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Person to Contact:

Identifying Number:

Telephone Number:

Refer Reply To:

CC:DOM:IT&amp;A:2 – PLR-113031-99

Date: November 5, 1999

Legend:

Mutual Company =

Transfer Agent =

Holding Company =

Country A =

Dear :

This responds to your request dated July 27, 1999, for rulings regarding the information reporting and backup withholding consequences to Holding Company and Transfer Agent in connection with the payment of certain stock sale proceeds to United States persons. You asked that we separately address those requested rulings relating to payments that will be made at the time of Mutual Company's demutualization. Thus, this letter addresses only the first requested ruling and the fourth requested ruling to the extent it relates to payments covered by the first requested ruling. The remaining rulings requested will be addressed separately.

**FACTS**

Mutual Company is a mutual life insurance company incorporated under the laws of Country A. As a mutual life insurance company, Mutual Company has no issued or outstanding capital stock. Mutual Company carries on its insurance business in Country A and internationally, including branch and subsidiary operations in the United States. Mutual Company plans to demutualize by converting to a Country A stock life insurance company. The demutualization will involve the formation of Holding Company, a new Country A stock holding company. Mutual Company will be wholly owned by Holding Company immediately after the demutualization. It is anticipated that in connection with Mutual Company's demutualization, Holding Company will issue common shares in Country A and certain other countries.

The policyholders of Mutual Company that are eligible to receive demutualization benefits will be entitled to receive common shares, cash, or policy credits in exchange

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for their rights to, and interests in, Mutual Company as a mutual company. Non-Country A eligible policyholders that are entitled to receive common shares may elect to sell those shares for cash through an initial public offering (IPO) as described below.

Holding Company has engaged Transfer Agent, a Country A trust company, to be its stock registrar and transfer agent and to perform certain other functions relating to Mutual Company's demutualization and Holding Company's IPO. Transfer Agent will maintain a share register showing the number of Holding Company common shares issued to each eligible policyholder in Mutual Company's demutualization.

At the time of Mutual Company's demutualization, Holding Company will issue to Transfer Agent a global stock certificate as nominee for all non-Country A eligible policyholders who elect to sell their Common Shares in the IPO. As the nominal owner of those shares, Transfer Agent will stand ready to effect sales of the common shares on behalf of the electing policyholders.

Holding Company has engaged a syndicate of underwriters to offer the common shares in the IPO to investors in Country A and in certain other countries. When the IPO closes, the underwriters will purchase from the electing policyholders the common shares they have elected to sell in the IPO that are held by Transfer Agent as the nominal owner. The lead underwriter will pay Transfer Agent for those shares. In consideration for that payment, the global certificate associated with the common shares issued to electing policyholders will be transferred by Transfer Agent to the lead underwriter.

Transfer Agent will distribute directly to each electing policyholder, including those policyholders subject to United States federal income tax, the proceeds it receives from the lead underwriter from the sale of the common shares. Transfer Agent will print the checks in, and mail them from, Country A. For United States electing policyholders, the checks will be drawn on a United States bank account of the Transfer Agent.

Transfer Agent is not engaged in any business within the United States; it does not have an office or place of business in the United States; it does not use a fiscal or paying agent in the United States; and it is not a controlled foreign corporation within the meaning of § 957(a) of the Internal Revenue Code. None of Transfer Agent's gross income during 1996, 1997, 1998, and 1999 as of the date this request was submitted was effectively connected with a United States trade or business.

It is represented that Holding Company will not engage in any trade or business in the United States nor will it have an office or place of business or fiscal or paying agent there. All payments made for which rulings are requested will occur in 1999.

**RULINGS REQUESTED**

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The rulings you have requested are essentially as follows:

- (1) Neither Holding Company nor Transfer Agent will be required to report under §§ 6045 and 6041 the Transfer Agent's payments to electing policyholders of the proceeds of the sales in the IPO of their common shares.
- (2) Neither Holding Company nor Transfer Agent will be required to deduct and withhold any amount pursuant to the backup withholding provisions of § 3406 with respect to the payments described in (1) above.

#### LAW AND ANALYSIS

(1) Section 6045(a) provides that every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business. Section 6045(c) defines the term "broker" to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

The term "broker" is further defined by § 1.6045-1(a)(1) of the Income Tax Regulations to mean a person that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Under § 1.6045-1(a)(10), to effect a sale means to act as a principal in the sale or as an agent for a party in the sale wherein the nature of the agency is such that the agent would ordinarily know the gross proceeds from the sale. *Example (1)(v)* of § 1.6045-1(b) provides that a stock transfer agent for a corporation that records transfers of stock in such corporation is generally a broker if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

Section 35a.9999-4T (A-2) provides that a payment made with respect to a transaction effected for a United States customer by a foreign office of a foreign broker is subject to information reporting under § 6045 only in the following circumstances: (i) the foreign broker is a controlled foreign corporation within the meaning of § 957(a); or (ii) 50 percent or more of the gross income of the foreign broker from all sources for the 3-year period ending with the close of its taxable year preceding the payment (or for such part of the period that the foreign broker has been in existence) was effectively connected with the conduct of a trade or business within the United States.

Thus, we must first determine whether Holding Company or Transfer Agent is a broker under the foregoing authority.

Holding Company does not stand ready to effect the sale of common shares by the electing policyholders because it is not acting as an agent or principal for them in the

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sale, nor is it responsible for paying the sale proceeds to them. Accordingly, Holding Company is not a broker within the meaning of § 6045 and the regulations thereunder and is not subject to information reporting under those provisions with respect to the sale.

However, Transfer Agent is a broker under § 6045 and the regulations thereunder because it stands ready to effect the sale of the common shares by the electing policyholders. Also, as a stock transfer agent for Holding Company, it will know the gross proceeds from the sale. Nevertheless, a payment with respect to a transaction effected for a United States customer by a foreign office of a foreign broker is subject to information reporting under § 6045 only under the circumstances described in § 35a.9999-4T (A-2). Because Transfer Agent is not a controlled foreign corporation within the meaning of § 957(a) and none of its gross income is effectively connected with the conduct of a trade or business within the United States, Transfer Agent does not meet the circumstances of § 35a.9999-4T (A-2). Therefore, Transfer Agent will not be subject to information reporting under § 6045 with regard to the sale of the common shares effected for electing policyholders who are United States customers.

Section 6041(a) requires, in general, that persons making payments in the course of a trade or business to another person of fixed or determinable gains, profits, and income (other than payments with respect to which a statement is required under certain other sections, including § 6045) of \$600 or more in any calendar year shall file a return setting forth the required information. Section 1.6041-3(b) specifically provides, with certain exceptions not relevant here, that returns are not required under § 6041 with respect to payments by a broker to his customer.

Holding Company will not make any payments to electing policyholders with respect to their sale of the common shares and therefore has no information reporting obligation under § 6041 as to the payments. Although Transfer Agent will make payments as a broker to its customers, the electing shareholders, the payments are excepted from information reporting by § 1.6041-3(b).

(2) In general, § 3406 provides that under specific conditions, a reportable payment is subject to backup withholding requiring the payor to deduct and withhold from such payment a tax equal to 31 percent of the payment. A reportable payment is defined, in part, as a payment required to be shown on a return required under §§ 6041 or 6045. Since we have concluded that neither Holding Company nor Transfer Agent will be subject to information reporting under §§ 6045 or 6041 with respect to the sale of common shares by electing policyholders who are United States customers, payments with respect to the sale effected for United States customers are not subject to backup withholding under § 3406.

## CONCLUSIONS

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Based solely on the facts submitted and the representations made, we conclude that:

(!) Neither Holding Company nor Transfer Agent will be subject to information reporting under §§ 6045 or 6041 with respect to the sale of common shares in the IPO by electing policyholders who are United States customers.

(2) The payments to electing policyholders who are United States customers with respect to the sale of their common shares in the IPO are not reportable payments under § 3406 and are not subject to backup withholding by Holding Company or Transfer Agent.

#### Caveats

A copy of this letter must be attached to any income tax return to which it is relevant. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Sincerely,

Deputy Assistant Chief Counsel  
(Income Tax & Accounting)

By \_\_\_\_\_  
Robert A. Berkovsky  
Chief, Branch 2