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Person to Contact:

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Refer Reply To:

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Date:

August 2, 2002

Distributing 1 =

Distributing 2 =

Controlled =

Corp 1 =

Corp 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LLC 12 =

LLC 13 =

LLC 14 =

LLC 15 =

LLC 16 =

Partnership 1 =

Partnership 2 =

Partnership 3 =

Business A =

Business B =

Segment A1 =

Segment A2 =

Segment A3 =

Segment A4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Distribution Record Date =

Event A =  
Jurisdiction A =  
Plan of Reorganization =

State A =

Investment Banker =

Item A =

Item B =

Item C =

Name A =

Agreement A =  
Trusts =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

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

This letter responds to your December 21, 2001 request for rulings on certain federal income tax consequences of a proposed and partially completed transaction. The information provided in that request and in later submissions is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statements executed by an appropriate party. This office has not verified any of these facts or representations, but such verification may be required as part of the audit process.

### **Summary of Facts**

Publicly traded Distributing 2 is a holding company and the common parent of an affiliated group that files a consolidated federal income tax return. Distributing 2 owns all the stock of Corp 1, all of the membership interests in LLC 1, and a percent of the Distributing 1 common stock (the "Distributing 1 Common Stock"). The remaining b percent of the Distributing 1 Common Stock is held by LLC 2, an entity wholly owned by Distributing 1. Distributing 1 also has outstanding several series of publicly traded preferred voting stock ("Distributing 1 Preferred Stock") and various long and short-term debt obligations. Distributing 2 has outstanding common stock (the "Distributing 2 Common Stock") and short-term and convertible debt obligations. Corp 1 owns c percent of Distributing 2 Common Stock. LLC 1 holds all of the stock of Corp 2.

Distributing 1 conducts Business A directly and through subsidiaries. Business A consists of Segment A1, Segment A2, Segment A3, and Segment A4.

Distributing 1 owns all of the stock of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Controlled and d percent of Sub 6. Controlled wholly owns LLC 6, LLC 7, and LLC 8. Sub 1 owns real estate related to Segment A4; Sub 2, Sub 3, and Sub 4 are inactive; and Sub 5 and Sub 6 are directly engaged in Segment A3. Controlled, LLC 6, LLC 7, and LLC 8 were formed to participate in the proposed transaction and currently are inactive.

Distributing 2 conducts Business B through entities including Corp 2, subsidiaries of Corp 2, and partnerships wholly or partially owned by the Corp 2 subsidiaries. Corp 2 wholly owns Sub 7 and Sub 8. Sub 7 wholly owns Sub 9. LLC 3, an entity wholly owned by Sub 8, holds all of the stock of Sub 10. LLC 4 and LLC 5, entities wholly owned by Sub 9, hold all of the stock of Sub 11 and Sub 12, respectively. Sub 11 wholly owns Sub 13 and Sub 14, and Sub 12 wholly owns Sub 15 and Sub 16. Sub 12 owns a e percent general partnership interest in, and Sub 15 owns a f percent general partnership interest in, Partnership 1. Sub 12 owns a e percent general partnership interest in, and Sub 16 owns a f percent general partnership interest in, Partnership 2. Sub 14 owns a e percent limited partnership interest in, and Sub 11 owns a f percent general partnership interest in, Partnership 3.

LLC 1 through LLC 8 are, and all limited liability companies formed in the proposed transaction described below will be, disregarded as entities separate from their owners for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations.

As a result of deteriorating market conditions that ultimately resulted in Event A, and other factors, the financial condition of Distributing 1 eroded in Date 3 to the point that it was no longer considered creditworthy, and its lenders were no longer willing to fund further loan requests. To restore the company to financial health, Distributing 1 filed a voluntary petition for relief through reorganization under chapter 11 of title 11 of the United States Code on Date 1 with the United States Bankruptcy Court for Jurisdiction A (the "Bankruptcy Court"). Investment Banker has advised Distributing 2, however, that even with the protections afforded by the Bankruptcy Court, Distributing 1 will be unable to raise the approximately g dollars of new or reinstated debt needed to implement the Plan of Reorganization unless it completely separates Segments A2 through A4 from Segment A1 (the "Separation").

### **Proposed Transaction**

To accomplish the Separation, Distributing 1 and Distributing 2, as co-proponents, have proposed (and partially undertaken) the following series of transactions (collectively, the "Transaction"):

(i) In Date 2, Controlled was organized as a subsidiary of Distributing 1, with Distributing 1 receiving all of Controlled's single class of stock (the "Controlled Common Stock").

(ii) In Date 2, Controlled formed LLC 6, LLC 7, and LLC 8 as wholly owned limited liability companies.

(iii) Several additional limited liability companies (the "Additional LLCs") have been formed and are held by LLC 8.

After Date 2, and on or before the date the Plan of Reorganization becomes effective (the "Effective Date"):

(iv) Controlled will form a new limited liability company, LLC 9.

(v) Other limited liability companies may be formed and wholly owned directly or indirectly through disregarded entities by Controlled (together with LLC 9 and the Additional LLCs, the "Controlled LLCs"). Each Controlled LLC will be a disregarded entity under § 301.7701-3.

(vi) Corp 1 will merge with and into Distributing 2. The merger is intended to qualify as a liquidation under §§ 332 and 337 of the Internal Revenue Code (the "Code").

(vii) Sub 14 will convert into a limited liability company, LLC 10, by filing a certificate of conversion under State A law. Because LLC 10 will be a disregarded entity under § 301.7701-3, Sub 11 will be treated as receiving and directly owning the assets of Sub 14. Additionally, as a result of the conversion, Partnership 3 will terminate for federal income tax purposes and Sub 11 will be treated as receiving and directly owning the assets of Partnership 3. The conversion is intended to qualify as a liquidation under §§ 332 and 337.

(viii) Sub 13 will merge with and into LLC 11, a limited liability company to be formed and wholly owned by Sub 11, with LLC 11 surviving. Because LLC 11 will be a disregarded entity under § 301.7701-3, Sub 11 will be treated as receiving and directly owning the assets of Sub 13. The merger is intended to qualify as a liquidation under §§ 332 and 337.

(ix) Sub 11 will merge with and into LLC 12, a limited liability company to be formed and held by LLC 4, with LLC 12 surviving. Because LLC 12 and LLC 4 will be disregarded entities under § 301.7701-3, Sub 9 will be treated as receiving and directly owning the assets of Sub 11. The merger is intended to qualify as a liquidation under §§ 332 and 337.

(x) Sub 16 will convert into a limited liability company, LLC 13, by filing a certificate of conversion under State A law. Because LLC 13 will be a disregarded entity under § 301.7701-3, Sub 12 will be treated as receiving and directly owning the assets of Sub 16. Additionally, as a result of the conversion, Partnership 2 will terminate for federal income tax purposes and Sub 12 will be treated as receiving and directly owning the assets of Partnership 2. The conversion is intended to qualify as a liquidation under §§ 332 and 337.

(xi) Sub 15 will convert into a limited liability company, LLC 14, by filing a certificate of conversion under State A law. Because LLC 14 will be a disregarded entity under § 301.7701-3, Sub 12 will be treated as receiving and directly owning the assets of Sub 15. Additionally, as a result of the conversion, Partnership 1 will



terminate for federal income tax purposes and Sub 12 will be treated as receiving and directly owning the assets of Partnership 1. The conversion is intended to qualify as a liquidation under §§ 332 and 337.

(xii) Sub 12 will merge with and into LLC 15, a limited liability company to be formed and held by LLC 5, with LLC 15 surviving. Because LLC 15 and LLC 5 will be disregarded entities under § 301.7701-3, Sub 9 will be treated as receiving and directly owning the assets of Sub 12. The merger is intended to qualify as a liquidation under §§ 332 and 337.

(xiii) Sub 8 will merge with and into LLC 16, a limited liability company to be formed and wholly owned by Corp 2, with LLC 16 surviving. Because LLC 16 will be a disregarded entity under § 301.7701-3, Corp 2 will be treated as receiving and directly owning the assets of Sub 8. The merger is intended to qualify as a liquidation under §§ 332 and 337.

(xiv) Sub 10 will sell assets to Distributing 1 for approximately h dollars. As a result, Segment A3 will convert from an intrastate business to an interstate business.

To implement the Plan of Reorganization, the following steps will occur after the later of (a) the date a confirmation order regarding the Plan of Reorganization has been entered by the Bankruptcy Court (the "Confirmation Date") or (b) the date Distributing 2 and Distributing 1 have received all regulatory approvals and similar authorizations necessary to implement the Plan of Reorganization, but in any event the following steps will occur on or before the Effective Date:

(xv) Distributing 1 will transfer to LLC 6 (or one or more Controlled LLCs) the assets primarily used in Segment A2 now conducted directly by Distributing 1 (the "LLC 6 Assets"). LLC 6 (or one or more Controlled LLCs) will assume the liabilities of Distributing 1 associated with the LLC 6 Assets. In addition, on the Effective Date, Distributing 1 will receive from LLC 6 cash currently projected to be approximately i dollars (the "LLC 6 Cash Amount") and long-term debt securities currently projected to have a value of approximately j dollars (the "LLC 6 Long-Term Notes"). The LLC 6 Cash Amount will be funded on or before the Effective Date through an offering of long-term debt securities by LLC 6 that will yield net offering proceeds equal at least to the LLC 6 Cash Amount. For federal income tax purposes, these transfers are intended to be treated as a contribution of the LLC 6 Assets to Controlled (the owner of LLC 6) in exchange for Controlled Common Stock, the LLC 6 Cash Amount, the LLC 6 Long-Term Notes, and the assumption by Controlled of related liabilities. The LLC 6 Cash Amount will be deposited in a segregated account (the "Segregated Account") for distribution to Claimants (as defined below) on or shortly after the Effective Date.

(xvi) Distributing 1 will transfer to LLC 7 (or one or more Controlled LLCs) the assets primarily used in Segment A3 now conducted directly by Distributing 1 (the "LLC 7 Assets"). Distributing 1 will also transfer to LLC 7 its stock interest in Sub 6, all the outstanding stock of Sub 5 (the Sub 5 and Sub 6 stock interests together, the "LLC 7 Stock Interests"), and a demand note in the amount of approximately k

dollars issued by Sub 6 (the "Sub 6 Demand Note"). LLC 7 (or one or more Controlled LLCs) will assume the liabilities of Distributing 1 associated with the LLC 7 Assets. In addition, on the Effective Date, Distributing 1 will receive from LLC 7 cash currently projected to be approximately l dollars (the "LLC 7 Cash Amount") and long-term debt securities currently projected to have a value of approximately m dollars (the "LLC 7 Long-Term Notes"). The LLC 7 Cash Amount will be funded on or before the Effective Date through an offering of long-term debt securities by LLC 7 that will yield net offering proceeds equal at least to the LLC 7 Cash Amount. For federal income tax purposes, these transfers are intended to be treated as a contribution of the LLC 7 Assets, the LLC 7 Stock Interests, and the Sub 6 Demand Note to Controlled (the owner of LLC 7) in exchange for Controlled Common Stock, the LLC 7 Cash Amount, the LLC 7 Long-Term Notes, and the assumption by Controlled of related liabilities. The LLC 7 Cash Amount will be deposited in the Segregated Account for distribution to Claimants on or shortly after the Effective Date.

(xvii) Distributing 1 will transfer to LLC 8 (or one or more Controlled LLCs) assets primarily used in Segment A4 now conducted directly by Distributing 1, including Distributing 1's beneficial interest in certain Trusts and Distributing 1's membership interest in a mutual insurance company (collectively, the "LLC 8 Assets"). Distributing 1 will also transfer to LLC 8 all the outstanding stock of Sub 1 and Sub 4 (the Sub 1 and Sub 4 stock interests together, the "LLC 8 Stock Interests"), and a demand note in the amount of approximately n dollars issued by Sub 1 (the "Sub 1 Demand Note"). LLC 8 (or one or more Controlled LLCs) will assume the liabilities of Distributing 1 associated with the LLC 8 Assets. In addition, on the Effective Date, Distributing 1 will receive from LLC 8 cash currently projected to be approximately o dollars (the "LLC 8 Cash Amount" and, together with the LLC 6 Cash Amount and the LLC 7 Cash Amount, the "Cash Payment"), long-term debt securities currently projected to have a value of approximately p dollars consisting of (a) approximately q dollars of long-term debt securities (the "LLC 8 Long-Term Notes," and together with the LLC 6 Long-Term Notes and the LLC 7 Long-Term Notes, the "Controlled Long-Term Notes") and (b) approximately r dollars of other long-term debt securities (the "A Notes," and together with the Controlled Long-Term Notes and any Excess Controlled Notes (as defined below in step (xxvii)), the "Controlled Securities"). The LLC 8 Cash Amount will be funded on or before the Effective Date through an offering of long-term debt securities by LLC 8 that will yield net offering proceeds equal at least to the LLC 8 Cash Amount. For federal income tax purposes, these transfers are intended to be treated as a contribution of the LLC 8 Assets, the LLC 8 Stock Interests, and the Sub 1 Demand Note to Controlled (the owner of LLC 8) in exchange for Controlled Common Stock, the LLC 8 Cash Amount, the LLC 8 Long-Term Notes, the A Notes, and the assumption of related liabilities by Controlled. The LLC 8 Cash Amount will be deposited in the Segregated Account for distribution to Claimants on or shortly after the Effective Date.

(xviii) Distributing 1 may transfer additional property (the "Additional Property") to a Controlled LLC. The Controlled LLC will assume liabilities of Distributing 1 in connection with these transfers.

(xix) Distributing 1 will transfer to Controlled all the stock of Sub 2, a demand note in the amount of approximately n dollars issued by Sub 2 (the "Sub 2 Demand

Note"), all the stock of Sub 3, and a demand note in the amount of approximately  \$  dollars issued by Sub 3 (the "Sub 3 Demand Note," and together with the Sub 1 Demand Note, the Sub 2 Demand Note and the Sub 6 Demand Note, the "Demand Notes"). The Sub 2 stock, Sub 3 stock, the LLC 7 Stock Interests, the LLC 8 Stock Interests, the Demand Notes, and any Additional Property will be collectively referred to as the "Miscellaneous Controlled Assets."

Effective on the Effective Date, or, with respect to distributions to holders of certain claims that remain disputed on the Effective Date ("Disputed Claims") that subsequently become holders of claims allowed by the Bankruptcy Court ("Allowed Claims") against Distributing 1 (the "Claimants"), as promptly as practicable after the Effective Date:

(xx) Distributing 1 will transfer to Controlled (or one of the Controlled LLCs) the right to receive an amount equal to  t  percent of the net after-tax proceeds of any successful resolution of the Item A litigation (the "Item A Litigation Payment").

(xxi) Distributing 1 will transfer and assign to Controlled (or a Controlled LLC) all of Distributing 1's right, title, and interest in and to Item B and Item C. The transfer to Controlled (directly or through LLC 6, LLC 7, LLC8, or a Controlled LLC) of Item B, Item C, the LLC 6 Assets, the LLC 7 Assets, the LLC 8 Assets, the Miscellaneous Controlled Assets, and the Item A Litigation Payment in exchange for Controlled Common Stock, Controlled Securities, the Cash Payment, and the assumption by Controlled (through LLC 6, LLC 7, LLC 8, or a Controlled LLC) of related liabilities will be referred to as the "Internal Contribution."

(xxii) After the completion of steps (xv) through (xxi), (a) Distributing 1 will distribute all of the Controlled Common Stock to Distributing 2 (the "Controlled Stock Distribution"), (b) Controlled (through LLC 6, LLC7, and LLC8), will transfer the Controlled Securities and the Cash Payment to Distributing 1, (c) Distributing 1 will distribute the Controlled Securities (i) to Claimants (including through a transfer by any Escrow described below in step (xxiii) that does not constitute a "qualified settlement fund") in satisfaction of all or part of the Claimants' Allowed Claims (including holders of Disputed Claims whose claims become Allowed Claims) or (ii) to any Escrow described below in step (xxiii) that constitutes a "qualified settlement fund," (d) Distributing 1 may distribute the Controlled Securities to holders of Disputed Claims described in step (xxiii) while their claims remain Disputed Claims, and (e) Distributing 1 will distribute the Cash Payment to holders of Allowed Claims ((b), (c), (d), and (e), together with the Controlled Stock Distribution, the "Internal Distribution"). The balance of cash required by the Plan of Reorganization to be paid to holders of Allowed Claims and allowed equity interests will come from Distributing 1 cash and from an offering by Distributing 1 of debt currently expected to yield net offering proceeds of approximately  u  dollars. On the Effective Date, all existing securities of Distributing 1 and other claims against Distributing 1, other than those that are reinstated, will be deemed cancelled to the extent the securities or claims are paid.

(xxiii) Distributing 1 expects to establish one or more escrow accounts (each, an "Escrow") and deposit or segregate into these account(s) Distributing 1 cash and

Controlled Long-Term Notes expected to be sufficient to satisfy certain Disputed Claims. Depending on the nature of the Disputed Claims, it is possible that one or more of the Escrows will satisfy the definition of a "qualified settlement fund" under § 468B(g) of the Code and § 1.468B-1(a) of the Income Tax Regulations as of the Effective Date. Additionally, Distributing 1 may distribute directly to holders of certain Disputed Claims certain Controlled Long-Term Notes.

(xxiv) Distributing 2 will assign to Distributing 1 all of its right, title, and interest in the names "Distributing 1" and "Name A" and related intellectual property and Distributing 1 may assume certain Distributing 2 liabilities (the "External Contribution"). Distributing 2 will retain a royalty-free license to use these names and related intellectual property for a period of one year.

On, or as promptly as practicable after, the Effective Date, and after the completion of the above steps:

(xxv) Distributing 1 will issue to Distributing 2 as a stock dividend the number of shares of Distributing 1 Common Stock that is necessary to cause the number of shares of Distributing 1 Common Stock owned by Distributing 2 to equal the number of shares of Distributing 2 Common Stock then outstanding (the "Stock Dividend"). Distributing 1 also will establish a shareholder rights plan that will enable its shareholders to acquire additional shares of newly issued Distributing 1 Preferred Stock or Distributing 1 Common Stock on the occurrence of certain events (generally involving changes in control) and will distribute one right (a "Distributing 1 Right") on each outstanding share of Distributing 1 Common Stock.

(xxvi) Shortly after the distribution of the Stock Dividend and the Distributing 1 Rights, Distributing 2 will distribute all of the Distributing 1 Common Stock (other than shares of Distributing 1 Common Stock held by LLC 2) pro rata to persons who are holders of Distributing 2 Common Stock as of the Distribution Record Date (the "External Distribution" and, together with the Internal Distribution, the "Distributions").

(xxvii) After the Distributions, certain Disputed Claims may become Allowed Claims. Each Escrow will be terminated by Distributing 1 when all distributions and other dispositions of the property in the Escrow have been made in accordance with the Plan of Reorganization. If any property remains in an Escrow after all Disputed Claims for which the property is being held have been resolved and paid, the property will revert to and become the property of Distributing 1, which will, in turn, deliver to each of LLC 6, LLC 7, and LLC 8, respectively, any LLC 6 Long-Term Notes, LLC 7 Long-Term Notes, or LLC 8 Long-Term Notes remaining in the Escrow. In the event the amount of Controlled Long-Term Notes deposited into the Escrows, as described in step (xxiii), is insufficient to make required payments to holders of Allowed Claims, it is expected that LLC 6, LLC 7, and LLC 8 will be required to issue to Distributing 1 additional Controlled Long-Term Notes (the "Excess Controlled Notes") and cash equal to the interest at the coupon rate from the Effective Date to the date of issuance of the Excess Controlled Notes as if such Excess Controlled Notes had been issued on the Effective Date so that Distributing 1 can make these required payments. Any Excess Controlled Notes would have terms and conditions identical to the Controlled Long-Term Notes previously issued.

(xxviii) To the extent the amount of the Controlled Long-Term Notes received plus cash to be received by a holder of a Disputed Claim exceeds the amount of the Disputed Claim that becomes an Allowed Claim, such surplus Controlled Long-Term Notes will revert back to and become the property of Distributing 1, which will, in turn, deliver to each of LLC 6, LLC 7, and LLC 8, respectively, any LLC 6 Long-Term Notes, LLC 7 Long-Term Notes, or LLC 8 Long-Term Notes. To the extent the holder of the Disputed Claim disposed of the Controlled Long-Term Notes prior to the Disputed Claim becoming an Allowed Claim, the holder of the Disputed Claim is required to return to Distributing 1, cash equal to the amount of the surplus Controlled Long-Term Notes received in excess of the Allowed Claims, and Distributing 1, in turn, will deliver such cash amount to each of LLC 6, LLC 7, and LLC 8 respectively. In the event the amount of Controlled Long-Term Notes originally transferred to the holder of the Disputed Claim is less than the amount of the Disputed Claim that becomes an Allowed Claim, Distributing 1 will distribute (as described in step (xxii)) required amounts to such holders and, if insufficient assets remain in the Escrow relating to such claims at such time to permit such distribution, it is expected that LLC 6, LLC 7, and LLC 8 will be required to issue to Distributing 1 Excess Controlled Notes and cash equal to the interest at the coupon rate from the Effective Date to the date of issuance of the Excess Controlled Notes as if such Excess Controlled Notes had been issued on the Effective Date. Distributing 1 will, in turn, distribute the Excess Controlled Notes and cash to the holders of such Disputed Claims that become Allowed Claims.

(xxix) Following the External Distribution, Distributing 2 may change its name.

In connection with the Transaction, the parties will enter into various agreements, including Agreement A, a Master Separation and Distribution Agreement, a Tax Matters Agreement, an Employee Matters Agreement, and certain other agreements (collectively, the "Ancillary Agreements").

## **Representations**

### The Internal Distribution

Distributing 2 has made the following representations concerning the Internal Distribution:

(a) Distributing 1 is under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(b) No part of the consideration distributed with respect to the Distributing 1 Common Stock by Distributing 1 in the Internal Distribution will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a Distributing 1 shareholder.

(c) No part of the consideration distributed by Distributing 1 in the Internal Distribution with respect to the Allowed Claims that qualify as securities will be received by a security holder as an employee or in any capacity other than that of a Distributing 1 security holder.

(d) The five years of financial information submitted on behalf of Segment A1 directly conducted by Distributing 1 represents the present operations of this business segment, and with regard to this business segment, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) The five years of financial information submitted on behalf of Segment A2, Segment A3, and Segment A4 (which will be transferred to Controlled indirectly through LLC 6, LLC 7, and LLC 8, or a Controlled LLC) represents, in each case, the present operations of that business segment, and with regard to each business segment, there have been no substantial operational changes since the date of the last financial statements submitted.

(f) Immediately after the Internal Distribution, the gross assets of the trade or business segment directly conducted by Distributing 1 (Segment A1) that is relied upon by Distributing 1 to satisfy the active trade or business requirement of § 355(b) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Distributing 1.

(g) Immediately after the Internal Distribution, the gross assets of the trade or business segments directly conducted by LLC 6 (or a Controlled LLC) (Segment A2), LLC 7 (or a Controlled LLC) (Segment A3), and LLC 8 (or a Controlled LLC) (Segment A4) that are relied upon by Controlled to satisfy the active trade or business requirement of § 355(b) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Controlled.

(h) Following the Internal Distribution, Distributing 1 and Controlled (through LLC 6, LLC 7, and LLC 8, or Controlled LLCs) will each continue the active conduct of its business independently and with its separate employees, except that Distributing 1 and its affiliates, on the one hand, and Controlled and its affiliates on the other hand, will provide to each other following the Internal Distribution the transitional and continued services and/or products described in the Ancillary Agreements.

(i) The Internal Distribution is being carried out to facilitate the borrowing and debt refinancing needed to enable Distributing 1 to emerge from bankruptcy and pay all valid claims in full. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(j) Other than the External Distribution and the transfer of Controlled Securities (including the Controlled Securities to be delivered into Escrow(s)) to Claimants, there is no plan or intention by Distributing 2, and the management of Distributing 2, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or Claimant, to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, Distributing 1 or Controlled, other than in ordinary market trading.

(k) There is no plan or intention by either Distributing 1 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding

stock after the Transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(l) There is no plan or intention to liquidate either Distributing 1 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Transaction, except in the ordinary course of business and except for the sale or other disposition of assets that will not be relied upon to satisfy the active trade or business requirement.

(m) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing 1 will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus the amount of the Cash Payment.

(n) The liabilities assumed (within the meaning of § 357(d)) by Controlled in the Transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(o) No intercorporate debt will exist between Distributing 1 and Controlled at the time of the Internal Distribution (and there is no plan or intention for any such debt to exist after the Internal Distribution), except for (i) indebtedness that may arise as a result of continuing transactions under the Ancillary Agreements and (ii) Distributing 1's temporary ownership (including through the Escrows) of the Controlled Securities before these securities are distributed by Distributing 1 to the Claimants and holders of Disputed Claims in the Internal Distribution or returned to Controlled (through LLC 6, LLC 7, and LLC 8) as described in steps (xxvii) and (xxviii) above. Any indebtedness owed by Controlled to Distributing 1 after completion of the Internal Distribution and any return of the Controlled Long-Term Notes described in steps (xxvii) and (xxviii) above will not constitute stock or securities.

(p) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account to the extent 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).

(q) Payments made in connection with all continuing transactions between Distributing 1 and its affiliates, on the one hand, and Controlled and its affiliates, on the other hand, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length. However, at the time the agreements regarding the continuing transactions were negotiated, Distributing 1 owned Controlled.

(r) No two parties to the Controlled Stock Distribution described in § 368(b) will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(s) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent

or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.

(t) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.

(u) Other than as it relates to the External Distribution, the Internal Distribution is not part of a "plan (or series of related transactions)" pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing 1 or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing 1 or Controlled, within the meaning of § 355(e).

(v) Distributing 1 will not have an excess loss account in the Controlled stock immediately before the Internal Distribution.

#### The External Distribution

Distributing 2 has made the following representations concerning the External Distribution:

(w) Distributing 1 is under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(x) No part of the consideration distributed by Distributing 2 in the External Distribution will be received by a Distributing 2 shareholder as a creditor, employee, or in any capacity other than that of a Distributing 2 shareholder.

(y) The five years of financial information submitted on behalf of Segment A1 directly conducted by Distributing 1 represents the present operations of this business segment, and with regard to this business segment, there have been no substantial operational changes since the date of the last financial statements submitted.

(z) The five years of financial information submitted on behalf of Business B (which is conducted by Distributing 2 indirectly through Corp 2 its subsidiaries and partnerships), and Segment A2, Segment A3, and Segment A4 (which will be



conducted by Distributing 2 indirectly through Controlled), represents, in each case, the present operations of that business segment or business, as applicable, and with regard to each of these business segments or businesses, as applicable, there have been no substantial operational changes since the date of the last financial statements submitted.

(aa) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist for federal income tax purposes of the stock and securities of Controlled and Corp 2, controlled corporations that are themselves directly or indirectly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(bb) Immediately after the External Distribution, the gross assets of the trade or business segments directly conducted by LLC 6 (or a Controlled LLC) (Segment A2), LLC 7 (or a Controlled LLC) (Segment A3), and LLC 8 (or a Controlled LLC) (Segment A4) that are relied upon by Controlled to satisfy the active trade or business requirement of § 355(b) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Controlled.

(cc) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Corp 2 will consist for federal income tax purposes of the stock and securities of Sub 7 and Sub 10, controlled corporations that are themselves either (i) directly engaged in the active conduct of a trade or business as defined in § 355(b)(2) or (ii) a corporation at least 90 percent of the fair market value of the gross assets of which will consist of stock or securities of controlled corporations that are so directly engaged.

(dd) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 7 will consist of the stock and securities of Sub 9, a controlled corporation that is directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(ee) Immediately after the External Distribution, the gross assets of the trades or businesses directly conducted by Sub 9 and relied upon by Sub 9 to satisfy the active trade or business requirement of § 355(b) (i) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Sub 9 or (ii) will represent at least (a) five percent of the gross revenues of Sub 9 and its subsidiaries, (b) five percent of the total employees of Sub 9 and its subsidiaries, and (c) five percent of the total payroll costs of Sub 9 and its subsidiaries or (iii) will satisfy both (i) and (ii). Consequently, immediately after the External Distribution, the trades or businesses conducted by Sub 9 and relied upon by Sub 9 (and indirectly by Distributing 2) to satisfy the active trade or business requirement of § 355(b) will not be *de minimis* compared with the other assets or activities of Sub 9.

(ff) Immediately after the External Distribution, the gross assets of the trades or businesses directly conducted by Sub 10 that are relied upon by Sub 10 (and indirectly, by Distributing 2) to satisfy the active trade or business requirement of § 355(b) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Sub 10.

(gg) Immediately after the External Distribution, the gross assets of Segment A1 directly conducted by Distributing 1 that is relied upon by Distributing 1 to satisfy the active trade or business requirement of § 355(b) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Distributing 1.

(hh) Following the External Distribution, Distributing 2 (through its subsidiaries) and Distributing 1 (directly) each will continue the active conduct of its businesses, independently and with its separate employees, except that Distributing 2 and its affiliates, on the one hand, and Distributing 1 and its affiliates, on the other hand, will provide to each other following the External Distribution the transitional and continued services and/or products described in the Ancillary Agreements.

(ii) The External Distribution is being carried out to facilitate the borrowing and debt refinancing needed to enable Distributing 1 to emerge from bankruptcy and pay all valid claims in full. The External Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(jj) There is no plan or intention by any shareholder who owns five 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 any particular remaining shareholder or security holder of Distributing 2, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing 2 or Distributing 1 after the Transaction, other than in ordinary market trading.

(kk) There is no plan or intention by either Distributing 2 or Distributing 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(ll) There is no plan or intention to liquidate either Distributing 2 or Distributing 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Transaction, except for (i) the possible granting of options to acquire common stock of Corp 2 in connection with the possible extension of certain loans to Distributing 2, or the exercise of such options or options to acquire common stock of Corp 2 that were granted in obtaining such loans, which in the aggregate will be exercisable on no more than v percent of the common stock of Corp 2, (ii) sales or dispositions in the ordinary course of business, and (iii) the sale or other disposition of assets that will not be relied upon to satisfy the active trade or business requirement.

(mm) The total adjusted basis and the fair market value of assets transferred to Distributing 1 by Distributing 2 will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Distributing 1.

(nn) Immediately before the External 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, *supra*, and as currently in effect; § 1.1502-13 as

published by T.D. 8597). Further, any excess loss account Distributing 2 has in the stock of Distributing 1 will be included in income immediately before the External Distribution to the extent required by applicable regulations (see § 1.1502-19).

(oo) Payments made in connection with all continuing transactions between Distributing 2 and its affiliates, on the one hand, and Distributing 1 and its affiliates, on the other hand, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length. However, at the time the agreements regarding the continuing transactions were negotiated, Distributing 2 owned Distributing 1.

(pp) Distributing 2 will not retain any significant power, right or continuing interest (within the meaning of § 1253(b)) in the assets transferred to Distributing 1 in step (xxiv) above.

(qq) No intercorporate debt will exist between Distributing 2 and its affiliates, on the one hand, and Distributing 1 and its affiliates, on the other hand, at the time of the External Distribution (and there is no plan or intention for any such debt to exist after the External Distribution), except for (i) intercompany receivables that will be satisfied as provided in the Plan of Reorganization, (ii) indebtedness that may arise as a result of continuing transactions under the Ancillary Agreements, and (iii) Distributing 1's temporary ownership (including through the Escrows) of the Controlled Securities before these securities are distributed by Distributing 1 to Claimants and holders of Disputed Claims in the Internal Distribution or returned to Controlled (through LLC 6, LLC 7, and LLC 8), as described in steps (xxvii) and (xxviii) above. Any indebtedness owed by Distributing 1 to Distributing 2 after completion of the External Distribution and any return of the Controlled Long-Term Notes described in steps (xxvii) and (xxviii) will not constitute stock or securities.

(rr) No two parties to the External Distribution described in § 368(b) will be investment companies under § 368(a)(2)(F)(iii) and (iv).

(ss) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five- year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(tt) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in

§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(uu) The External Distribution is not part of a "plan (or series of related transactions)" pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Distributing 2 or Distributing 1 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing 2 or Distributing 1, within the meaning of § 355(e).

(vv) The Distributing 1 Rights cannot be separately traded and are not divisible from the Distributing 1 Common Stock before the triggering events occur. Before the occurrence of these events, the Distributing 1 Rights may be redeemed by Distributing 1. At the time of the External Distribution, the likelihood that the Distributing 1 Rights would be exercised will be both remote and uncertain.

## **Rulings**

### **The Internal Distribution**

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

(1) The Internal Contribution, followed by the Internal Distribution, will be a reorganization under § 368(a)(1)(G) (the "Internal G Reorganization"). Distributing 1 and Controlled each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing 1 on the Internal Contribution, provided the Cash Payment is transferred to Claimants (§§ 361(a), 361(b)(1)(A), 361(b)(3), and 357(a)).

(3) Section 304 will not apply to any transfer of stock by Distributing 1 to Controlled (or an LLC owned directly or indirectly by Controlled) in the Internal Contribution (§§ 1.1502-80(b) and 361).

(4) The aggregate basis of the Controlled Common Stock and Controlled Securities in the hands of Distributing 1 immediately before the Internal Distribution will equal Distributing 1's basis in the assets transferred to Controlled in the Internal Contribution, decreased by the amount of the Cash Payment received from Controlled and the related liabilities assumed by Controlled (§ 358(a)(1)). The aggregate basis of the Controlled Common Stock and Controlled Securities will be allocated between the two in proportion to the fair market value of each in accordance with § 1.358-2(b)(2) (§ 358(b)(1)).

(5) No gain or loss will be recognized by Controlled on the Internal Contribution (§ 1032(a)).

(6) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing 1 immediately before the transfer (§ 362(b)).

(7) The holding period of each asset received by Controlled will include the period during which that asset was held by Distributing 1 (§ 1223(2)).

(8) No gain or loss will be recognized by Distributing 1 on the Internal Distribution (§§ 361(c)(1), (2), and (3)).

(9) Distributing 1 will not recognize any income, gain, loss, or deduction with respect to any Controlled Securities under the intercompany transaction regulations relating to intercompany obligations, other than any income recognized with respect to any interest paid or accrued on any Controlled Securities owned (including through any Escrow that does not constitute a “qualified settlement fund”) by Distributing 1 during any period that Distributing 1 and Controlled remain members of the same consolidated group within the meaning of § 1.1502-1(h).

(10) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on its receipt of Controlled Common Stock in the Internal Distribution (§ 355(a)(1)).

(11) The aggregate basis of Distributing 1 Common Stock and Controlled Common Stock in the hands of Distributing 2 after the Internal Distribution will equal the aggregate basis of Distributing 1 Common Stock held by Distributing 2 immediately before the Internal Distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)).

(12) The holding period of the Controlled Common Stock received by Distributing 2 will include the holding period of the Distributing 1 Common Stock on which the distribution is made, provided the shares of Distributing 1 Common Stock are held as a capital asset on the Internal Distribution date (§ 1223(1)).

(13) Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with §§ 312(h), 1.312-10, and 1.1502-33(f)(2).

(14) Item A Litigation Payments made to Distributing 1 that have not become fixed or ascertainable until after the Internal Distribution date (and that have not already been included in Distributing 1's income as of the Internal Distribution date) will be included in Distributing 1's gross income.

(15) Any Item A Litigation Payments made by Distributing 1 to Controlled that have not become fixed or ascertainable until after the Internal Distribution date will be treated as transfers by Distributing 1 to Controlled as part of the Internal G Reorganization immediately before the Internal Distribution date.

(16) No gain will be recognized by (and no amount will otherwise be included in the income of) a holder of an Allowed Claim that qualifies as a security under § 355(a) on the exchange of such Allowed Claim solely for Controlled Securities (excluding Controlled Securities received to the extent attributable to interest (including original issue discount) which has accrued during such holders' holding period) provided the aggregate principal amount of the Controlled Securities received

is no greater than the aggregate principal amount of the Allowed Claim surrendered (§§ 355(a)(1), 355(a)(3)(C), and 356(a)(1)). No loss will be recognized by any such holder, except potentially to the extent of accrued interest (other than original issue discount) that was included in income by such holder for which consideration is not received (§§ 355(a)(1) and (a)(3)(C)).

(17) Gain, if any will be recognized by a holder of an Allowed Claim or a Disputed Claim that qualifies as a security under § 355(a) upon the receipt of cash and Controlled Securities (excluding cash or Controlled Securities received to the extent attributable to interest (including original issue discount) which has accrued during such holders' holding period) but in an amount not in excess of the amount of cash received plus the amount by which the aggregate principal amount of the Controlled Securities received exceeds the aggregate principal amount of the Allowed Claim or Disputed Claim surrendered (§§ 355(a)(3)(C) and 356(a)(1)). No loss will be recognized by any such holder, except potentially to the extent of accrued interest (other than original issue discount) that was included in income by such holder for which consideration is not received (§§ 355(a)(3)(C) and 356(c)).

(18) The issuance of Excess Controlled Notes by Controlled to Distributing 1 will be treated as if it had occurred as part of the Internal G Reorganization. The transfer of Excess Controlled Notes to any Claimant will be treated as part of the Internal Distribution.

(19) Neither Distributing 1 nor Controlled will recognize any gain or loss by reason of the issuance of Excess Controlled Notes by Controlled or the receipt or distribution to any Claimant of such Excess Controlled Notes by Distributing 1. (§§ 361(c)(1), (2), and (3)).

(20) The reversion from Distributing 1 to Controlled of any Controlled Long-Term Notes originally transferred to Distributing 1 in the Internal G Reorganization and transferred by Distributing 1 to any Escrow that does not constitute a "qualified settlement fund" (as described above in step (xxvii)) will result in no gain or loss to Distributing 1 or Controlled.

(21) Any reversion from the holders of Disputed Claims to Distributing 1, and from Distributing 1 to Controlled, of any Controlled Long-Term Notes or cash attributable to Controlled Long-Term Notes originally issued to, and sold or otherwise disposed of by, the holders of Disputed Claims (as described in step (xxviii)), will result in no gain or loss to Distributing 1 or Controlled.

#### The External Distribution

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

(22) The External Contribution, followed by the External Distribution, will be a reorganization under § 368(a)(1)(G). Distributing 2 and Distributing 1 each will be "a party to a reorganization" under § 368(b).

(23) Distributing 2 will not recognize any gain or loss on the External Contribution (§ 361(a)).

(24) No gain or loss will be recognized by Distributing 1 on the External Contribution (§ 1032(a)).

(25) The basis of each asset received by Distributing 1 will equal the basis of that asset in the hands of Distributing 2 immediately before the transfer (§ 362(b)).

(26) The holding period of each asset received by Distributing 1 will include the period during which that asset was held by Distributing 2 (§ 1223(2)).

(27) No gain or loss will be recognized to Distributing 2 on the External Distribution (§ 361(c)(1)).

(28) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing 2 shareholders on their receipt of the Distributing 1 Common Stock in the External Distribution (§ 355(a)(1)).

(29) The aggregate basis of the Distributing 1 Common Stock and Distributing 2 Common Stock in the hands of each Distributing 2 shareholder after the External Distribution will equal the aggregate basis of the Distributing 2 Common Stock held immediately before the External Distribution, allocated in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)).

(30) The holding period of the Distributing 1 Common Stock received by each Distributing 2 shareholder will include the holding period of the Distributing 2 Common Stock on which the distribution is made, provided the Distributing 2 Common Stock is held as a capital asset on the External Distribution date (§ 1223(1)).

(31) Earnings and profits will be allocated between Distributing 2 and Distributing 1 in accordance with §§ 312(h), 1.312-10, and 1.1502-33(e)(3).

(32) The Stock Dividend will not result in taxable income to Distributing 1 or Distributing 2 (§§ 305(a) and 311(a)(1)).

(33) Payments made between Distributing 1 and Distributing 2, and their respective subsidiaries, under the Tax Matters Agreement regarding tax liabilities that (i) have arisen or will arise for a taxable period ending on or before the External Distribution date or for a taxable period beginning before and ending after the External Distribution date and (ii) have not become fixed or ascertainable until after the External Distribution date will be treated as occurring immediately before the External Distribution date.

(34) Provided that, at the time of the External Distribution, the Distributing 1 Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of these rights by Distributing 2 or the Distributing 2 shareholders will not be a

distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of income or gain by Distributing 2 or the Distributing 2 shareholders (Rev. Rul. 90-11, 1990-1 C.B. 10).

### **Caveats**

No opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations or 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. In particular, no opinion is expressed on:

(i) whether the mergers and conversions described above in steps (vi) through (xiii) will qualify as liquidations under §§ 332 and 337;

(ii) the federal income tax treatment of the Trusts referred to above in step (xvii), regarding issues that are the subject of a separate private letter ruling issued on Date 4; and

(iii) whether any of the Escrows will satisfy the definition of a "qualified settlement fund" under §§ 468B(g) and 1.468B-1(a).

### **Procedural Statements**

This ruling 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.

Each taxpayer involved in the Transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Transaction is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent your authorized representatives.

Sincerely,

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Lewis K Brickates  
Acting Chief, Branch 4  
Office of Associate Chief Counsel  
(Corporate)