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Date:

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TY:

Legend

Distributing =

Controlled Sub =

Controlled =

D Sub 1 =

D Sub 2 =

Trust 1 =

Trust 2 =

Trust 3 =

Foundation =

State A =

State B =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

y =

z =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

Exchange Ratio =

Dear :

This letter responds to your letter dated December 21, 2009, and subsequent correspondence, in which you requested rulings regarding certain Federal income tax consequences of a series of proposed transactions (the “Proposed Transactions”). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification on examination. In particular, no determination has been made regarding whether the Split-Off (defined 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 Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code of 1986 and Treas. Reg. § 1.355-2(d)), or (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 Distributing or Controlled (see § 355(e) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a State A corporation, is a privately owned corporation and the common parent of an affiliated group of corporations, including D Sub1 and D Sub 2, which file a consolidated Federal income tax return (the “Distributing Group”). Distributing is engaged, directly and indirectly through members of its separate affiliated group, as defined in § 355(b)(3)(B) (the “Distributing SAG”), in Business A. Approximately b percent of Distributing’s outstanding common stock is held by c shareholders (or their estates, corporations or partnerships owned by them or trusts formed on their behalf) (collectively, the “Family Shareholders”). The Family Shareholders include (i) Trust 1, (ii) Trust 2, and (iii) Foundation (Trust 1, Trust 2, Trust 3 (discussed below), and Foundation together, the “Charities”). The Charities hold approximately hh percent of

the stock of Distributing. The Distributing Group owns a percent of Controlled Sub.

Controlled Sub, a publicly traded State A corporation, is the common parent of an affiliated group of corporations. Controlled Sub has one class of common stock outstanding, which is held a percent by the Distributing Group (consisting of d percent held by Distributing, e percent held by D Sub 1, and f percent held by D Sub 2) and approximately g percent by the public (the "Public Shareholders"). Controlled Sub has continuously owned all of the stock of Controlled, a State A corporation, for more than five years. In the Proposed Transactions (described below), Controlled will become the owner of all of the stock of Controlled Sub. Controlled Sub is engaged, indirectly through members of its separate affiliated group, as defined in § 355(b)(3)(B) (the "Controlled Sub SAG"), in Business B.

Financial information has been submitted that indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transactions

For what are represented to be valid business purposes, Distributing has proposed the following steps be undertaken.

- (i) D Sub 1 and D Sub 2 will each convert under State A law from a corporation to a limited liability company and will be treated as entities disregarded from their owner, Distributing, for Federal income tax purposes. D Sub 1 and D Sub 2 will then transfer their Controlled Sub stock to Distributing. Following the conversions and transfers, Distributing will directly own a percent of the shares Controlled Sub common stock.
- (ii) Controlled will organize a wholly-owned State A limited liability company ("Merger Sub"). Merger Sub will merge with and into Controlled Sub with Controlled Sub surviving the merger as a wholly-owned subsidiary of Controlled (the "Merger-Exchanges"). Pursuant to, or in connection with, the Merger-Exchanges, (1) Controlled will amend its certificate of incorporation to authorize three classes of common stock: Controlled Common Stock, Controlled Class A common stock ("Class A Shares"), and Controlled Class B common stock ("Class B Shares"); (2) Distributing's shares of Controlled Sub common stock will be converted into an equal number, in the aggregate, of shares of Class A Shares, Class B Shares, and Controlled Common Stock, (3) the Public Shareholders' shares of Controlled Sub common stock will be converted into an equal number of shares of Controlled Common Stock, and (4) Controlled Sub's shares of Controlled will be converted into that number of shares of Controlled Common Stock so that Controlled Sub will own a number of shares of common stock of Controlled determined by reference to the value of Controlled immediately before the

Merger-Exchanges (the “hook stock”). Except for certain transfer restrictions, the Class A Shares will be identical in all respects to shares of Controlled Common Stock, including the right to cast one vote per share for the election of directors (Controlled Common Stock together with the Class A Shares comprise the “Low-Vote Shares”). Except for certain transfer restrictions, the Class B Shares will be identical in all respects to the Controlled Common Stock, except the Class B Shares will bear the right to cast ten votes per share solely for the election of directors (the “High-Vote Shares.”)

Immediately after the Merger-Exchanges, (1) Distributing will own shares of Controlled stock representing approximately h percent of the voting power and a percent of the economic value of Controlled, (2) the Public Shareholders will own shares of Controlled stock representing approximately i percent of the voting power and g percent of the economic value of Controlled, and (3) Controlled Sub will own hook stock representing j percent of the voting power and economic value of Controlled. Under applicable state law, Controlled Sub will not be entitled to vote the hook stock.

After the Merger-Exchanges, Controlled may transfer some or all of its assets and liabilities to Controlled Sub.

- (iii) Distributing will exchange shares of Controlled Common Stock, Class A Shares and Class B Shares for outstanding shares of Distributing common stock held by certain Family Shareholders, including the Charities (the “Exchanging Distributing Shareholders”) (the exchange of Controlled shares for Distributing shares, the “Split-Off”). The Controlled shares distributed in the Split-Off will represent k percent of the voting power and l percent of the economic value of Controlled’s outstanding stock. The Split-Off would be treated as a distribution to which § 355(e) applies if either Distributing’s or the Public Shareholders’ acquisition of Controlled resulting from the Merger-Exchanges is taken into account for purposes of § 355(e), and this fact has been specifically considered in issuing Ruling #8. Distributing will retain shares of Controlled stock representing approximately ii percent of Distributing’s economic interest in Controlled or m percent of the economic value and n percent of the voting power of Controlled’s outstanding stock (the “Retained Shares”). The Charities and Distributing will enter into an agreement pursuant to which, in the Split-Off, the Charities will agree to exchange all their Distributing common stock for shares of Controlled and certain other Exchanging Distributing Shareholders may also enter into similar agreements to exchange some or all of their Distributing common stock for shares of Controlled, in each case based upon the Exchange Ratio. All Exchanging Distributing Shareholders, with the exception of the Charities, are expected to receive solely High-Vote Shares. The Charities are expected to receive a combination of Controlled Common Stock, Class B Shares, and Class

A Shares. Exchanging Distributing Shareholders will receive cash in lieu of fractional shares of Controlled stock.

- (iv) At the same time as the Split-Off, Distributing expects to transfer the Retained Shares to one or more investment banks (the "Investment Banks") in one or more exchanges in retirement of Distributing indebtedness (commercial paper or other short-term debt with a maturity of 30 days or longer) (the "Distributing Indebtedness"), which the Investment Banks, acting as principals for their own account, will have purchased from Distributing at least fourteen calendar days prior to the Initial Debt Exchange (defined below). Pursuant to an exchange agreement entered into by Distributing and the Investment Banks no sooner than five days after the Investment Banks acquire Distributing Indebtedness, Distributing will agree with the Investment Banks to exchange an amount of Retained Shares in retirement of an amount of Distributing Indebtedness to be determined by the parties bargaining at arm's length (the "Initial Debt Exchange"). On the same day the exchange agreement is executed, the Investment Banks and other underwriters will sign an underwriting agreement with Controlled and Distributing to conduct a secondary public offering (the "First Public Offering") of the Controlled Common Stock the Investment Banks expect to receive in the Initial Debt Exchange. Distributing expects to close the exchange by transferring shares of Controlled Common Stock to the Investment Banks in exchange for the Distributing Indebtedness four business days after the execution of the exchange agreement and the underwriting agreement; this closing will in no event be less than fourteen calendar days after the Investment Banks purchase the Distributing Indebtedness from Distributing. In furtherance of the fiduciary duties of the trustees of the Trusts to diversify the assets of the Trusts, the Trusts will have the right to sell 0 shares (but not more than 1 shares) of Controlled Common Stock (representing 0 percent (by economic value) of Controlled) in the First Public Offering. The Investment Banks may enter into other arrangements with respect to the Distributing Indebtedness, but neither Distributing, Controlled nor any of their affiliates will be a party to such arrangements.
- (v) The Investment Banks have advised Distributing that (a) there may be a limited market for Controlled Common Stock in the First Public Offering, thereby limiting the amount of Distributing Indebtedness the Investment Banks would be willing to exchange for Controlled Common Stock in the Initial Debt Exchange, and (b) the terms of the First Public Offering may be improved if Controlled agrees pursuant to a customary lockup agreement not to engage in a second public offering for 6 months following the First Public Offering (unless the Investment Banks agree to a shorter period). To the extent Distributing does not exchange all of the Retained Stock in the Initial Debt Exchange, it may engage in additional debt exchanges with the Investment Banks, in which the Investment Banks may be willing to purchase additional Distributing Indebtedness from Distributing in

contemplation of one or more additional underwritten offering(s) of Controlled Common Stock, in which case the Investment Banks would consider (with no legal obligation to proceed) effecting additional debt exchanges (the “Follow-On Debt Exchanges” and, collectively with the Initial Debt Exchange, the “Debt Exchanges”). If a Follow-On Debt Exchange occurs, the Investment Banks will sell the Controlled Common Stock received in such Follow-On Debt Exchange to investors in an underwritten secondary public offering (the “Second Public Offering”) immediately after such Follow-On Debt Exchange. The timing and terms of the exchange and underwriting agreements concerning any Follow-On Debt Exchange would be similar to the timing and terms of the agreements governing the Initial Debt Exchange (as described in paragraph (iv) above). Regardless of whether a Follow-On Debt Exchange occurs, the Charities will have the right to sell q shares of Controlled Common Stock (representing p percent (by economic value) of Controlled) in the Second Public Offering, so long as the total number of shares of Controlled Common Stock sold by the Charities, including those sold in the Second Public Offering, does not exceed r shares. The Debt Exchanges will in no event be executed later than s months after the Split-Off. Alternatively, or in addition, Distributing may seek to sell the Retained Stock. Any Retained Stock not disposed of in the Debt Exchanges will be disposed of no later than five years after the Split-Off.

- (vi) If a second Follow-On Debt Exchange occurs, the Investment Banks will sell the Controlled Common Stock received in such Follow-On Debt Exchange to investors in an underwritten secondary public offering (the “Third Public Offering”) immediately after such Follow-On Debt Exchange. Regardless of whether a second Follow-On Debt Exchange occurs, the Charities will have the right to sell an amount of additional shares of Controlled Common Stock in the Third Public Offering such that the total shares of Controlled Common Stock disposed of by the Charities, including those sold in the Third Public Offering, will not exceed r shares.
- (vii) Under certain circumstances, the Charities have the right to cause a fourth underwritten secondary public offering (the “Fourth Public Offering”) (together with the First Public Offering, Second Public Offering, Third Public Offering, and any Index Inclusion Offering (defined below) the “Public Offerings”) to dispose of a number of shares of Controlled Common Stock such that the total shares of Controlled Common Stock disposed of by the Charities in the Public Offerings does not exceed r shares. The last Public Offering would occur at least twelve months before any Demand Offering (defined below).
- (viii) It is anticipated that, as a result of increasing the public float of its shares, Controlled will be eligible for inclusion in t. In the event of such inclusion, Controlled may also conduct an index inclusion offering (an “Index Inclusion

Offering”), in which Controlled, the Charities and/or the Investment Banks would sell shares of Controlled Common Stock.

- (ix) Rather than selling Controlled Common Stock in the Public Offerings, the Charities may instead sell shares of Controlled Common Stock to one or more private investors, which would be unrelated to Distributing or Controlled. In connection with any sale, a private investor may be required to enter into a governance agreement with Controlled in which the investor would agree to vote its shares of Controlled Common Stock (other than for the election of directors) in accordance with the recommendations of Controlled’s board of directors.
- (x) If the Charities are unable to sell r shares of Controlled Common Stock in the Public Offerings or to one or more private investors as described in paragraph (ix) above (such unsold shares comprise the “Residual Charity Shares”), Controlled is generally obligated to maintain a shelf registration statement from the date upon which the underwriters’ lock-up for the last Public Offering expires until the second anniversary of the Split-Off. The shelf registration would permit the Charities to sell (from time to time on an ongoing basis) the Residual Charity Shares in open market sales on the u at prices then prevailing in the market (“Shelf Sales”). All Shelf Sales would be made through a broker and would not involve an underwriting. Any acquisition of Controlled stock pursuant to a Shelf Sale that is considered similar to a public offering within the meaning of Treas. Reg. § 1.355-7(h)(11) would cause the Split-Off to be treated as a distribution to which § 355(e) applies, if such acquisition was taken into account for purposes of § 355(e), and this fact has been specifically considered in issuing Ruling #8. Additionally, the Charities may request that Controlled purchase the Residual Charity Shares, but Controlled is under no obligation to make any such purchase.
- (xi) The Controlled stock distributed to the Exchanging Distributing Shareholders in the Split-Off (other than the shares to be sold by the Charities in the Public Offerings, in the Shelf Sales, to Controlled and/or to private investors) generally will not be transferable for two and one-half years following the Split-Off, however transfers of Controlled stock pursuant to an estate plan and disposition of Controlled stock to pay estate taxes will be permitted at any time. The restrictions on transfer will lapse with respect to one-third of the shares of Controlled stock (or such greater number as determined by Controlled) held by the Exchanging Distributing Shareholders on each of the two and one-half, three and one-half and four and one-half year anniversaries (each a “Lock-Up Release Date”) of the Split-Off. No more than y prior to each Lock-Up Release Date, the Charities will be entitled to request that Controlled effect an underwritten, secondary public offering of shares of Controlled Common Stock (any such offering, a “Demand Offering”). The Charities and the other Exchanging Distributing Shareholders generally will be permitted to participate in these Demand Offerings with respect to a number of shares of Controlled stock

determined on a pro rata basis based upon the number of shares of Controlled stock held by such shareholder. Any acquisition of Controlled stock pursuant to a Demand Offering would cause the Split-Off to be treated as a distribution to which § 355(e) applies if such acquisition was taken into account for purposes of § 355(e), and this fact has been specifically considered in issuing Ruling #8. If all of the shares to be released on each Lock-Up Release Date and requested to be included in a Demand Offering are not sold in a Demand Offering, then the Charities will be entitled to request that Controlled maintain a “shelf” registration statement under which holders of Controlled stock may sell such shares.

- (xii) Distributing will reimburse Controlled for certain out-of-pocket expenses of Controlled Sub incurred in connection with the Proposed Transactions (e.g., legal fees, investment banker fees, costs of printing), which expenses will not exceed \$w (which is x percent of the value of Distributing’s interest in Controlled Sub).
- (xiii) In the event that Distributing lists its common stock on a U.S. national securities exchange or comparable foreign exchange, the Charities will be entitled to an additional payment per share of Distributing common stock exchanged in the Split-Off, which may be payable in cash or Retained Shares. At the Charities’ option, the payment will be either (i) \$y per share if Distributing lists its common stock within z of the Split-Off or (ii) \$aa per share if Distributing lists its common stock within bb of the Split-Off.
- (xiv) During the five year period following the Split-Off, pursuant to a governance agreement entered into with Controlled, an Exchanging Distributing Shareholder that beneficially owns Controlled stock representing cc percent or more of the voting power of Controlled will not be permitted to (i) seek to affect the control of the management or policies of Controlled or the Controlled board of directors, (ii) seek to call a special meeting of the Controlled shareholders, (iii) nominate any person as a director of Controlled, (iv) propose any matter to be voted upon by the Controlled shareholders, (v) deposit any Controlled stock into a voting trust, or (vi) subject any Controlled stock to any agreement or arrangement with respect to the voting of such stock with a third party (the “Governance Restrictions”).
- (xv) Controlled currently expects that, following the consummation of the Split-Off and the Initial Debt Exchange, and in connection with the consideration of resolutions to be submitted to the Controlled shareholders at the first regularly scheduled annual shareholders’ meeting of Controlled following the Split-Off or at a special shareholders’ meeting of Controlled following the Split-Off, the Controlled board of directors will consider a proposal to convert the Class B Shares to Class A Shares on a share-for-share-basis, subject to the receipt of Controlled shareholder approval. A conversion of Class B Shares to Class A Shares would cause the Split-Off to be treated as a distribution to which § 355(e) applies if the

Public Shareholders' acquisition of an increased voting interest in Controlled that would occur in the event of a conversion is taken into account for purposes of § 355(e), and this fact has been specifically considered in issuing Ruling #8. There will be no binding commitment by the Controlled board of directors to, and there can be no assurances that the Controlled board of directors will, consider the issue or resolve to present a conversion proposal to the Controlled shareholders at that meeting or any subsequent meeting. Moreover, there can be no assurances that, if presented, the Controlled shareholders will approve a conversion proposal. If such a conversion proposal is approved by the Controlled board of directors and presented to the Controlled shareholders, a vote by a majority of all three classes of Controlled stock outstanding, represented in person or by proxy at a shareholder meeting, voting together as a single class (with each share having one vote), will be required for the proposal to be approved. No Controlled shareholder would have the right to cause the Controlled board of directors to consider a proposal to convert the Class B Shares to Class A Shares.

- (xvi) The sole beneficiary of Trust 1 is Foundation. When Trust 1 terminates, all of the assets held by Trust 1 are required by the governing trust agreement to be distributed to Foundation. The sole beneficiary of Trust 2 is Trust 3. When Trust 2 terminates, all of the assets held by Trust 2 are required by the governing trust agreement to be distributed to Trust 3. The Foundation's acquisition of Controlled stock from Trust 1 and Trust 3's acquisition of Controlled stock from Trust 2 would cause the Split-Off to be treated as a distribution to which § 355(e) applies, if such acquisitions were taken into account for purpose of § 355(e) and this fact has been specifically considered in issuing Ruling #8.
- (xvii) It is intended that Distributing, Controlled and Controlled Sub will enter into or continue various agreements in connection with the Proposed Transactions that will result in continuing transactions between the parties, including a Merger and Exchange Agreement, Registration Agreement, Master Services Agreements, and Tax Indemnity Agreement.

Representations

The following representations are made with respect to the Merger Exchanges:

- (a) No stock or securities of Controlled will be issued for services rendered to or for the benefit of Controlled in connection with the Proposed Transactions, and no stock or securities of Controlled will be issued for indebtedness of Controlled that is not evidenced by a security or for interest on indebtedness of Controlled which accrued on or after the beginning of the holding period for the debt.

- (b) The transfer of Controlled Sub stock to Controlled by the Public Shareholders is not the result of the solicitation by a promoter, broker, or investment house; provided that, a proxy solicitor may be engaged in connection with the vote of the Public Shareholders with respect to the Proposed Transactions.
- (c) The Public Shareholders and Distributing will not retain any rights in the Controlled Sub stock transferred to Controlled in the Merger-Exchanges.
- (d) Any debt of the Public Shareholders or Distributing relating to the Controlled Sub stock being transferred to Controlled that is being assumed (or to which such Controlled Sub stock is subject) was incurred to acquire such Controlled Sub stock and was incurred when such Controlled Sub stock was acquired, and the Public Shareholders and Distributing are transferring all of the Controlled Sub stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.
- (e) The adjusted basis and fair market value of the assets to be transferred by the Public Shareholders and Distributing to Controlled will, in each instance, be equal to or exceed the sum of the liabilities, if any, to be assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (f) The liabilities of the Public Shareholders and Distributing to be assumed by Controlled, if any, were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (g) There will be no indebtedness created in favor of the Public Shareholders and Distributing as a result of the transaction.
- (h) The Merger-Exchanges will occur under a plan agreed upon before the transaction and effectuated pursuant to agreements in which the rights of the parties are defined.
- (i) All exchanges that make up the Merger-Exchanges will occur on approximately the same date.
- (j) There is no plan or intention on the part of Controlled to redeem or otherwise reacquire any Controlled stock to be issued in the Proposed Transactions.
- (k) Taking into account any issuance of additional shares of Controlled stock; any issuance of stock for services; the exercise of any Controlled stock rights, warrants, or subscriptions; a public offering of Controlled stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Controlled to be received in the Merger-Exchanges (but excluding any transaction not taken into account under § 351(c)), the Public Shareholders and Distributing will be in

“control” of Controlled within the meaning of § 368(c) immediately after the Merger-Exchanges.

- (l) The Public Shareholders and Distributing will each receive stock, securities or other property approximately equal to the fair market value of the property transferred to Controlled or for services rendered or to be rendered for the benefit of Controlled.
- (m) Controlled has no plan or intention to terminate its existence and will use the property transferred (i.e., the Controlled Sub stock) to it directly or indirectly, in a trade or business.
- (n) There is no plan or intention by Controlled to dispose of the transferred property other than in the normal course of business operations.
- (o) Aside from the reimbursement of up to \$w of Controlled Sub’s out-of-pocket expenses by Distributing, each of the parties to the transaction will pay its or his/her own expenses, if any, incurred in connection with the Proposed Transactions.
- (p) Controlled will not be an investment company within the meaning of § 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (q) Distributing 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.
- (r) Controlled will not be a personal service corporation within the meaning of § 269A.

The following representations are made with respect to the Split-Off and Debt Exchanges:

- (s) The indebtedness owed by Controlled to Distributing after the Split-Off, if any, will not constitute stock or securities.
- (t) The fair market value of the Controlled stock to be received by each Exchanging Distributing Shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the Split-Off.
- (u) No part of the Controlled stock to be distributed by Distributing in the Split-Off will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (v) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing SAG) is representative of the present operations of

Business A, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (w) The five years of financial information submitted on behalf of Business B (as conducted by the Controlled Sub SAG) is representative of the present operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (x) Following the Proposed Transactions, each of the Distributing SAG and the Controlled SAG will continue the active conduct of its business, independently and with its separate employees.
- (y) The Split-Off is motivated, in whole or substantial part, by one or more corporate business purposes: (i) resolving the ongoing dispute between the Charities and the management of Distributing by fully redeeming the Charities' interest in Distributing; (ii) enhancing Distributing's credit profile; (iii) enabling Distributing's management to focus all of its attention on managing Distributing's businesses; (iv) allowing Controlled additional strategic flexibility to pursue its business interests independent of Distributing; (v) enhancing Controlled's ability to use its stock as acquisition currency, as a means of raising capital and for employee compensation; (vi) removing regulatory limitations that affect Controlled's ability to expand its business; (vii) rationalizing Distributing's employee compensation program; and (viii) facilitating the inclusion of Controlled in t. The Split-Off is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (z) The Proposed Transactions are not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled.
- (aa) Excluding any acquisitions of stock pursuant to the Merger-Exchanges, the Split-Off, Shelf Sales, Demand Offerings, conversion of Class B Shares to Class A Shares, the Foundation's acquisition of Controlled stock from Trust 1, and Trust 3's acquisition of Controlled stock from Trust 2, the Split-Off is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) 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 Distributing or Controlled (including any predecessor or successor of any such corporation).
- (bb) Other than certain payments under the agreements described in paragraph (xvii) or incurred in the ordinary course, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.

- (cc) Except for certain payments that may be made in connection with the Tax Indemnity Agreements and the Master Services Agreement, payments made in connection with all continuing transactions, if any, between members of the Distributing group and members of the Controlled group will be for approximately fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (dd) No two parties to the transaction will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (ee) For purposes of § 355(d), immediately after the Split-Off, 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 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 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 Split-Off date.
- (ff) For purposes of § 355(d), immediately after the Split-Off, 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) and Treas. Reg. § 1.355-6(d)(3)(iii)) during the five-year period (determined after applying § 355(d)(6)) ending on the Split-Off date, or (ii) attributable to distributions on Distributing 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 Split-Off date.
- (gg) Immediately after the transaction (as defined in § 355(g)(4)) either (i) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)) or (ii) no person will hold a 50 percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such interest immediately before the Split-Off.
- (hh) Cash payments made by Distributing in lieu of fractional shares of Controlled stock are for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and do not represent separately bargained for consideration. The total cash consideration, if any, that will be paid in lieu of fractional shares of Controlled stock will not exceed one percent (1 percent) of the total consideration that will be distributed to Exchanging Distributing Shareholders in the Split-Off.
- (ii) The business purpose for Distributing's retention of the Retained Shares is to improve Distributing's debt-equity ratio, to solidify its credit rating, and to provide

Distributing with a source of cash for working capital needs, expansion and acquisitions.

- (jj) Two or fewer Distributing executives will serve on Controlled's board of directors after the Split-Off. After the Split-Off there will be no other common officers or directors between Distributing and Controlled.
- (kk) The Retained Shares will be disposed of as soon as a disposition is warranted, but in any event no later than five years after the Split-Off.
- (ll) Distributing will vote the Retained Shares in the election of the members of the Controlled Board in proportion to the votes cast by all other shareholders of Controlled.
- (mm) The aggregate amount of Distributing Indebtedness exchanged for Controlled Common Stock in the Debt Exchanges will not exceed the weighted quarterly average of the Distributing debt owed to unrelated third parties for the twelve month period ending upon the close of business on the last full business day before the date on which the Proposed Transactions were first presented to Distributing's board of directors.
- (nn) The aggregate number of shares of Controlled Common Stock to be sold by the Charities and the Investment Banks in the Public Offerings, any sale to a private investor, any Shelf Sale, any sales of Residual Charity Shares or any other sale of Controlled stock prior to the second anniversary of the Split-Off is not expected to exceed approximately ee shares, representing an approximately ff interest, which is an economic value of less than 50 percent, in Controlled.
- (oo) To the knowledge of Controlled Sub, prior to the Split-Off no Exchanging Distributing Shareholder has acquired Controlled Sub stock pursuant to a plan (or series of related transactions) described in § 355(e)(2)(A)(ii) with the Split-off.
- (pp) To the knowledge of Distributing, prior to the Split-Off no Exchanging Distributing Shareholder has acquired Distributing stock pursuant to a plan (or series of related transactions) described in § 355(e)(2)(A)(ii) with the Split-off.
- (qq) The Merger-Exchange is a single, isolated transaction and is not part of a plan to periodically increase the proportional interest of any shareholder in the assets or earnings and profits of Controlled.
- (rr) The Exchanging Distributing Shareholders have no plan or intention to acquire (by purchase or otherwise) any shares of Controlled stock following the Split-Off.

- (ss) The number of shares of hook stock immediately after the Merger-Exchanges will be determined by reference to the fair market value of Controlled Sub's shares of Controlled stock immediately before the Merger-Exchanges.

The Charities have made the following representations with respect to the Proposed Transactions:

- (tt) The sole beneficiary of Trust 1 is Foundation, a private foundation within the meaning of §§ 501(c)(3) and 509(a). When Trust 1 terminates, all of the assets held by the trust are required by the governing trust agreement to be distributed to Foundation. The sole beneficiary of Trust 2 is Trust 3, a public charity within the meaning of §§ 501(c)(3) and 509(a). When Trust 2 terminates, all of the assets held by the trust are required by the governing trust agreement to be distributed to Trust 3.
- (uu) The trustees of Trust 1 and Trust 2 have a fiduciary duty under State B law to diversify the assets held by the trusts.
- (vv) The assets owned by Trust 1 and Trust 2 mainly consist of shares of Distributing stock.
- (ww) Each of Trust 1 and Trust 2 made an election under § 645 to be treated and taxed as part of gg's estate until the date that is six (6) months after the final determination of estate tax liability in gg's estate (the administrative period). All of the income of Trust 1 and Trust 2 during the administrative period qualifies for the charitable "set aside" deduction described in § 642(c)(2), regardless of whether such income is derived from the receipt of dividends or from the sale of shares.
- (xx) After the administrative period, it is the intention of the trustees of Trust 1 and Trust 2, consistent with their fiduciary duties to minimize income taxes, to distribute all income of Trust 1 and Trust 2 derived from their shares of Distributing and Controlled Stock to Foundation and Trust 3, respectively, in a manner that will qualify those distributions for the deduction described in § 642(c)(1), regardless of whether such income is derived from the receipt of dividends or from the sale of shares.
- (yy) Foundation and Trust 3 are exempt from income taxation under § 501(c)(3).

Rulings

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

The Merger-Exchanges

1. The exchange by the Public Shareholders and Distributing of Controlled Sub stock for Controlled stock pursuant to the Merger-Exchanges will qualify as a transaction described in § 351(a).
2. Distributing will not recognize any gain or loss on the Merger-Exchanges (§ 361(a)).
3. The Public Shareholders will not recognize any gain or loss on the Merger-Exchanges (§ 351(a)).
4. Controlled will not recognize any gain or loss on the Merger-Exchanges (§ 1032(a)).
5. Controlled's basis in the Controlled Sub stock received in the Merger-Exchanges will be the same as Controlled Sub's net asset basis within the meaning of Treas. Reg. § 1.1502-31(c), subject to the adjustments described in Treas. Reg. § 1.1502-31(d) (Treas. Reg. § 1.1502-31(b)(2)).
6. Controlled's holding period of the Controlled Sub stock received by Controlled in the Merger-Exchanges will include the period during which such property was held by Distributing or the Public Shareholders, as applicable (§ 1223(2)).

The Split-Off

7. The Merger-Exchanges, followed by the Split-Off will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" under § 368(b).
8. Distributing will not recognize income, gain or loss upon the Split-Off and the Debt Exchanges (§ 361(c)).
9. The Exchanging Distributing Shareholders will not recognize income, gain or loss upon the receipt of the Controlled stock in the Split-Off (§ 355(a)(1)).
10. The aggregate basis of the Controlled stock in the hands of each of the Exchanging Distributing Shareholders after the Split-Off will equal the aggregate basis of the Distributing common stock surrendered by each of the Exchanging Distributing Shareholders immediately prior to the Split-Off (§ 358(a)(1)).
11. The holding period of the Controlled stock received by each of the Exchanging Distributing Shareholders in the Split-Off will include the holding period of the

Distributing common stock surrendered in exchange therefor, provided that the Distributing common stock was held by each of the Exchanging Distributing Shareholders as a capital asset on the date of the Split-Off (§ 1223(1)).

12. Earnings and profit will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. § 1.312-10(a).
13. Payments made between any of Distributing and Controlled or their subsidiaries that (i) have arisen or will arise for a taxable period ending on or before the Split-Off and (ii) will not become fixed and ascertainable until after the Split-Off, will be treated as occurring immediately before the Split-Off (cf. *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952)); Rev. Rul. 83-73, 198-1 C.B. 84).
14. An Exchanging Distributing Shareholder that receives cash in lieu of a fractional share of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided that the fractional share of stock is held as a capital asset on the date of the Split-Off (§§ 1221 and 1222).
15. The hook stock will be treated as part of a class of Controlled stock entitled to vote (Rev. Rul. 73-28, 1973-1 C.B. 187).

Caveats

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. We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Split-Off satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Split-Off is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Split-Off and an acquisition or acquisitions are 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 Distributing or Controlled (see § 355(e) and § 1.355-7);

- (iv) The federal income tax consequences of step (xiii) described above; and
- (v) The tax effects of the Proposed Transactions, if the Split-Off is not completed prior to the effective date of final regulations or the effective date of temporary regulations under § 355(b).

One or more rulings given in this letter deal with issues that may be addressed in subsequent published guidance. See section 11 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 49-52, regarding the circumstances, including published guidance, which may result in the revocation or modification of a ruling letter.

Procedural Matters

This ruling letter is directed only to the taxpayers who requested it. See § 6110(k)(3), which provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Reviewing Attorney, Branch 1
Office of Associate Chief Counsel (Corporate)