Refinancing Debt") or were



used to repay or refinance (including through successive refinancing) Distributing Refinancing Debt.

9. In the Distribution, Controlled shares will not be distributed to holders of Hook Stock or with respect to Compensation Plan Equity.

### **Rulings**

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

- 1) The Contribution and the Distribution will be a “reorganization” within the meaning of Sections 368(a)(1)(D) and 355. Distributing and Controlled will each be “a party to the reorganization” within the meaning of Section 368(b).
- 2) Distributing will recognize no gain or loss (i) on its receipt of the Controlled stock and the Cash Proceeds, or (ii) the assumption by Controlled of any liabilities of Distributing in connection with the Contribution. Sections 361(a), 361(b) and 357(a).
- 3) Controlled will recognize no gain or loss upon the Contribution. Section 1032(a).
- 4) The basis of Controlled in each asset received from Distributing in the Contribution will equal the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- 5) The holding period of Controlled in each asset received from Distributing in the Contribution will include the period during which such asset was held by Distributing. Section 1223(2).
- 6) Distributing will recognize no gain or loss upon the Distribution. Section 361(c).
- 7) Distributing shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Distribution. Section 355(a).
- 8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share interest in Controlled Stock to which the shareholder may be entitled) will equal the aggregate basis of the Distributing stock held by such Distributing shareholder immediately before the Distribution, allocated between the stock of Controlled and Distributing in proportion to the

fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a). Section 358(b)(2) and (c).

- 9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period the Distributing stock held by such shareholder, provided that such Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).
- 10) Earnings and profits will be allocated between Controlled and Distributing in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- 11) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized, if any (determined using the basis allocated to the fractional shares in ruling 8), will be treated as capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder. Section 1001. Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in ruling 9).
- 12) Following the Distribution, Controlled will not be a successor of Distributing for purposes of Section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includable corporations” under Section 1504(b) and satisfy the ownership requirements of Section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.
- 13) Payments made between any of Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution, will be viewed as occurring immediately before the Distribution. See *Arrowsmith v. Comm’r*, 344 U.S. 6, 73 (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.

### **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,

Douglas C. Bates  
Branch Chief  
(Corporate)