

INTERNAL REVENUE SERVICE
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Target 1 =

Target 2 =

Holdco =

Interim 1 =

Interim 2 =

Shareholder A =

Shareholder B =

Shareholder C =

Business A =

Business B =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

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Date 6 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

This letter responds to a request dated June 29, 1998, submitted on your behalf by your authorized representative, for rulings on the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 28, September 18, October 14, October 21, and November 9, 1998. The information submitted for consideration is summarized below.

Target 1, a State X corporation, is a holding company. Through its subsidiaries, Target 1 is engaged in Business A as well as many other businesses. Target 1 is a widely held publicly traded corporation and the common parent of an affiliated group filing a consolidated return.

As of Date 1, Target 1's outstanding shares consisted of a shares of Class A Common Stock (the "Target 1 A Common") and b shares of Class B Common Stock (the "Target 1 B Common"). Each

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share of Target 1 A Common is convertible at the option of the holder into c shares of Target 1 B Common. Each share of Target 1 B Common has economic rights equivalent to 1/c of a share of Target 1 A Common. Each share of Target 1 A Common has one vote while each share of Target 1 B Common has 1/d of a vote. Options to purchase e shares of Target 1 B Common (the "Target 1 Options") were outstanding as of Date 2. On Date 3, f shares of \$ g stated value non-voting preferred stock were issued to Target 2 (the "Target 1 Preferred"). Shareholder A is the only person known to Target 1 to be the beneficial owner of more than 5% of Target 1 A Common or Target 1 B Common.

Target 2, a State X corporation, is a multinational company. Directly and/or through its subsidiaries, Target 2 is engaged in Business A and Business B. Target 2 is a widely held publicly traded corporation and the common parent of an affiliated group filing a consolidated return.

As of Date 4, Target 2's outstanding shares consisted of h shares of Common Stock (the "Target 2 Common") together with the rights attached thereto to purchase Series A Junior Participating Preferred Stock of Target 2 (the "Rights") (none of the Series A Junior Participating Preferred Stock of Target 2 is currently outstanding), and i shares of Series A ESOP Convertible Preferred Stock (the "Target 2 ESOP Preferred"). The Target 2 ESOP Preferred is convertible into Target 2 Common and votes together with the Target 2 Common as a single class, with each share of Target 2 ESOP Preferred having the number of votes equal to the number of shares of Target 2 Common into which such share of Target 2 ESOP Preferred could be converted. Options to purchase j shares of Target 2 Common (the "Target 2 Options") were outstanding as of Date 2. On Date 3, f shares of \$ g stated value non-voting preferred stock were issued to Target 1 (the "Target 2 Preferred"). Shareholder B is the only person known to Target 2 to be the beneficial owner of more than 5% of Target 2 Common.

In order to combine the businesses of Target 1 and Target 2 under a single holding company, the following transaction has been proposed and partially consummated:

- (i) On Date 5, Holdco, a State X corporation, was formed for purposes of effectuating the proposed transaction.
- (ii) Also on Date 5, Interim 1 and Interim 2, both State X corporations, were formed. No shares of stock of Interim 1 or Interim 2 have yet been issued. However, prior to step (iv), below, Interim 1 and Interim 2 will each issue to Holdco, for \$ k per share, l shares of common stock, which will constitute all the issued and

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outstanding stock of Interim 1 and Interim 2.

- (iii) On Date 6, all of the Target 1 Preferred held by Target 2 and all of the Target 2 Preferred held by Target 1 were purchased by Shareholder C, a person that is not a member of Target 1's or Target 2's affiliated group as defined in § 1504 of the Internal Revenue Code (without regard to § 1504(b)) and will not be a member of the affiliated group as so defined immediately after the transactions.
- (iv) Interim 1 will be merged with and into Target 1 with Target 1 being the surviving corporation (the "Target 1 Merger"), and Interim 2 will be merged with and into Target 2 with Target 2 being the surviving corporation (the "Target 2 Merger"). The Target 1 Merger and the Target 2 Merger are collectively referred to as the Mergers. The Mergers will occur simultaneously.

In the Target 1 Merger, each share of Target 1 A Common will be converted automatically into the right to receive one share of Class A Common Stock of Holdco (the "Holdco A Common"), and each share of Target 1 B Common will be converted automatically into the right to receive one share of Class B Common Stock of Holdco (the "Holdco B Common"). Further, each Target 1 Option will be automatically converted into an option to purchase Holdco B Common.

Each share of Holdco A Common is convertible at the option of the holder into $\frac{1}{c}$ shares of Holdco B Common. Each share of Holdco B Common has economic rights equivalent to $\frac{1}{c}$ of a share of Holdco A Common. Each share of Holdco A Common has one vote while each share of Holdco B Common has $\frac{1}{d}$ of a vote.

In the Target 2 Merger, each share of Target 2 Common will be converted into the right to receive either $\frac{1}{m}$ shares of Holdco A Common or $\frac{1}{n}$ shares of Holdco B Common, as determined pursuant to an election of the holder of such Target 2 Common. Target 2 will call for redemption, and redeem, the Target 2 ESOP Preferred as of immediately prior to the Mergers pursuant to the terms of the Target 2 ESOP Preferred. The Target 2 ESOP Preferred can be converted into Target 2 Common up to the close of business on the redemption date. Shares of Target 2 Common issued upon such a conversion of Target 2 ESOP Preferred would in turn be converted in the Target 2 Merger into common stock of Holdco (and cash in lieu of fractional shares, as described below) in the same manner as other shares of Target 2 Common. Further, each Target 2 Option will be automatically converted into an option to purchase Holdco B Common. The Rights will be canceled in the Target 2 Merger.

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No fractional shares of Holdco A Common or Holdco B Common will be issued in the Target 2 Merger. Instead, each Target 2 shareholder who would otherwise have been entitled to receive a fraction of a share of Holdco A Common will instead receive an equivalent amount of Holdco B Common and each Target 2 shareholder who would have otherwise been entitled to receive a fraction of a share of Holdco B Common will receive a cash payment, in lieu thereof.

As a result of the Mergers, Holdco will own all the outstanding common stock of Target 1 and Target 2. The Target 1 Preferred and the Target 2 Preferred will not be converted in the Mergers, and will remain outstanding and continue to be held by the unrelated third party buyer (or its successors and assigns) after the transaction.

The taxpayers have made the following representations in connection with the proposed transaction:

- (a) Applying the look-through rules of § 1.351-1(c)(4) of the Income Tax Regulations, immediately after the Mergers, 20% or more of the assets of Holdco either (i) will be "used in the trade or business of banking, insurance, brokerage, or a similar trade or business" within the meaning of § 1.351-1(c)(3), or (ii) are not "stock and securities" within the meaning of § 351(e)(1).
- (b) To the best of the knowledge and belief of Target 1 and Target 2, the transaction described in steps (i), (ii), and (iv), above, will qualify under § 351 based on the rulings below.

Based on the information submitted and on the representations made, we hold as follows:

- (1) For federal income tax purposes, the formation of Interim 1 and Interim 2 followed by the Mergers will be treated as transfers by the holders of the common stock of Target 1 and Target 2 of their shares of Target 1 and Target 2 to Holdco in exchange for Holdco stock (see Rev. Rul. 67-448, 1967-2 C.B. 144). Such transfers may qualify under § 351 providing all the requirements of that section are otherwise satisfied.
- (2) Provided that 20% or more of the combined assets held by Holdco and its subsidiaries (within the meaning of § 1.351-1(c)(4)) are used in the trade or business of banking, insurance, brokerage, or a similar trade or business within the meaning of § 1.351-1(c)(3) or are not "stock and

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securities" within the meaning of § 351(e)(1), Holdco will not be an "investment company" within the meaning of § 351(e) (§ 1.351-1(c)(3)).

- (3) Holdco will neither acquire "control" of Target 1 or Target 2 in the Mergers nor have "control" of Target 1 or Target 2 immediately after the Mergers, in both cases within the meaning of § 368(c).

No opinion is expressed as to the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. Specifically, no opinion is expressed whether the deemed transfers of stock pursuant to ruling (1), above, qualifies under § 351 other than as specified above.

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

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

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to your authorized representative.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By *Ken Cohen*

Ken Cohen

Senior Technician Reviewer, Branch 3