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**Legend**

Distributing 1 =

Distributing 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Controlled =

Sub 9 =

Accounts =

Business A =

Business B =

Business C =

Business D =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Dear :

This letter responds to your August 19, 2004 request for rulings regarding certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information submitted in that request and in later correspondence 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 statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has made no determination regarding whether any distribution described below: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or any controlled corporation (see § 355(e) and § 1.355-7T).

### Summary of Facts

Distributing 2 is a closely held corporation that has outstanding Class A common stock. Distributing 2 is the common parent of an affiliated group that files a consolidated return. Distributing 2's group includes wholly owned Sub 1. Sub 1 wholly owns Sub 2 and Sub 3.

Sub 4 is a closely held corporation that has outstanding common and preferred stock. Sub 4 is the common parent of an affiliated group that files a consolidated return. Sub 4's group includes first tier wholly owned Sub 5. Sub 4 conducts Business C and Business D through subsidiaries and disregarded entities. Additionally, Sub 4 owns a percent of Distributing 1 common stock and b percent of Distributing 1 preferred stock, c percent of Sub 6, d percent of Sub 7, and e percent of Sub 8 common stock and f

percent of Sub 8 preferred stock. The remaining shares of Sub 6, Sub 7, and Sub 8 are owned by Sub 4's shareholders.

Sub 1, Sub 2, Sub 3, Sub 6, Sub 7, and Sub 8 hold the remaining shares of Distributing 1, in amounts less than a percent of the common stock and b percent of the preferred stock. Distributing 1 is the common parent of an affiliated group that includes Sub 9 and files a consolidated return. Distributing 1 is engaged in Business A and Business B through subsidiaries and disregarded entities.

Sub 9 has one class of common stock and one class of non-voting preferred stock outstanding. Distributing 1 owns g percent of Sub 9 common stock. Sub 3 owns h percent of Sub 9's common stock. The remaining i percent of Sub 9 common stock is owned by an employee trust. The public owns all of Sub 9 non-voting preferred stock. Sub 9 conducts Business B.

Financial information has been submitted indicating that Business A (as conducted by Sub 7), Business B (as conducted by Sub 9), and Business C and Business D (as conducted by Sub 4 through subsidiaries and disregarded entities) has, in the case of each named entity, had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### **Proposed Transaction**

For what are represented as valid business reasons, Distributing 1 proposes the following series of transactions (the "Proposed Transaction"):

- (i) Distributing 2 will recapitalize its stock by amending its organizational documents to permit it to have two classes of common stock outstanding, Class A and Class B which will be held pro rata by the shareholders. The Class B stock will be issued to Distributing 2's current shareholders in a ratio to reflect the current value of Distributing 2's direct and indirect interest in Business A as compared to Business B.
- (ii) Distributing 1 will transfer all of its Sub 9 stock to a newly formed domestic subsidiary ("Controlled") in exchange for all of the Controlled stock and the assumption by Controlled of Distributing 1 liabilities ("Contribution 1").
- (iii) Sub 4 will form a wholly-owned single member limited liability company that will be disregarded for federal income tax purposes under § 301.7701-3 ("LLC-1"). Sub 5 will merge into LLC-1 (the "Sub 5 Merger").
- (iv) Distributing 2 will form a wholly-owned single member limited liability company that will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 ("LLC-2"). Sub 4 will merge into LLC-2 under

- applicable state law (“Merger 1”). Pursuant to the merger, Sub 4 shareholders will receive Distributing 2 Class A and Class B common stock.
- (v) Distributing 2 will form a wholly-owned single member limited liability company that will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 (“LLC-3”). Sub 1 will merge into LLC-3 (“Liquidation 1”).
  - (vi) Distributing 2 will form a wholly-owned single member limited liability company that will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 (“LLC-4”). Sub 2 will merge into LLC-4 (“Liquidation 2”).
  - (vii) Distributing 2 will form three wholly-owned single member limited liability companies each of which will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 (“LLC-5,” “LLC-6,” and “LLC-7”). Sub 6 will merge into LLC-5, Sub 7 will merge into LLC-6, and Sub 8 will merge into LLC-7 under applicable state law (each merger, respectively, “Merger 2,” “Merger 3,” and “Merger 4”). Pursuant to Merger 2, Merger 3, and Merger 4, Sub 6, Sub 7, and Sub 8’s shareholders will each receive Distributing 2 Class A and Class B common stock.
  - (viii) Distributing 2 will form a wholly owned single member limited liability company that will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 (“LLC-8”). Sub 3 will merge into LLC-8 (the “Sub 3 Transaction”).
  - (ix) Distributing 2 will contribute the Sub 9 stock acquired from Sub 3 to Distributing 1 in constructive exchange for Distributing 1 common stock (“Contribution 2”).
  - (x) Distributing 1 will contribute the Sub 9 stock acquired from Distributing 2 in the previous step above to Controlled in constructive exchange for Controlled common stock (“Contribution 3”).
  - (xi) Sub 9 will amend its organizational documents to provide its non-voting Preferred Stock with the right to vote. The vote will be less than j% of the total voting power of all classes of stock entitled to vote.
  - (xii) Distributing 2 will transfer all of its membership interest in LLC-2 and LLC-6 to Distributing 1 in constructive exchange for Distributing 1 common stock and the assumption by Distributing 1 of Distributing 2 liabilities (“Contribution 4”).
  - (xiii) Distributing 1 will distribute all of the Controlled stock to Distributing 2 (“Distribution 1”).

- (xiv) Distributing 2 will distribute all of the Controlled stock to its shareholders in exchange for their Distributing 2 Class B stock ("Distribution 2") (Distribution 1 and Distribution 2, collectively "the Distributions").

### **Representations**

The following representations are made with respect to the Sub 5 Merger:

- (a) The merger of Sub 5 into LLC-1 will be pursuant to state law.
- (b) No Sub 4 stock will be issued, so Sub 4 has no plan or intention to reacquire any of its stock issued in the Sub 5 Merger.
- (c) Sub 4 has no plan or intention to sell or otherwise dispose of the assets acquired in the Sub 5 Merger, except for (i) Merger 1, (ii) dispositions made in the ordinary course of business, and (iii) transfers described in § 368(a)(2)(C).
- (d) The liabilities of Sub 5 assumed by Sub 4 and the liabilities to which the transferred assets are subject were incurred by Sub 5 in the ordinary course of its business and are associated with the assets transferred.
- (e) Following the Sub 5 Merger, Sub 4 and Distributing 2 will continue the historic business of Sub 5 or use a significant portion of Sub 5's historic business asset in a business, either directly or indirectly through Distributing 1.
- (f) Sub 5 and Sub 4 will each pay their respective expenses, if any, incurred in connection with the Sub 5 Merger.
- (g) No intercorporate indebtedness exists or will exist between Sub 5 and Sub 4 that was issued, acquired, or will be settled at a discount.
- (h) No two parties to the Sub 5 Merger are investment companies (as defined in § 368(a)(2)(F)(iii) and (iv)).
- (i) The fair market value of the Sub 5 assets transferred to Sub 4 will equal or exceed the sum of the liabilities assumed by Sub 4 plus the amount of liabilities, if any, to which the transferred assets are subject.
- (j) The total adjusted basis of the assets of Sub 5 transferred to Sub 4 will equal or exceed the sum of the liabilities assumed by Sub 4, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (k) Sub 5 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

- (l) At least 50 percent of the proprietary interest in Sub 5 will be preserved (within the meaning of § 1.368-1(e)) by reason of an exchange of Sub 5 stock held by Sub 4 for a direct interest in the Sub 5 enterprise.

The following representations are made with respect to Merger 1:

- (a) The fair market value of the Distributing 2 stock and other consideration received by Sub 4 shareholders will approximately equal the fair market value of the Sub 4 stock surrendered in Merger 1.
- (b) At least 50 percent of the proprietary interest in Sub 4 will be exchanged for Distributing 2 stock and will be preserved (within the meaning of § 1.368-1(e)).
- (c) Except for the exchange of Distributing 2 Class B stock in Distribution 2, Distributing 2 has no plan or intention to reacquire any of its stock issued in Merger 1.
- (d) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 4 acquired in Merger 1, except for (i) dispositions made in the ordinary course of business and (ii) transfers described in § 368(a)(2)(C).
- (e) The liabilities of Sub 4 assumed by Distributing 2 and the liabilities to which the transferred assets are subject were incurred by Sub 4 in the ordinary course of its business and are associated with the assets transferred.
- (f) Following Merger 1, Distributing 2 will continue the historic business of Sub 4 or will use a significant portion of Sub 4's historic business assets in a business either directly or indirectly through Distributing 1.
- (g) Distributing 2, Sub 4, and the Sub 4 shareholders will pay their respective expenses, if any, incurred in connection with Merger 1.
- (h) There is no intercorporate indebtedness existing between Distributing 2 and Sub 4 that was issued, acquired, or will be settled at a discount.
- (i) No two parties to Merger 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (j) The fair market value of the Sub 4 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2 plus the amount of the liabilities, if any, to which the transferred assets are subject.

- (k) The total adjusted basis of the Sub 4 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities to be assumed by Distributing 2 plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (l) Sub 4 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

The following representations are made with respect to Merger 2:

- (a) The fair market value of the Distributing 2 stock and other consideration received by Sub 6 shareholders will approximately equal the fair market value of the Sub 6 stock surrendered in Merger 2.
- (b) At least 50 percent of the proprietary interest in Sub 6 will be exchanged for Distributing 2 stock and will be preserved (within the meaning of § 1.368-1(e)).
- (c) Except for the exchange of Distributing 2 Class B stock in Distribution 2, Distributing 2 has no plan or intention to reacquire any of its stock issued in Merger 2.
- (d) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 6 acquired in Merger 2 except for (i) dispositions made in the ordinary course of business and (ii) transfers described in § 368(a)(2)(C).
- (e) The Sub 6 liabilities assumed by Distributing 2 and the liabilities to which the transferred assets are subject were incurred by Sub 6 in the ordinary course of its business and are associated with the assets transferred.
- (f) Following Merger 2, Distributing 2 will continue the historic business of Sub 6 or will use a significant portion of Sub 6's historic business assets in a business.
- (g) Distributing 2, Sub 6, and the Sub 6 shareholders will pay their respective expenses, if any, incurred in connection with Merger 2.
- (h) There is no intercorporate indebtedness existing between Distributing 2 and Sub 6 that was issued, acquired, or will be settled at a discount.
- (i) No two parties to Merger 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (j) The fair market value of the Sub 6 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of liabilities, if any, to which the transferred assets are subject.



- (k) The total adjusted basis of the Sub 6 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (l) Sub 6 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

The following representations are made with respect to Merger 3:

- (a) The fair market value of the Distributing 2 stock and other consideration received by Sub 7 shareholders will approximately equal the fair market value of the Sub 7 stock surrendered in Merger 3.
- (b) At least 50 percent of the proprietary interest in Sub 7 will be exchanged for Distributing 2 stock and will be preserved (within the meaning of § 1.368-1(e)).
- (c) Except for the exchange of Distributing 2 Class B stock in Distribution 2, Distributing 2 has no plan or intention to reacquire any of its stock issued in Merger 3.
- (d) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the Sub 7 assets acquired in Merger 3, except for (i) dispositions made in the ordinary course of business and (ii) transfers described in § 368(a)(2)(C).
- (e) The Sub 7 liabilities assumed by Distributing 2 and the liabilities to which the transferred assets are subject were incurred by Sub 7 in the ordinary course of its business and are associated with the assets transferred.
- (f) Following Merger 3, Distributing 2 will continue the historic business of Sub 7 or will use a significant portion of Sub 7's historic business assets in a business, either directly or indirectly through Distributing 1.
- (g) Distributing 2, Sub 7, and the Sub 7 shareholders will each pay their respective expenses, if any, incurred in connection with Merger 3.
- (h) No intercorporate indebtedness exists or will exist between Distributing 2 and Sub 7 that was issued, acquired, or will be settled at a discount.
- (i) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

- (j) The fair market value of the Sub 7 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (k) The total adjusted basis of the Sub 7 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (l) Sub 7 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

The following representations are made with respect to Merger 4.

- (a) The fair market value of the Distributing 2 stock and other consideration received by Sub 8 shareholders will approximately equal the fair market value of the Sub 8 stock surrendered in Merger 4.
- (b) At least 50 percent of the proprietary interest in Sub 8 will be exchanged for Distributing 2 stock and will be preserved (within the meaning of § 1.368-1(e)).
- (c) Except for the exchange of Distributing 2 Class B stock in Distribution 2, Distributing 2 has no plan or intention to reacquire any of its stock issued in Merger 4.
- (d) Distributing 2 has no plan or intention to sell or otherwise dispose of any of the Sub 8 assets acquired in the transaction, except for (i) dispositions made in the ordinary course of business and (ii) transfers described in § 368(a)(2)(C).
- (e) The Sub 8 liabilities assumed by Distributing 2 and the liabilities to which the transferred assets are subject were incurred by Sub 8 in the ordinary course of its business and are associated with the assets transferred.
- (f) Following Merger 4, Distributing 2 will continue the historic business of Sub 8 or will use a significant portion of Sub 8's historic business assets in a business.
- (g) Distributing 2, Sub 8, and the Sub 8 shareholders will each pay their respective expenses, if any, incurred in connection with Merger 4.
- (h) No intercorporate indebtedness exists, or will exist between Distributing 2 and Sub 8 that was issued, acquired, or will be settled at a discount.

- (i) No two parties to Merger 4 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (j) The fair market value of the Sub 8 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (k) The total adjusted basis of the Sub 8 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (l) Sub 8 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

The following representations are made with respect to Liquidation 1:

- (a) Distributing 2, on the date of adoption of the plan of liquidation of Sub 1 into Distributing 2, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 1 stock.
- (b) No shares of Sub 1 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 1.
- (c) All distributions from Sub 1 to Distributing 2 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 1.
- (d) As soon as the first liquidating distribution has been made, Sub 1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e) Sub 1 will retain no assets following the final liquidating distribution.
- (f) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of the adoption of the plan of liquidation.
- (g) No Sub 1 assets have been, or will be, disposed of by Sub 1 or Distributing 2 except for dispositions in the ordinary course of business, and dispositions occurring more than three years before the adoption of the plan of liquidation.
- (h) The liquidation of Sub 1 into Distributing 2 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also

hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c).

- (i) Before the adoption of the plan of liquidation, no Sub 1 assets will have been distributed in kind, transferred, or sold to Distributing 2, except for transactions occurring in the normal course of business and transactions occurring more than three years before adoption of the plan of liquidation.
- (j) Sub 1 will report all earned income represented by assets that will be distributed to Distributing 2, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (k) The fair market value of the Sub 1 assets will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.
- (l) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, Liquidation 1 have been fully disclosed.
- (n) Immediately before Liquidation 1, items of income, gain, loss, deduction, or 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, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (o) On the date of Liquidation 1, there will be outstanding intercorporate debt owed by Distributing 2 to Sub 1 ("Debt 1"). Apart from Debt 1, there is no intercorporate debt existing between Distributing 2 and Sub 1 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the liquidation plan (or alternatively, if such date is later) except for transactions occurring before the date Distributing 2 initially acquired Sub 1.

The following representations are made with respect to Liquidation 2:

- (a) Distributing 2, on the date of adoption of the plan of liquidation of Sub 2 into Distributing 2, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 2 stock.

- (b) No shares of Sub 2 stock will have been redeemed during the three years preceding the adoption of the plans of complete liquidation of Sub 2.
- (c) All distributions from Sub 2 to Distributing 2 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 2.
- (d) As soon as the first liquidating distribution has been made, Sub 2 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e) Sub 2 will retain no assets following its final liquidating distribution.
- (f) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of the adoption of the plan of liquidation.
- (g) No Sub 2 assets have been, or will be, disposed of by Sub 2 or Distributing 2 except for dispositions in the ordinary course of business, and dispositions occurring more than three years before the adoption of the plan of liquidation.
- (h) The liquidation of Sub 2 into Distributing 2 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c).
- (i) Before the adoption of the plan of liquidation, no Sub 2 assets will have been distributed in kind, transferred, or sold to Distributing 2, except for transactions occurring in the normal course of business and transactions occurring more than three years before the adoption of the plan of liquidation.
- (j) Sub 2 will report all earned income represented by assets that will be transferred to its shareholder, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (k) The fair market value of the Sub 2 assets will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.
- (l) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, Liquidation 2 have been fully disclosed.
- (n) Immediately before Liquidation 2 items of income, gain, loss, deduction, or 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, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (o) On the date of Liquidation 2, there will be outstanding intercorporate debt owed by Sub 2 to Distributing 2 as successor to Sub 1 ("Debt 2"). Apart from Debt 2, there is no intercorporate debt existing between Distributing 2, Sub 1, and Sub 2 and none has been cancelled, forgiven, or discounted, except for transactions, that occurred more than three years before the date of adoption of the liquidation plan (or alternatively, if such date is later) except for transactions occurring before the date Sub 1 initially acquired Sub 2.

The following representations are made with respect to the Sub 3 Transaction should the transaction be treated as a reorganization under § 368(a)(1)(A):

- (a) The merger of Sub 3 into LLC-8 will be pursuant to state law.
- (b) No Distributing 2 stock will be issued, so Distributing 2 has no plan or intention to reacquire any of its stock issued in the Sub 3 Transaction.
- (c) Distributing 2 has no plan or intention to sell or otherwise dispose of the assets of Sub 3 acquired in the transaction except for (i) dispositions made in the ordinary course of business, (ii) the Distributions, and, (iii) transfers described in § 368(a)(2)(C).
- (d) The Sub 3 liabilities assumed by Distributing 2 and the liabilities to which the transferred assets are subject were incurred by Sub 3 in the ordinary course of its business and are associated with the assets transferred.
- (e) Following the Sub 3 Transaction, Distributing 2 will continue the historic business of Sub 3 or use a significant portion of each historic business asset in a business, either directly or indirectly through Controlled.
- (f) Sub 3 and Distributing 2 will each pay their respective expenses, if any, incurred in connection with the Sub 3 Transaction.
- (g) No intercorporate indebtedness exists, or will exist, between Distributing 2 and Sub 3 that was issued, acquired, or will be settled at a discount.

- (h) No two parties to the transactions are investment companies (as defined in § 368(a)(2)(F)(iii) and (iv)).
- (i) The fair market value of the Sub 3 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (j) The total adjusted basis of the Sub 3 assets transferred to Distributing 2 will equal or exceed the sum of the liabilities assumed by Distributing 2, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (k) Sub 3 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).
- (l) At least 50 percent of the proprietary interest in Sub 3 will be preserved (within the meaning of § 1.368-1(e)) by reason of an exchange of Sub 3 stock held by Distributing 2 for a direct interest in the Sub 3 enterprise.

The following representations are made with respect to the Sub 3 Transaction should the transaction be treated as a liquidation under § 332:

- (a) Distributing 2, on the date of the adoption of the plan of complete liquidation of Sub 3 into Distributing 2, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 3 stock.
- (b) No shares of Sub 3 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 3.
- (c) All distributions from Sub 3 to Distributing 2 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 3.
- (d) As soon as the first liquidating distributions occur, Sub 3 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e) Sub 3 will retain no assets following its final liquidating distribution.
- (f) Sub 3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of the adoption of the plan of liquidation.
- (g) No assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Distributing 2 except for dispositions in the ordinary course of business, and

- dispositions occurring more than three years before the adoption of the plan of liquidation.
- (h) Except for the transfers, after the merger, in Contribution 2 and Contribution 3, the liquidation of Sub 3 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the businesses or assets of Sub 3, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a) as modified by § 304(c).
  - (i) Before the adoption of the plan of liquidation, no Sub 3 assets will have been distributed in kind, transferred, or sold to Distributing 2, except for transactions occurring in the normal course of business and transactions occurring more than three years before the adoption of the plan of liquidation.
  - (j) Sub 3 will report all earned income represented by assets that will be distributed to its shareholder, such as, receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
  - (k) The fair market value of the Sub 3 assets will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately before the time the first liquidating distribution is made.
  - (l) Distributing 2 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
  - (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 3 Transaction have been fully disclosed.
  - (n) Immediately before the Sub 3 Transaction, items of income, gain, loss, deduction, or 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, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
  - (o) On the date of the Sub 3 Transaction, there will be outstanding intercorporate debt owed by Sub 1 to Sub 3 (“Debt 3”). Apart from Debt 3, there is no intercorporate debt existing between Distributing 2, Sub 1, and Sub 3 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the liquidation plan (or alternatively, if such date is later) except for transactions occurring before the date Sub 1 initially acquired Sub 3.



The following representations are made with respect to Contribution 2 and Contribution 4:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Distributing 1 in connection with Contribution 2 and Contribution 4, and no stock or securities will be issued for Distributing 1 indebtedness that is not evidenced by a security or for interest on Distributing 1 indebtedness which accrued on or after the beginning of the holding period of Distributing 2 for the debt.
- (b) The transfer is not the result of the solicitation by a promoter, broker or investment house.
- (c) Distributing 2 will not retain any rights in the property transferred to Distributing 1.
- (d) The adjusted basis and the fair market value of the assets to be transferred by Distributing 2 to Distributing 1 will, in each instance, equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Distributing 1.
- (e) The Distributing 2 liabilities to be assumed (within the meaning of § 357(d)) by Distributing 1 were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (f) There is no indebtedness between Distributing 1 and Distributing 2, and there will be no indebtedness created in favor of Distributing 2 as a result of Contribution 2 or Contribution 4.
- (g) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (h) All exchanges will occur on the same date.
- (i) There is no plan or intention on the part of Distributing 1 to redeem or otherwise reacquire any stock or indebtedness to be issued in Contribution 2 or Contribution 4.
- (j) Taking into account any issuance of additional shares of Distributing 1 stock; any issuance of stock for services; the exercise of any Distributing 1 stock rights, warrants, or subscriptions; a public offering of Distributing 1 stock; and the sale, exchange, transfer by gift, or other dispositions of any of the stock of Distributing 1 to be received in the exchange, Distributing 2 will be in control of Distributing 1 within the meaning of § 368(c).

- (k) Distributing 2 will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Distributing 1.
- (l) Distributing 1 will remain in existence and retain and use the property transferred to it in a trade or business, except for the Sub 9 stock, which will be transferred to Controlled.
- (m) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with Contribution 2 and Contribution 4.
- (n) Distributing 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (o) Distributing 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (p) Distributing 1 will not be a “personal service corporation” within the meaning of § 269A.

The following representations are made with respect to Contribution 1, Contribution 3, and Distribution 1:

- (a) The Accounts owed by Sub 9 to Distributing 1 and its affiliates after Distribution 1 will not constitute stock or securities.
- (b) No part of the consideration distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a Distributing 1 shareholder.
- (c) The five years of financial information submitted for Business A, Business C, and Business D represents the present operations of each respective business, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted for Business B (as conducted by Sub 9) is representative of the corporation’s present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Immediately after Distribution 1 at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock of Sub 9, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

- (f) Following Distribution 1, Distributing 1 and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (g) Distribution 1 is being carried out for the following corporate business purposes: avoidance of regulatory interference with the conduct of Business A; facilitate financing of Business B on more advantageous terms; to divide the risks of Business B from Business A; to allow expansion of Business B; to permit cost savings for Business B; and to facilitate expeditious compliance with changes to federal laws and regulations. Distribution 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (h) Distribution 1 is not used principally as a device for the distribution of the earnings and profits of either Distributing 1 or Controlled or both.
- (i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing 1 equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled.
- (j) The liabilities assumed (within the meaning of § 357(d)) in Distribution 1 were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or after Distribution 1.
- (l) Immediately before Distribution 1, 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 publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 1's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before Distribution 1.
- (m) Payments made in connection with all continuing transactions between Distributing 1 and Controlled following Distribution 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

- (o) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing 1 or Controlled (including any predecessor or successor of any such corporation).
- (p) For purposes of § 355(d), immediately after Distribution 1, 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 Distribution 1 or (ii) attributable to distributions on Distributing 1 stock that were acquired by purchase (as defined by § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
- (q) For purposes of § 355(d), immediately after Distribution 1 no person (determined by 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 Distribution 1.

The following representations are made with respect to Distribution 2:

- (a) The Accounts owed by Sub 9 to Distributing 2 and its affiliates after Distribution 2 will not constitute stock or securities.
- (b) The fair market value of the Controlled stock to be received by each holder of Distributing 2 Class B stock will be approximately equal to the fair market value of the Distributing 2 Class B stock surrendered by the shareholder in the exchange.
- (c) No part of the consideration distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of Distributing 2 shareholder.
- (d) Immediately after Distribution 2 at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock of Sub 9, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

- (e) The five years of financial information submitted for Business B (as conducted by Sub 9) is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Immediately after Distribution 2 at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock of Distributing 1, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (g) The five years of financial information submitted for Business A, Business C, and Business D represents the present operations of these businesses, and regarding each, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Following Distribution 2, Distributing 2 (either directly or indirectly through Distributing 1) and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (i) Distribution 2 is being carried out for the following corporate business purposes: avoidance of regulatory interference with the conduct of Business A; facilitate financing of Business B on more advantageous terms; to divide the risks of Business B from Business A; to allow expansion of Business B; to permit cost savings for Business B; and to facilitate expeditious compliance with changes to federal laws and regulations. Distribution 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (j) Distribution 2 is not used principally as a device for the distribution of the earnings and profits of either Distributing 2 or Controlled or both.
- (k) No intercorporate debt will exist between Distributing 2 or Controlled at the time of, or after Distribution 2.
- (l) Immediately before Distribution 2, 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 publication of T.D. 8597, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further Distributing 2's excess loss accounts with respect to the Controlled stock, if any, will be included in income immediately before Distribution 2.
- (m) Payments made in connection with all continuing transactions between Distributing 2 and Controlled following Distribution 2 will be for fair market

- value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
  - (o) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing 2 or Controlled (including any predecessor or successor of any such corporation).
  - (p) For purposes of § 355(d), immediately after Distribution 2, 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 Distribution 2 or (ii) attributable to distributions on Distributing 2 stock that were acquired by purchase (as defined by § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.
  - (q) For purposes of § 355(d), immediately after Distribution 2, no person (determined by 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 Distribution 2.

### **Rulings**

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

#### **Sub 5 Merger**

- (1) Provided the Sub 5 Merger qualifies as a statutory merger under applicable state law, Sub 5's merger into LLC-1 will constitute a reorganization within the meaning of § 368(a)(1)(A). Sub 4 and Sub 5 will each be "a party to a reorganization" within the meaning of § 368(b).

- (2) No gain or loss will be recognized by Sub 5 on the transfer of Sub 5's assets to Sub 4 in constructive exchange for Sub 4 common stock and the assumption by Sub 4 of Sub 5 liabilities (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Sub 4 on the receipt of assets of Sub 5 in constructive exchange for Sub 4 common stock and the assumption of liabilities by Sub 5 of Sub 4 (§ 1032(a)).
- (4) The basis of Sub 5 assets in the hands of Sub 4 will be the same as the basis of such assets in the hands of Sub 5 (§ 362(b)).
- (5) The holding period of Sub 5 assets received by Sub 4 will include the period during which the assets were held by Sub 5 (§ 1223(2)).
- (6) Sub 4 will succeed to and take into account as of the close of the date of the Sub 5 Merger, the items of Sub 5 described in § 381(c) subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.
- (7) Except to the extent that Sub 5 has earnings and profits reflected in Sub 4's earnings and profits, Sub 4 will succeed to and take into account the earnings and profits or deficit in earnings and profits of Sub 5 as of the date of the Sub 5 Merger. Section 381(c)(2)(A) and § 1.381(c)(2)-1. Any deficit in the earnings and profits of Sub 4 and Sub 5 will be used only to offset earnings and profits accumulated after the date of the Sub 5 Merger (§ 381(c)(2)(B)).

#### Merger 1, Merger 2, Merger 3, and Merger 4

- (8) Provided Merger 1, Merger 2, Merger 3, and Merger 4 (collectively "the Mergers") each qualify as a statutory merger under applicable state law, each merger into LLC-2, LLC-5, LLC-6, and LLC-7 respectively will constitute a reorganization within the meaning of § 368(a)(1)(A). Distributing 2, Sub 4, Sub 6, Sub 7, and Sub 8 will each be "a party to a reorganization" within the meaning of § 368(b).
- (9) No gain or loss will be recognized, in each instance, by Distributing 2 and Sub 4, Sub 6, Sub 7, or Sub 8 on the transfer of their respective assets to Distributing 2 in exchange for Distributing 2 common stock and the assumption by Distributing 2 of the liabilities of, Sub 4, Sub 6, Sub 7, and Sub 8 (§§ 361(a) and 357(a)).
- (10) No gain or loss will be recognized by Distributing 2 on the receipt of assets of Sub 4, Sub 6, Sub 7, and Sub 8 in exchange for Distributing 2 common stock and the assumption of liabilities by Distributing 2 of each of Sub 4, Sub 6, Sub 7, and Sub 8, as described above (§ 1032(a)).

- (11) The basis of the assets of Sub 4, Sub 6, Sub 7, and Sub 8 in the hands of Distributing 2 will be the same as the basis of such assets in the hands of each of Sub 4, Sub 6, Sub 7, and Sub 8 (§ 362(b)).
- (12) The holding period of the assets of Sub 4, Sub 6, Sub 7, and Sub 8 received by Distributing 2 will include the period during which the assets were held by each of Sub 4, Sub 6, Sub 7, and Sub 8 (§ 1223(2)).
- (13) Distributing 2 will succeed to and take into account as of the close of the date of each of Merger 1, Merger 2, Merger 3, and Merger 4, the items of Sub 4, Sub 6, Sub 7, and Sub 8, respectively, described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.
- (14) Except to the extent that Sub 4, Sub 6, Sub 7, and Sub 8 have earnings and profits reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits or deficit in earnings and profits of Sub 4, Sub 6, Sub 7, and Sub 8 as of the date of each of the Mergers. Section 381(c)(2)(A) and § 1.381(c)(2)-1. Any deficit in the earnings and profits of Distributing 2, Sub 4, Sub 6, Sub 7, and Sub 8 will be used only to offset earnings and profits accumulated after the date of the Mergers (§ 381(c)(2)(B)).
- (15) No gain or loss will be recognized by the shareholders of Sub 4, Sub 6, Sub 7, and Sub 8 on the exchange of their Sub 4, Sub 6, Sub 7, and Sub 8 stock for Distributing 2 stock in Merger 1, Merger 2, Merger 3, and Merger 4 (§ 354(a)(1)).
- (16) The basis of the Distributing 2 stock received by each shareholder of Sub 4, Sub 6, Sub 7, and Sub 8 in each of Merger 1, Merger 2, Merger 3, and Merger 4 will equal the basis of the Sub 4, Sub 6, Sub 7, and Sub 8 stock surrendered by that shareholder in exchange therefor (§ 358(a)(1)).
- (17) The holding period of the Distributing 2 stock received by each shareholder of Sub 4, Sub 6, Sub 7, and Sub 8 in each of Merger 1, Merger 2, Merger 3, and Merger 4 will include the holding period of the Sub 4, Sub 6, Sub 7, and Sub 8 stock surrendered by that shareholder in exchange therefor (§ 1223(1)).

#### Liquidation 1 and Liquidation 2

- (18) Liquidation 1 and Liquidation 2 will each constitute a complete liquidation of each of Sub 1 and Sub 2 under § 332 and § 1.332-2(d).
- (19) Except as provided in the succeeding sentence, no gain or loss will be recognized by Distributing 2, Sub 1, and Sub 2 as a result of Liquidation 1 and Liquidation 2 (§ 332(a), 337(a), 337(b), 336(d)(3)). However, items of income,



gain, loss, and deductions with respect to Debt 1 and Debt 2 will be taken into account as required by the applicable intercompany transaction regulations.

- (20) Distributing 2's basis in each asset received from Sub 1 and Sub 2 in Liquidation 1 and Liquidation 2 will be the same as the basis of that asset in the hands of Sub 1 and Sub 2 immediately before Liquidation 1 and Liquidation 2 (§ 334(b)(1)).
- (21) Distributing 2's holding period in each asset received from Sub 1 and Sub 2 in Liquidation 1 and Liquidation 2 respectively will include the period during which that asset was held by Sub 1 and Sub 2 (§ 1223(2)).
- (22) Distributing 2 will succeed to and take into account the items of Sub 1 and Sub 2 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1)).
- (23) Except to the extent Sub 1 and Sub 2's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 and Sub 2 as of the date of Liquidation 1 and Liquidation 2 respectively (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1, and 1.1502-33(a)(2)). Any deficit in earnings and profits of Sub 1 or Sub 2 will be used only to offset earnings and profits accumulated after the date of Liquidation 1 and Liquidation 2 (§ 381(c)(2)(B)).

#### Sub 3 Transaction

- (24) No gain or loss will be recognized by Sub 3 in the Sub 3 Transaction.
- (25) No gain or loss will be recognized by Distributing 2 in the Sub 3 Transaction.
- (26) The basis of each asset received by Distributing 2 in the Sub 3 Transaction will equal the basis of that asset in the hands of Sub 3 immediately before the Sub 3 Transaction.
- (27) The holding period of each asset received by Distributing 2 in the Sub 3 Transaction will include the period during which Sub 3 held that asset.

#### Contribution 2 and Contribution 4

- (28) No gain or loss will be recognized by Distributing 2 on the transfer of assets to Distributing 1 in constructive exchange for Distributing 1 stock and the assumption by Distributing 1 of the related liabilities as a result of Contribution 2 and Contribution 4 (§§ 351(a) and 357(a)).

- (29) No gain or loss will be recognized by Distributing 1 on the receipt of assets from Distributing 2 as a result of the exchanges in Contribution 2 and Contribution 4 (§ 1032)).
- (30) The basis of the Distributing 1 stock held by Distributing 2 will be increased by the basis of the assets transferred to Distributing 1 in Contribution 2 and Contribution 4 reduced by the amount of the liabilities assumed by Distributing 1 (§ 358(a)(1) and 358(d)).
- (31) The basis of the assets transferred by Distributing 2 in Contribution 2 and Contribution 4 to Distributing 1 will equal the basis of those assets in the hands of Distributing 2 immediately before Contribution 2 (§ 362(a)).
- (32) The holding period of the assets received by Distributing 1 as a result of the exchanges in Contribution 2 and Contribution 4 will include the holding period of the assets in the hands of Distributing 2 (§ 1223(2)).

#### Contribution 1, Contribution 3, and Distribution 1

- (33) Contribution 1 and Contribution 3, followed by Distribution 1, will qualify as a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled each will be “a party to a reorganization” under § 368(b).
- (34) No gain or loss will be recognized by Distributing 1 on Contribution 1 and Contribution 3 (§§ 357(a), 357(c), 361(a)).
- (35) No gain or loss will be recognized by Controlled on Contribution 1 and Contribution 3 (§ 1032(a)).
- (36) The basis of each asset received by Controlled in Contribution 1 and Contribution 3 will equal the basis of that asset in the hands of Distributing 1 immediately before its transfer (§ 362(b)).
- (37) The holding period of each asset received by Controlled in Contribution 1 and Contribution 3 will include the period during which Distributing 1 held that asset (§ 1223(2)).
- (38) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 on receipt of Controlled stock in Distribution 1 (§ 355(a)(1)).
- (39) The holding period of the Controlled stock received by Distributing 2 will, in each instance, include the holding period of the Distributing 1 stock on which

Distribution 1 is made, provided the Distributing 1 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

- (40) No gain or loss will be recognized by Distributing 1 on Distribution 1 (§ 361(c)(1)).
- (41) As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled will be made under § 312(h), § 1.1502-33(e)(3), and § 1.312-10(a).

### Distribution 2

- (42) No gain or loss will be recognized by Distributing 2 on Distribution 2 (§ 355(c)).
- (43) No gain or loss will be recognized by (and no amount will be included in the income of) the holders of Distributing 2 Class B stock on the receipt of Controlled stock in Distribution 2 (§ 355(a)(1) and (2)).
- (44) The aggregate basis of the Controlled stock received by each holder of Distributing 2 Class B stock pursuant to Distribution 2 will be equal to such holder's adjusted basis in the shares of Distributing 2 Class B stock exchanged therefor (§ 358(a)(1)).
- (45) The holding period of the Controlled stock received by each Distributing 2 Class B shareholder in Distribution 2 will include the holding period of the Distributing 2 Class B stock surrendered in exchange therefor, provided the Distributing 2 Class B stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).
- (46) As provided § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled will be made under § 312(h), § 1.312-10(a), and § 1.1502-33(e)(3).
- (47) Following Distribution 2, Controlled and its direct and indirect subsidiaries that are "includible corporations" (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be an affiliated group of corporations entitled to file consolidated federal income tax returns with Controlled as the common parent.

### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under any other provision of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed (and none was requested) regarding:

- (i) Whether Distribution 1 or Distribution 2 satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether Distribution 1 or Distribution 2 is used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, or Controlled (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether any distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);
- (iv) The tax treatment of the recapitalizations described in the Proposed Transaction steps (i) and (xi) above;
- (v) Whether any entity described as a disregarded entity actually qualifies as a disregarded entity under § 301.7701-3.

### **Procedural Statements**

This ruling 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 must be attached to the federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed.

Under the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)

cc: