

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:1  
PLR-105496-22

Date:  
May 12, 2022

**Legend**

Distributing =

a =

Distributing Debt =

b =

Controlled =

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

This letter responds to your letter dated February 17, 2022, as supplemented by subsequent information and documentation, requesting a supplemental private letter ruling to the private letter ruling dated September 24, 2021 (PLR-108911-21) (the "Prior Letter Ruling") on certain federal income tax consequences of a series of transactions (the "Proposed Transaction"). The material information submitted in that request and subsequent correspondence is summarized below. Capitalized terms not defined in this letter have the meanings assigned to them in the Prior Letter Ruling.

This letter is issued pursuant to section 3.05 of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding a supplemental ruling on one or more Covered Transactions under section 355 and section 368 of the Internal Revenue Code (the "Code") and pursuant to section 6.03 of Rev. Proc. 2022-1, 2022-1 I.R.B. 1 regarding one or more significant issues under section 355 of the Code that only address one or more discrete legal issues involved in the transaction.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required on examination.

### **Supplemental Facts**

The facts as described in the Prior Letter Ruling are unchanged, except as described below.

Distributing may execute the Debt-for-Equity Exchange as follows:

1. Bank will make a loan to Distributing (the "Second Refinancing Debt") in an amount based upon the anticipated fair market value of the Remainder Shares to be transferred (the "Transferred Shares") with a maturity date of a. The cash proceeds from the issuance of the Second Refinancing Debt will not be segregated in a separate bank account or otherwise. Within 365 days following the date of the Distribution, Distributing will use an amount equal to the proceeds of the Second Refinancing Debt to pay principal, interest or premium on the Distributing Debt.
2. At least 1 day after the issuance of the Second Refinancing Debt, Distributing will enter into an exchange agreement with Bank (the "Debt-for-Equity Exchange Agreement") pursuant to which Distributing will transfer the Transferred Shares to Bank in exchange for (and in retirement of) the Second Refinancing Debt. The exchange ratio for such exchange will be fixed on the

date Distributing and Bank execute the Debt-for-Equity Exchange Agreement (subject to a True Up Payment defined in paragraph 4, below).

3. Between 3 and 5 days after Distributing and Bank enter into the Debt-for-Equity Exchange Agreement and within 365 days of the date of the Distribution, Distributing will deliver the Transferred Shares to Bank in satisfaction of the Second Refinancing Debt.
4. In connection with, and on the same date as, entering into the Debt-for-Equity Exchange Agreement, Distributing and Bank will enter into another agreement (the "True Up Agreement") pursuant to which either Bank will make a payment to Distributing or Distributing will make a payment to Bank (each a "True Up Payment"). Any True Up Payment will be based on the difference between (i) the reference price as determined below (the "Reference Price") and (ii) the NYSE closing price for a share of Controlled stock on the date on which Distributing and the Bank enter into the Debt-for-Equity Exchange Agreement. The Reference Price is the average daily volume weighted average price per share of Controlled shares beginning 1 day after the transfer of the Transferred Shares to Bank (the "Effective Date") through a valuation date determined as described below (the "Valuation Date"), increased by a premium of up to    percent.
  - a. Under the True Up Agreement, the period of time from the Effective Date through the Valuation Date for determining the Reference Price may vary within set boundaries, which establish the earliest and latest permissible Valuation Date. The latest permissible Valuation Date will be set such that in no event would any True Up Payment occur more than 365 days after the date of the Distribution.
  - b. Beginning with the earliest permissible Valuation Date until the latest permissible Valuation Date, Bank will have the right to designate an accelerated Valuation Date for some or all of the Transferred Shares subject to the True Up Agreement by delivering written notice to Distributing within 1 day of the accelerated Valuation Date.
  - c. Under the True Up Agreement, any True Up Payment will be made in cash, except that Distributing and Bank may agree that the payment from Bank to Distributing may be in the form of Distributing Debt. In order to effect this True Up Payment, Bank may purchase Distributing Debt from third parties.
  - d. Bank may designate sub-tranches of the Transferred Shares and set a different Valuation Date for each sub-tranche, but always

within the confines of the minimum and maximum periods established under the True Up Agreement.

Any Remainder Shares that are not disposed of pursuant to the Debt-for-Equity Exchange will be disposed of in the manner provided for in the Prior Letter Ruling.

### **Representations**

Distributing reaffirms all of the material information submitted in connection with, and all the representations contained in, the Prior Letter Ruling, as modified and supplemented by the representations and information herein.

Distributing has made the following modified representation pursuant to section 3.04 of Rev. Proc. 2018-53:

1. Representation 3: Except as otherwise described herein, the holder of the Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person. Bank will not acquire the Distributing Debt from Distributing, Controlled, or any Related Person. Except as otherwise described herein, neither Distributing, nor Controlled, nor any Related Person will participate in any profit gained by Bank upon an exchange of the §361 Consideration; nor will any such profit be limited by agreement or other arrangement. The value of the §361 Consideration received by Bank in satisfaction of the Distributing Debt will be determined pursuant to arm's length negotiations.

Distributing has made the following additional representations:

2. Distributing will recognize an amount of gain on any True Up Payment paid in cash from Bank to Distributing equal to the lesser of (a) the amount of cash received or (b) the amount of gain that would have been realized if the Transferred Shares had been sold.
3. Distributing will treat any True Up Payment from Distributing to Bank as a repayment of the Second Refinancing Debt.

### **Rulings**

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

1. Any True Up Payment from Bank to Distributing in the form of Distributing Debt paid within 365 days after the date of the Distribution will be treated as part of the Debt-for-Equity Exchange. Section 361(c).
2. With the exception of Ruling 9 in the Prior Letter Ruling, the Supplemental Facts will not adversely affect any of the rulings in the Prior Letter Ruling, and those rulings remain in full force and effect.

3. Ruling 9 is modified as follows:

Distributing will recognize no gain or loss, or deductions or items of income, on the Debt-for-Equity Exchange, other than (i) the amount of gain on any True Up Payment paid in cash from Bank to Distributing equal to the lesser of (a) the amount of cash received or (b) the amount of gain that would have been realized if the Transferred Shares had been sold, (ii) deductions attributable to the fact that the Distributing Debt may be redeemed at a premium, (iii) income attributable to the fact that the Distributing Debt may be redeemed at a discount, and (iv) interest expense accrued with respect to the Distributing Debt. Section 361(c).

### **Caveats**

No opinion is expressed or implied regarding the amount of gain that would have been realized if the Transferred Shares had been sold for purposes of Ruling 3.

Except as expressly provided in this letter, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

### **Procedural Statements**

This letter 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, copies of this letter are being sent to your authorized representatives.

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 returns that provides the date and control number (PLR-105496-22) of this letter ruling.

Sincerely,

*Kelly E. Madigan*

Kelly E. Madigan  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: