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Department of the Treasury

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Re:

Distributing 2 =

Distributing 1 =

New Distributing 2 =

Controlled 1 =

Controlled 2 =

Newco 1 =

Newco 2 =

Newco 3 =

Sub 1 =

Sub 1A =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

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Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

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Sub 16 =

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Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

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Sub 24 =

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Sub 62 =

Sub 63 =

Sub 64 =

Sub 65 =

Sub 66 =

Sub 67 =

Sub 68 =

Investment Banker =

State X =

State Y =

Country A =

a =b =c =d =e =f =g =

Date R =

Business A =

Business B =

Business C =

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Business D =

This is in reply to a letter dated February 9, 2001, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated May 18, May 23, May 25, May 30, June 7, June 19, and June 25, 2001. The facts submitted for consideration are substantially as set forth below:

Distributing 2, a Country A corporation, is widely held and publicly traded. It is engaged in Businesses A, B, C, and D through directly and indirectly owned subsidiaries.

Distributing 2 owns all of the outstanding stock of Sub 1 and Sub 1A. Sub 1 owns a percent, and Sub 1A owns b percent, of Sub 2. Sub 2 owns all of the outstanding stock of Sub 3, which owns all of the outstanding stock of Sub 4. Sub 1, Sub 1A, Sub 2, Sub 3, and Sub 4 are foreign corporations.

Distributing 1 is a U.S. corporation that serves as the parent corporation for the conduct of the business of Distributing 2 and its subsidiaries in the United States. Distributing 1 has outstanding c shares of common stock, d shares of which are held by Sub 4 and e shares of which are held by Sub 2.

Distributing 1 owns all of the outstanding stock of Sub 5, Sub 6, Sub 7, Sub 9 and Sub 10, and owned all of the outstanding stock of Sub 8 until its dissolution on Date R.

Sub 6 owns all of the outstanding stock of Sub 11 and Sub 11 owns all of the outstanding stock of Controlled 1. Controlled 1 owns all of the outstanding stock of Sub 13, Sub 14, Sub 16, Sub 17, and Sub 18. Sub 14 owns all of the outstanding stock of Sub 19.

Distributing 1 also owns all of the outstanding stock of Sub 20. Sub 20 owns all of the outstanding stock of Sub 21 and Sub 37. Sub 21 owns all of the outstanding stock of Sub 22 and Sub 37 owns all of the outstanding stock of Sub 38.

Sub 9 owns all of the outstanding stock of Sub 23. Sub 23 owns all of the outstanding stock of Sub 24. Sub 24 owns all of the outstanding stock of Sub 25, Sub 30 and Sub 31. Sub 25 owns all of the outstanding stock of Sub 26. Sub 26 owns all of the outstanding stock of Sub 27 and Sub 28, and owns f percent of Sub 29. Sub 26, Sub 27, Sub 28, and Sub 29 are foreign corporations.

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Sub 31 owns all of the outstanding stock of Sub 32 , Sub 33, Sub 34, Sub 35, and Sub 36.

Sub 1 owns all of the outstanding stock of Sub 42 and Sub 47. Sub 47 owns all of the outstanding stock of Sub 48 and Sub 64. Sub 48 owns all of the outstanding stock of Sub 43. Sub 64 owns all of the outstanding stock of Sub 65, which owns all of the outstanding stock of Sub 66. Sub 66 owns all of the outstanding stock of Sub 44. Each of these corporations is a foreign corporation engaged in Business C.

Sub 3 owns all of the outstanding stock of Sub 50, which owns all of the outstanding stock of Sub 46, Sub 49, Sub 51, and Sub 54. Sub 54 owns all of the outstanding stock of Sub 52, which owns all of the outstanding stock of Sub 53. Sub 49 owns all of the outstanding stock of Sub 45. Each of these corporations is a foreign corporation engaged in Business C.

Sub 3 also indirectly owns all of the outstanding stock of Sub 67. Sub 67 owns all of the outstanding stock of Sub 61 and owns g percent of the outstanding stock of Sub 68. Sub 61 owns all of the outstanding stock of Sub 60 and Sub 63. Sub 63 owns all of the outstanding stock of Sub 56 and Sub 57. Sub 68 owns all of the outstanding stock of Sub 58 and Sub 62. Each of these corporations is a foreign corporation engaged in Business C.

Sub 55, previously an indirectly wholly owned subsidiary of Distributing 1, was recently sold by Distributing 1 to Sub 2. Sub 55 is a foreign corporation engaged in Business C.

Financial information has been submitted indicating that Sub 19, Sub 38, Sub 39, Sub 40, Sub 42, Sub 43, Sub 45, Sub 51, Sub 54, and Sub 55 has each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the last 5 years.

In order to raise capital to be used to repay debt that was incurred to fund operations of, capital expenditures for, and acquisitions by Distributing 2 and its subsidiaries, it is proposed that Newco 1 offer equity to the public (the "Public Offering"). Distributing 2 has been advised by Investment Banker, its financial adviser, that the Public Offering should enable Newco 1 to raise equity capital at a lower cost, both in aggregate and on a per share basis, if Newco 1 and Business D are separated from Distributing 2.

Accordingly, Distributing 2 proposes the following transaction:

- (i) Controlled 1 will distribute to Sub 11 all of its stock in Sub 13, Sub 16, Sub 17, and Sub 18.

- (ii) Sub 34 will distribute to Sub 31 its minority stock interest in Sub 12.
- (iii) Sub 19, currently a State X corporation, will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a) of the Income Tax Regulations) under applicable state law.
- (iv) Sub 14 will merge into Controlled 1 under applicable state law.
- (v) Sub 11 will merge into Sub 6 under applicable state law.
- (vi) Sub 6 will merge into Distributing 1 under applicable state law.
- (vii) Sub 21 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (viii) Sub 21 will distribute to Sub 20 the stock of Sub 22 and certain intangibles used by Sub 22 (the “Sub 22 Intangibles”).
- (ix) Sub 20 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (x) Sub 8 having previously dissolved effective Date R, Sub 20 will distribute to Distributing 1 the stock of Sub 22 and the Sub 22 Intangibles.
- (xi) Sub 31 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (xii) Sub 31 will distribute to Sub 24 all of the stock of Sub 32, Sub 33, Sub 34, Sub 35, and Sub 36.
- (xiii) Sub 25 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (xiv) Sub 25 will distribute to Sub 24 the stock of Sub 26.
- (xv) Sub 24 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (xvi) Sub 24 will distribute to Sub 23 the stock of Subs 26, 30, 32, 33, 34, 35, and 36.
- (xvii) Sub 23 will convert to a State Y limited liability company that is an eligible

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- entity (within the meaning of § 301.7701-3(a)) under applicable state law.
- (xviii) Sub 23 will distribute to Sub 9 the stock of Subs 26, 30, 32, 33, 34, 35 and 36.
 - (xix) Sub 9 will convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
 - (xx) Sub 9 will distribute to Distributing 1 the stock of Subs 26, 30, 32, 33, 34, 35, and 36.
 - (xxi) Sub 26 will distribute to Distributing 1 the stock of Sub 27, Sub 29, and possibly, Sub 28.
 - (xxii) Distributing 1 will contribute to Controlled 1 in constructive exchange for Controlled 1 stock the Sub 22 Intangibles, and all of the stock of Sub 22, Sub 26, Sub 30, Sub 32, Sub 33, Sub 34, Sub 35 , and Sub 36 (the "Contribution").
 - (xxiii) Sub 37 and Sub 38 will each convert to a State Y limited liability company that is an eligible entity (within the meaning of § 301.7701-3(a)) under applicable state law.
 - (xxiv) Sub 1, Sub 1A, and Sub 2 will each make an election under § 301.7701-3 to be disregarded for Federal income tax purposes.
 - (xxv) Sub 3 and Sub 4 will each convert to an entity eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes and will each make such an election.
 - (xxvi) Distributing 1 will distribute the stock of Controlled 1 to Sub 4 (the "First Distribution") and Sub 4 will distribute the stock of Controlled 1 to Sub 3. Each distribution will take the form of a redemption of shares of Distributing 1.
 - (xxvii) Sub 3 will form a wholly owned subsidiary, Newco 1, contributing to it the stock of Controlled 1. In addition, cash may be contributed to Newco 1 by Distributing 2.
 - (xxviii) Newco 1 will form a new Country A corporation, Newco 2.
 - (xxix) Newco 1 will contribute the cash received from Distributing 2 to Newco 2. In addition, Newco 2 may borrow funds from third parties.

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- (xxx) Newco 2 will purchase the stock of a number of foreign affiliated corporations engaged in Business D, including Sub 39, Sub 40, and Sub 41, using the cash contributed by Distributing 2 and either the funds borrowed from third parties or its own notes. Any notes issued by Newco 2 in this connection will constitute debt not amounting to a security.
- (xxxii) Newco 2 will cause Sub 39, Sub 40, and Sub 41 to each make an election under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xxxiii) Newco 1 will issue to the public in exchange for cash new shares of common stock not to exceed 20 percent of its vote and value.
- (xxxiv) Distributing 2 will form a Country A corporation, Newco 3, which will make an election under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xxxv) Sub 3 will transfer the Newco 1 stock not issued in the public offering to Distributing 2 in exchange for a note. Distributing 2 will exchange the Newco 1 stock for new shares of Newco 3.
- (xxxvi) A new Country A corporation, New Distributing 2, will be inserted between Distributing 2 and its public shareholders. All of the stock in Distributing 2 held by the public will be cancelled, Distributing 2 will issue new stock to New Distributing 2 and New Distributing 2 will issue stock to the public pro rata to their previous holdings in Distributing 2.
- (xxxvii) Distributing 2 will be converted into a limited liability company and will make an election under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xxxviii) Distributing 2 will transfer the stock of Newco 3 to New Distributing 2 either in return for a note or as a reduction of capital.
- (xxxix) A new Country A corporation, Controlled 2, will be formed.
- (xl) New Distributing 2 will simultaneously cancel a proportionate part of its stock held by the public and transfer the stock of Newco 3 to Controlled 2 (the "Second Contribution"). As consideration for that transfer, Controlled 2 will issue all of its outstanding stock to the public stockholders of New Distributing 2 on a pro rata basis (the "Second Distribution").
- (xi) The Newco1 stock held by the public shareholders will be converted to

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equivalent Controlled 2 stock pursuant to its terms. The conversion may be effected either by a transfer of the Newco 1 stock held by the public shareholders to Controlled 2 or by a cancellation of the Newco 1 stock held by the public shareholders and the issuance of an equivalent amount of Newco 1 stock to Controlled 2. Controlled 2 will issue its own stock to the public shareholders of Newco 1 in exchange for such transfer or cancellation.

- (xli) Newco 1's stock will cease to be publicly listed and Controlled 2's stock will replace it as the publicly traded stock of Business D.

Prior to the Second Distribution it is proposed that the following steps will occur:

- (xlii) Sub 42, Sub 43, Sub 44, Sub 45, Sub 46, Sub 47, Sub 48, and Sub 49 will each elect under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xliii) Sub 50, which was converted to a company eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes, will make such election.
- (xliv) Sub 51, Sub 52, Sub 53 and Sub 54 will be merged with Sub 54 surviving the merger. Sub 54 will elect under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xlv) Sub 55 and Sub 56 will each elect under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (xlvi) Sub 57 and Sub 58 will each convert to a company eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes and will each make such an election.
- (xlvii) Prior to the First Distribution, Sub 58 will be transferred to Sub 59, a newly formed foreign corporation owned by Sub 2.
- (xlviii) Sub 60 and Sub 61 will each convert to a company eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes and will each make such an election.
- (xlix) Sub 61 will be transferred to Sub 59.
- (l) Sub 62 will convert to a company eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes and will

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make such election.

- (li) Sub 62 will be transferred to Sub 59.
- (lii) Sub 59 will be make an election under § 301.7701-3 to be disregarded for Federal income tax purposes.
- (liii) Sub 63 will convert to a company eligible to make an election under § 301.7701-3 to be disregarded for Federal income tax purposes. Sub 63, Sub 64, Sub 65, and Sub 66 will each elect under § 301.7701-3 to be disregarded for Federal income tax purposes.

It is represented that each of the transactions described in steps (iii), (vii), (ix), (xi), (xiii), (xv), (xvii), (xix), (xxiii), (xxiv), (xxv), (xxxi), (xxxiii) and (xxxvi) qualify as liquidations under § 332 of the Internal Revenue Code. It is represented that, pursuant to steps (xlii) through (liii), the assets of Sub 42, Sub 43, Sub 44, Sub 45, Sub 46, Sub 47, Sub 48, Sub 49, Sub 54, Sub 55, Sub 56, Sub 57, Sub 58, Sub 59, Sub 60, Sub 61, Sub 62, Sub 63 will each be transferred to Distributing 2 in a transaction qualifying as a liquidation under § 332.

In connection with the proposed transaction described in steps (xxii) and (xxvi), the taxpayer represents as follows:

- (a) The indebtedness owed by Controlled 1 to Distributing 1 after the First Distribution, if any, will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) No part of the Controlled 1 stock distributed by Distributing 1 will be received by a security holder of Distributing 1.
- (d) The 5 years of financial information submitted on behalf of Sub 38 is representative of the business' present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The 5 years of financial information submitted on behalf of Sub 19 is representative of the business' present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

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- (f) Following the First Distribution, Distributing 1 and Controlled 1 will each continue the active conduct of its trade or business independently and with its separate employees.
- (g) Immediately after the First Distribution, the gross assets of the business that is actively conducted by Distributing 1 (within the meaning of § 355(b)(2)) will have a fair market value of at least 5 percent of the total fair market value of the gross assets of Distributing 1.
- (h) Immediately after the First Distribution, the gross assets of the business that is actively conducted by Controlled 1 (within the meaning of § 355(b)(2)) will have a fair market value of at least 5 percent of the total fair market value of the gross assets of Controlled 1.
- (i) The First Distribution will be carried out for the following corporate business purpose: to facilitate a public stock offering. The distribution of the stock, or stock and securities, of Controlled 1 is motivated, in whole or substantial part, by this corporate business purpose.
- (j) Except for the transfer of the Controlled 1 stock to Newco 1 (step xxvii above), there is no plan or intention by any shareholders who owns 5 percent or more of the stock of Distributing 1, and the management of Distributing 1, to the best of its knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing 1, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing 1 or Controlled 1 after the First Distribution.
- (k) There is no plan or intention by Distributing 1 or Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the First Distribution.
- (l) There is no plan or intention to liquidate either Distributing 1 or Controlled 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the First Distribution, except in the ordinary course of business.
- (m) Immediately before the First Distribution, items of income, gain loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 1's excess loss account, if any, with respect to the

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Controlled 1 stock and the excess loss accounts, if any, with respect to Controlled 1's subsidiaries will be included in income immediately before the First Distribution.

- (n) Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (p) Distributing 1 and Controlled 1 and their respective shareholders will each pay their own expenses, if any, incurred in connection with the First Distribution.
- (q) Immediately after the distribution, no person will hold, directly or indirectly, disqualified stock (within the meaning of § 355(d)) in Distributing 1 or Controlled 1 that constitutes a 50 percent or greater interest in Distributing 1 or Controlled 1.
- (r) The First Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing a 50 percent or greater interest (as defined in § 355(e)(4)(A)) in either Distributing 1 or Controlled 1.

In connection with the proposed transaction described in step (xxxix), the taxpayer represents as follows:

- (a) Indebtedness owed by Controlled 2 to New Distributing 2 after the Second Distribution, if any, will not constitute stock or securities.
- (b) No part of the consideration to be distributed by New Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of New Distributing 2.
- (c) No part of the Controlled 2 stock distributed by New Distributing 2 will be received by a security holder of New Distributing 2.
- (d) The 5 years of financial information submitted on behalf of the Business C operations of Sub 42, Sub 43, Sub 44, Sub 45, Sub 46, Sub 51, Sub 53, Sub 54, Sub 55, Sub 56, Sub 57, Sub 58, Sub 60, and Sub 62 is

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representative of the corporation's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (e) The 5 years of financial information submitted on behalf of the Sub 39 and Sub 40 businesses of Newco 2 is representative of those businesses' present operations, and with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Controlled 2 will consist of stock and securities of a corporation (Newco 1) that is indirectly engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (g) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Newco 1 will consist of the stock and securities of corporations (Controlled 1 and Newco 2) that are directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (h) Immediately after the Second Distribution, the gross assets of Business C that is actively conducted by Distribution 2 (within the meaning of § 355(b)(2)) will have a fair market value of at least 5 percent of the total fair market value of the gross assets of New Distributing 2.
- (i) Immediately after the Second Distribution, the gross assets of the Sub 39 and Sub 40 businesses that are actively conducted by Newco 2 (within the meaning of § 355(b)(2)) will have fair market value of at least 5 percent of the total fair market value of the gross assets of Newco 2.
- (j) Following the Second Distribution, New Distributing 2, Controlled 1, and Newco 2 will each continue the active conduct of their businesses, independently and with their separate employees.
- (k) The second Distribution will be carried out for the following corporate business purpose: to facilitate a public stock offering. The distribution of the stock, or stock and securities, of Controlled 2 is motivated, in whole or substantial part, by this corporate business purpose.
- (l) There is no plan of intention by any shareholder who owns 5 percent or more of the stock of Distributing 2, and the management of Distributing 2, to its best knowledge, is not aware of any plan or intention on the part of

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any particular remaining shareholder or security holder of Distribution 2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either New Distributing 2 or Controlled 2 after the Second Distribution.

- (m) There is no plan or intention by either New Distributing 2 or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Second Distribution.
- (n) There is no plan or intention to liquidate either New Distributing 2 or Controlled 2, to merge either corporation with any corporation, or to sell or otherwise dispose of the assets of either corporation after the Second Distribution, except in the ordinary course of business.
- (o) Except for short-term liabilities that may arise under short-term transitional agreements, no intercorporate debt will exist between Distributing 1 and Controlled 1 or between New Distributing 2 and Controlled 2 at the time of, or subsequent to, the Second Distribution. Any such debt will not constitute stock or securities.
- (p) Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 2, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (r) Distributing 2, New Distributing 2, and Controlled 2 and their respective shareholders will each pay their own expenses, if any, incurred in connection with the Second Distribution.
- (s) Immediately after the Second Distribution, no person will hold, directly or indirectly, disqualified stock, within the meaning of § 355(d), in New Distributing 2 or Controlled 2 that constitutes a 50 percent or greater interest in Distributing 2 or Controlled 2.
- (t) The Second Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing a 50 percent or greater interest (as defined in § 355(e)(4)(A)) in either New Distributing 2 or Controlled 2.

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- (u) The payment of cash in lieu of fractional shares of Controlled 2 common stock would be solely for the purposes of avoiding the expense and inconvenience to Distributing 2 of issuing fractional shares and does not represent separately bargained for consideration. The total cash consideration that will be paid in the Second Distribution to the New Distributing 2 shareholders instead of issuing fractional shares of Controlled 2, if any, will not exceed 1 percent of the total consideration that will be distributed in the Second Distribution to the New Distributing 2 shareholders. The fractional share interests of each New Distributing 2 shareholder, if any, will be aggregated, and no New Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 common stock.

In connection with the transaction, the taxpayer makes the following representations relating to international issues:

- (a) The transaction does not involve the transfer of any “United States real property interest” within the meaning of § 897(c).
- (b) The transaction does not involve the transfer of any passive foreign investment company that would result in taxation under § 1291.
- (c) The deemed liquidations pursuant to the elections by certain foreign corporations to be classified as disregarded entities under § 301.7701-3 do not have a tax avoidance purpose.
- (d) Sub 17 and Sub 18 are “controlled foreign corporations” within the meaning of § 957.
- (e) Sub 26, Sub 27, Sub 28, and Sub 29 are controlled foreign corporations within the meaning of § 957.
- (f) With respect to each foreign corporation that is deemed liquidated into a foreign corporate parent as part of the transaction, the liquidating corporation will not distribute as part of its deemed liquidation “qualified property,” as described in §1.367(e)-2(b)(2)(i)(B), that is used by liquidating corporation in the conduct of a trade or business within the United States at the time of distribution, or property that had ceased to be used by the liquidating corporation in the conduct of a U.S. trade or business within the 10-year period ending on the date of the distribution and that would have been subject to § 864(c)(7) had it been disposed of.
- (g) Neither Distributing 1 nor Controlled 1 is a “United States real property

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holding corporation” (as defined in § 897(c)(2)) at any time during the 5-year period ending on the date of the First Distribution. Neither Distributing 1 nor Controlled 1 will be a United States real property holding corporation immediately after the First Distribution.

- (h) Neither Newco 2 nor any of the corporations being purchased in step (xxx) qualify as controlled foreign corporations (as defined in § 957).
- (i) Distributing 2, Controlled 2, Newco 1, and Newco 2 are foreign corporations. None of these corporations is a passive foreign investment company or a controlled foreign corporation, either before or after the Second Distribution.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to steps (xxii) and (xxvi) of the proposed transaction:

- (1) The Contribution (step (xxii) above), solely in exchange for a constructive issuance of Controlled 1 stock followed by the First Distribution (step (xxvi)) will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 1 each will be a “party to a reorganization” within the meaning of § 368(b).
- (2) Distributing 1 will recognize no gain or loss upon the transfer of the property to Controlled 1 in constructive exchange for Controlled 1 stock pursuant to the Contribution (§ 361(b)).
- (3) Controlled 1 will recognize no gain or loss upon the receipt of property in constructive exchange for Controlled 1 stock pursuant to the Contribution (§ 1032(a)).
- (4) The basis of the assets transferred in the Contribution in the hands of Controlled 1 will be the same as the basis of such assets in the hands of Distributing 1 immediately before the Contribution (§ 362(b)).
- (5) The holding period of the assets transferred in the Contribution in the hands of Controlled 1 will include the period during which such assets were held by Distributing 1 (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 upon distribution of the Controlled 1 common stock in the First Distribution (§§ 361(c) and 367(e)(1)).

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- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon the receipt of the Controlled 1 common stock in the First Distribution (§ 355(a)(1)).
- (8) The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after the First Distribution will be the same as the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before the First Distribution, allocated between the Distributing 1 stock and the Controlled 1 stock in proportion to the fair market value of each in accordance with § 1.358-2(a) (§ 358(b)(2)).
- (9) The holding period of the Controlled 1 common stock received in the First Distribution by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the First Distribution will be made, provided that such Distributing 1 stock is held as a capital asset on the date of the First Distribution (§ 1223(1)).
- (10) As provided in § 312(h) proper allocation and adjustment of earnings and profits between Distributing 1 and Controlled 1 will be made in accordance with § 1.312-10(a).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to step (xxxix) of the proposed transaction:

- (11) No gain or loss will be recognized by (and no amount will be included in the income of) the New Distributing 2 shareholders upon the receipt of Controlled 2 common stock in the Second Distribution (§ 355(a)(1)).
- (12) The aggregate basis of the New Distributing 2 and the Controlled 2 stock in the hands of the New Distributing 2 shareholder immediately after the Second Distribution (including any fractional share interests to which they may be entitled) will be the same as the aggregate basis of the New Distributing 2 stock held by the New Distributing 2 shareholders immediately before the Second Distribution, allocated between the New Distributing 2 and the Controlled 2 stock in proportion to the fair market value of each of in accordance with § 1.358-2(a) (§ 358(b)(2)).
- (13) The holding period of the Controlled 2 common stock received in the Second Distribution by a New Distributing 2 shareholder (including any fractional share interest) will include the holding period of the New Distributing 2 stock with respect to which the Second Distribution will be made, provided the New Distributing 2 stock is held as a capital asset on the date of the Second Distribution (§ 1223(1)).

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- (14) The payment of cash, if any, in lieu of fractional shares of Controlled 2 common stock will be treated for Federal income tax purposes as if the fractional shares were distributed as part of the Second Distribution and then redeemed by Controlled 2. These cash payments will be treated as having been received as distributions in full payment in exchange for Controlled 2 stock as provided in § 302(a) (Rev. Rul. 66-365, 1966-2 C.B. 116).
- (15) As provided in § 312(h), earnings and profits will be allocated between New Distributing 2 and Controlled 2.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to certain international aspects of the proposed transaction:

- (16) With respect to steps (v), (vi), (xiii), (xv), (xvii), and (xix), the earnings and profits of any foreign corporation stock distributed, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such corporation beginning after December 31, 1962 and during the period the foreign corporation was a controlled foreign corporation, shall be attributable to such stock held by the domestic corporate transferee. See § 1.1248-1(a)(1).
- (17) The earnings and profits of Sub 26, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such corporation beginning after December 31, 1962 and during the period in which Sub 26 was a controlled foreign corporation, shall be attributable to such stock held by Controlled 1. See § 1.1248-1(a)(1).

We express no opinion about 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 regarding the consequences of the distributions in step (i) (by Controlled 1 to Sub 11) and step (xxi) (by Sub 26 to Distributing 1). See §§ 311(b), 954(c)(1)(B)(i), and 1248(a).

Finally, no opinion is expressed or implied concerning the tax consequences of any aspect of the transaction or item not discussed or referenced in the letter. Specifically, no opinion is expressed regarding whether any or all of the foreign corporations involved in the transaction are passive foreign investment companies

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(within the meaning of § 1297(a)). If it is determined that any of the foreign corporations is a passive foreign investment company, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provision of the Code.

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 returns 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 the taxpayer.

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Debra Carlisle
Chief, Branch 5