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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-105847-23

Date:

December 20, 2023

Legend

Distributing =

Controlled =

DRE 1 =

DRE 2 =

Sub 1 =

Sub 2 =

Business A =

PLR-105847-23 2

Business B =

Retained Businesses =

Third-Party Debt =

Litigation Obligations =

Ordinary Course
Liabilities =

Internal Refinanced Debt =

Refinanced Debt =

Share Repurchases =

Quarterly Dividends =

Other Substantial Adverse
Financial Consequences =

Transaction Agreements =

Controlled Equity Awards =

IP Agreements =

Post-Distribution Quarterly
Dividends =

Post-Distribution Share
Repurchases =

Principal Payments =

Interest Payments =

Premium Payments =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

d =

Dear :

This letter responds to your representative's letter dated March 15, 2023, on behalf of Distributing, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transactions"). The material information provided in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to 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 one or more "Covered Transactions" under sections 355 and 368 of the Internal Revenue Code (the "Code"). This office expresses no opinion as to any issue not specifically addressed by the rulings 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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

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 section 355(a)(1)(B) and Treas. Reg. §1.355-2(d)); or (iii) is part of a plan (or a 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 relevant distributing corporation or the controlled corporation, or any predecessor or successor of such distributing corporation or controlled corporation, within the meaning of Treas. Reg. §1.355-8 (see section 355(e) and Treas. Reg. §1.355-7).

Summary of Facts

Distributing is a publicly traded domestic corporation, the common parent of a consolidated group for U.S. federal income tax purposes, and the parent company of a worldwide group of foreign and domestic entities (the "Distributing Worldwide Group").

The Distributing Worldwide Group, which includes Sub 1 and Sub 2, has multiple business segments, including Business A and Business B.

Distributing is directly engaged in, and holds operating assets related to, the Retained Business (including Business A), and Business B. In addition, Distributing holds interests in certain subsidiaries that are engaged in, or that hold operating assets related to, Business B, such as Sub 1.

Distributing proposes to undertake a series of transactions to separate Business B from the Retained Businesses pursuant to a plan of reorganization (the “Plan of Reorganization”).

Distributing had Third-Party Debt, Litigation Obligations, and Ordinary Course Liabilities (collectively, “Distributing Relevant Debt”) outstanding as of Date 1. Distributing will establish one or more trusts to satisfy certain Litigation Obligations (each, a “Settlement Fund”). References to any Distributing Relevant Debt include references to Refinanced Debt and Internal Refinanced Debt. Distributing will not segregate or otherwise trace the proceeds of any Refinanced Debt.

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Distribution, Distributing and the members of its “separate affiliated group” as defined in section 355(b)(3) (the “Distributing SAG”) will rely on Business A, and Controlled and members of its separate affiliated group (the “Controlled SAG”) will rely on Business B. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what are represented to be valid business reasons, Distributing proposes to undertake the following Proposed Transactions, the steps of which may occur in a different order than described below, and some of the steps of which have already been completed:

1. On Date 2, Distributing formed Controlled, a domestic corporation.
2. On Date 3, Controlled formed DRE 1, a domestic limited liability company disregarded as separate from Controlled for U.S. federal income tax purposes (a “disregarded entity”).
3. On Date 3, Distributing formed DRE 2, a disregarded entity.
4. Controlled will borrow cash from unrelated third-party lender(s) (the “External Borrowing”). The External Borrowing may consist of a combination of notes, term loans, and/or revolving credit facilities. Some or all of the External Borrowing may occur prior

to the External Contribution (as defined below) and Controlled Cash Transfer (as defined below). In that event, the proceeds of the External Borrowing would be held by Controlled pending the External Contribution and Controlled Cash Transfer until certain conditions for the Distribution have been satisfied, either in an escrow account or otherwise with Distributing providing a limited guarantee of repayment of the External Borrowing (which guarantee would terminate by the time of the Distribution). If the Distribution were abandoned or otherwise delayed beyond a date set forth in the legal documentation governing the External Borrowing, the External Borrowing would be prepaid or redeemed by Controlled either out of the proceeds of the External Borrowing (which may be escrowed) or funds contributed to Controlled by Distributing prior to its maturity, and such prepayment or redemption may be accompanied by a prepayment premium.

5. Distributing will transfer to Sub 2, in exchange for stock in Sub 2, certain directly held intellectual property related to Business B.

6. Distributing will transfer to DRE 2 assets related to Business B, including (a) all of the outstanding stock of Sub 2 and other corporations conducting Business B and (b) directly held Business B assets, in exchange for a percent of the equity interests in DRE 2 and DRE 2's assumption of liabilities related to Business B (if any).

7. Distributing will transfer to Controlled all of the equity interests in DRE 2 (and potentially other assets or stock) in exchange for (a) Controlled common stock and (b) cash up to an amount equal to the cash borrowed in the External Borrowing (such cash, plus any cash transferred by Controlled to Distributing pursuant to the Cash Adjustment (as defined below) and minus any cash transferred by Distributing to Controlled pursuant to the Cash Adjustment, the "Controlled Cash," the transfer of the Controlled Cash, the "Controlled Cash Transfer," and this Step 7 collectively the "External Contribution"). The Transaction Agreements implementing the External Contribution are expected to include a post-closing cash adjustment (the "Cash Adjustment"). Distributing will not be required to segregate or otherwise trace the Controlled Cash.

8. Sub 1 will merge with and into DRE 1 with DRE 1 surviving in a transaction intended to qualify as a reorganization under section 368(a)(1)(A) (the "Sub 1 Merger"). Pursuant to the Sub 1 Merger, Distributing, as sole shareholder of Sub 1, will receive Controlled common stock (or a combination of Controlled common stock and cash) with value equal to the value of Sub 1 stock.

9. Distributing will distribute at least a percent of the Controlled common stock to its shareholders as a pro rata distribution (the "Distribution" and together with the External Contribution, the "External Spin-off"). The shares of Controlled common stock not distributed in the Distribution are referred to as the "Retained Stock" (such retention, the "Retention").

10. Within one year of the Distribution, Distributing will make payments to various

creditors in satisfaction of all or a portion of Distributing Relevant Debt, and/or to shareholders in the form of Share Repurchases or Quarterly Dividends, in an aggregate amount equal to the Controlled Cash (the “Cash Boot Purge”).

11. Distributing will dispose of the Retained Stock through sales of the Retained Stock to third-party investors (not later than b years after the Distribution).

In the absence of the Retention, Distributing believes (i) Distributing would be required to incur incremental indebtedness at a significant cost and on potentially less favorable terms and (ii) Distributing would incur Other Substantial Adverse Financial Consequences (the “Retention Business Purpose”).

Following the Distribution, Distributing will continue to conduct Business A and Controlled will conduct Business B. In connection with the Proposed Transactions, Distributing and Controlled (or their respective affiliates, if applicable) will enter into certain Transaction Agreements. In addition, Controlled may issue Controlled Equity Awards.

In connection with the Proposed Transactions, (i) certain subsidiaries of the Distributing Worldwide Group (which hold assets relating to both the Retained Businesses and Business B) are expected to sell Business B assets (and certain employees of such subsidiaries may also transfer) directly to certain subsidiaries of Controlled in taxable transactions and (ii) certain subsidiaries of the Controlled Worldwide Group (which hold assets relating to both the Retained Businesses and Business B) are expected to sell assets of the Retained Businesses to certain subsidiaries of Distributing in taxable transactions (collectively, the “Direct Asset Sales”). It is expected that most of the Direct Asset Sales will occur prior to the Distribution; however, some of the Direct Asset Sales might occur following the Distribution. It is possible that certain other internal restructuring transactions occurring in the U.S. and/or certain foreign jurisdictions separating Business B from the Retained Businesses may also be delayed for regulatory, operational, local country, or other reasons. In such case, the transfer of the Business B assets and/or liabilities involved in such delayed transfers to Controlled or a subsidiary thereof may occur following the External Contribution and Controlled Cash Transfer and, potentially, following the Distribution.

Representations

The following representations have been made with respect to the Proposed Transactions:

Except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

Distributing has made the following alternative representations: 3(a), 22(a), 31(a) and 41(a).

Distributing has not made the following representations, which do not apply to the Proposed Transaction: 20, 24, 25, 39 and 40.

Distributing has made the following modified representations:

1. Representation 2: Other than the Retained Stock, Distributing will distribute on the same day all of the stock and securities of Controlled that it holds immediately before the Distribution.
2. Representation 8(b): Distributing has securities outstanding, but it will not distribute Controlled stock, Controlled securities or other property to any holder of such securities in the Distribution, in satisfaction thereof. It is possible that, pursuant to the Cash Boot Purge, all or a portion of the Controlled Cash may be transferred to one or more holders of Distributing Relevant Debt (including Refinanced Debt) that constitutes a security in exchange therefor.
3. Representation 11(a): Following the Distribution, Distributing or the Distributing SAG and Controlled or the Controlled SAG each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b), except with respect to activities performed pursuant to the Transaction Agreements.
4. Representation 21: Immediately after the Distribution, the fair market value of the assets of each of Distributing and Controlled will exceed the amount of its liabilities.
5. Representation 23: Other than a mismatch or arrangement (if any) that will not result in a material distortion of income, the transaction does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns property but another party recognizes the income associated with such property.
6. Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock, except for any amounts payable under the Transaction Agreements and trade payables arising in the ordinary course of business.
7. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will either: (i) be made pursuant to the Transaction Agreements or (ii) be for fair market value based on arm's-length terms.
8. Representation 35: The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional

share interests of each Distributing shareholder will be aggregated and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled (with the possible exception of shareholders who hold Distributing stock in multiple accounts or with multiple brokers).

9. Representation 37: No net losses are expected to be recognized for U.S. federal income tax purposes as a result of the Proposed Transactions. While it is possible that a U.S. taxable loss will be recognized by Distributing's direct or indirect subsidiaries with respect to the sale of certain individual assets in the Direct Asset Sales, none of the Direct Asset Sales will be motivated by a desire to recognize a U.S. tax loss; such taxable losses, if any, are expected to be immaterial; and it is expected that the Distributing Worldwide Group will recognize a net taxable gain on the Direct Asset Sales as a whole. While it is possible that a U.S. taxable loss will be recognized by Distributing upon any sale of any Retained Stock to third-party investors in any taxable dispositions, any such sale is not motivated by a desire to recognize a U.S. tax loss and there is no expectation of the incurrence of such losses.

10. Representation 46: Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution, except to the extent that any of the External Borrowing constitutes a security.

Except as set forth below, Distributing has made all of the representations in section 3.04 of Rev. Proc. 2018-53.

Distributing has made the following modified representations:

1. Representation 2: No holder of Distributing Debt that will be assumed or satisfied is a Related Person, other than a holder of the Internal Refinanced Debt.
2. Representation 4: Other than with respect to the Litigation Obligations, the Ordinary Course Liabilities, and any Refinanced Debt, Distributing incurred the Distributing Debt: (a) before the request for any relevant ruling was submitted and (b) no later than c days before the earliest of the following dates: (i) the date of the first public announcement (as defined in Treas. Reg. §1.355-7(h)(10)) of the Proposed Transactions or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Proposed Transactions or a similar transaction, and (iii) the date of approval of the Proposed Transactions or a similar transaction by the board of directors of Distributing.
3. Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with section 361 Consideration (as defined in Rev. Proc. 2018-53) beyond d days after the date of the Distribution.

Distributing has made the following additional representations:

1. The Retention is motivated by the Retention Business Purpose.
2. None of Distributing's directors or officers will serve as directors or officers of Controlled so long as Distributing retains any Retained Stock.
3. The Retained Stock will be disposed of as soon as a disposition is warranted consistent with the Retention Business Purpose, but, in any event, not later than b years after the Distribution.
4. Distributing will vote, or cause to be voted, any Retained Stock in proportion to the votes cast by Controlled's other shareholders.

Rulings

Based solely on the information and representations submitted, we rule as follows regarding the Proposed Transactions:

1. The External Spin-off will be a "reorganization" within the meaning of sections 355 and 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).
2. Section 355(a)(3)(B) will not treat as "other property" any part of the Controlled common stock actually or deemed issued by Controlled to Distributing pursuant to the External Contribution in exchange for intellectual property rights pursuant to the IP Agreements.
3. No gain or loss will be recognized by Distributing on the External Contribution. Section 361(a); section 361(b); section 357(a).
4. Distributing's basis in the Controlled common stock received in the External Contribution will equal Distributing's basis in the property transferred pursuant to the External Contribution, decreased by the amount of Controlled Cash received from Controlled and any liabilities assumed or deemed assumed by Controlled in the External Contribution. Section 358(a)(1); section 358(d)(1).
5. No gain or loss will be recognized by Controlled on the External Contribution. Section 1032(a).
6. Controlled's basis in each asset received from Distributing in the External Contribution will equal the basis of that asset in the hands of Distributing immediately before the External Contribution. Section 362(b).
7. Controlled's holding period in each asset received from Distributing in the External Contribution will include the period during which that asset was held by Distributing. Section 1223(2).

8. No gain or loss will be recognized by holders of Distributing stock upon the receipt of Controlled common stock in the Distribution. Section 355(a).

9. The Post-Distribution Quarterly Dividends and Post-Distribution Share Repurchases will be treated as distributions in pursuance of the Plan of Reorganization under section 361(b)(1).

10. Any Principal Payments, Interest Payments, Premium Payments, and payments of Ordinary Course Liabilities will be treated as payments to creditors, which payments will be treated as distributions in pursuance of the Plan of Reorganization under section 361(b)(3).

11. Provided a Settlement Fund qualifies as a qualified settlement fund within the meaning of section 468B and Treas. Reg. §1.468B-1 or a disputed ownership fund within the meaning of Treas. Reg. §1.468B-9, such Settlement Fund will be treated as a creditor of Distributing for purposes of section 361(b)(3). Payments in full or partial satisfaction of the Litigation Obligations will be treated as distributions in pursuance of the Plan of Reorganization under section 361(b)(3).

12. No gain or loss will be recognized by Distributing upon the distribution of Controlled common stock in the Distribution. Section 361(c); section 355(c).

13. The aggregate basis of the Distributing stock and the Controlled common stock in the hands of Distributing shareholders immediately after the Distribution (including any fractional share interest in Controlled common stock to which the shareholders may be entitled) will equal the aggregate basis of the Distributing stock held by Distributing shareholders immediately before the Distribution, allocated in proportion to the fair market values of the Distributing stock and the Controlled common stock immediately following the Distribution in accordance with Treas. Reg. §1.358-2(a)(2). Section 358(a); section 358(b); section 358(c).

14. The holding period of the Controlled common stock received by Distributing shareholders in the Distribution (including any fractional share interest in Controlled common stock to which shareholders may be entitled) will include the holding period of the Distributing stock with respect to which the distribution of Controlled common stock was made, provided that the Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).

15. Distributing's earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. §1.312-10 and Treas. Reg. §1.1502-33(e).

16. Distributing's continuing ownership of any Retained Stock until Distributing's disposition thereof will not adversely impact the qualification of the External Spin-off

under sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii) and Treas. Reg. §1.355-2(e).

17. The tax consequence for the year in which any Cash Adjustment payment made between Distributing and Controlled will be characterized in a manner consistent with the proper treatment if such payment had occurred immediately before the Distribution pursuant to the External Spin-off. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Rev. Rul. 83-73, 1983-1 C.B. 84.

18. The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled common stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to 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 to a third party. The gain (or loss) recognized, if any, will be treated as capital gain (or loss) under section 1001, provided the stock was held as a capital asset by the selling shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) determined using the holding period provided in Ruling 14.

19. Following the External Spin-off, 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 "includible corporations" under section 1504(b) that satisfy the ownership requirements of section 1504(a)(4) will be members of an affiliated group of corporations eligible to file a consolidated U.S. federal income tax return with Controlled as the common parent.

20. Any Equity Awards currently outstanding and any Equity Awards issued in connection with or after the Distribution (and any Controlled stock underlying, or issued following the Distribution pursuant to, any such Equity Awards) will not be taken into account (i.e., will not be included in the numerator or the denominator) for purposes of determining whether Distributing distributed an amount of Controlled stock constituting control under section 368(c).

Caveats

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has made no determination whether the transfer of intellectual property pursuant to the IP Arrangements constitutes a transfer of property. See Rev. Rul. 69-156, 1969-1 C.B. 101.

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. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date on and control number of the letter ruling.

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

Sincerely,

Mark Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: