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CC:CORP:B06 – PLR-131080-03

Date:

November 26, 2003

LEGEND

Distributing =

Controlled =

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

Corp 5 =

Corp 6 =

Corp 7 =

Corp 7b =

Corp 8 =

Corp 8a =

Corp 8b =

Corp 9 =

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Corp 9b =

LLC 1 =

LLC 2 =

LLC 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

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Stock Option Plan 1 =

Stock Option Plan 2 =

Stock Option Plan 3 =
Stock Option Plan

Stock Option Plan 4 =

Stock Option Plan 5 =
Stock Option Plan

Stock Option Plan 6 =

Business 1 =
banking products

Business 2 =

Business 3 =

Business 4 =

#a =

#b =

#c =

#d =

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#e =

#f =

#g =

#h =

#i =

#j =

#k =

#l =

#m =

#n =

#o =

#p =

#q =

AA =

State A =

Ex =

Ex1 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

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Dear

This letter responds to your May 5, 2003 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondences dated May 21, 2003, July 2, 2003, July 10, 2003, July 21, 2003, July 31, 2003, August 20, 2003, September 9, 2003, October 17, 2003, October 22, 2003, November 6, 2003, November 11, 2003 and November 25, 2003 is summarized below.

Distributing is a holding company that was incorporated on Date 1 under the laws of State A. Distributing currently has three significant wholly owned subsidiaries. Corp 1, Corp 2 and Controlled. Distributing is a member of a affiliated group of corporations filing a consolidated return.

Corp 1 is involved in Business 1. Corp 1 was organized in Year 1 and became a subsidiary of Distributing upon the incorporation of Distributing in Year 2.

Corp 2 was acquired by Distributing on Date 2 in a tax-free transaction. Corp 2 is involved in Business 2. Corp 2 was acquired by Distributing through the merger of Corp 2 into Corp 4, a corporation wholly owned by Distributing. In conjunction with the merger of Corp 2 with and into Corp 4, the name of Corp 4 was changed to Corp 5.

Controlled is a State A corporation that owns 100 percent of the membership interests in several single member State A limited liability company ("LLC") operations and a #a percent interest in a corporation all of which engage in Business 3. Controlled owns 100 percent of the membership interests in LLC 1, LLC 2, and LLC 3. Controlled owns a #a percent interest in Corp 6. Controlled is a member of a affiliated group of corporations filing a consolidated return.

The predecessor corporation to Controlled, Corp 8, was incorporated in State A in Year 3 by Corp 1. Corp 8 subsequently changed its name to Corp 8a and Corp 8b before again changing its name to Controlled on Date 11. On Date 12, Corp 1 distributed Controlled to Distributing as a dividend.

LLC 1 is engaged in Business 3 and is organized as a State A LLC. LLC 1 was formed by Controlled on Date 4, and effective as of Date 5, Corp 7b (previously known as Corp 7) merged with and into LLC 1. Corp 7 (now known as Corp 7b) was acquired by Corp 8b (Corp 8b is now known as Controlled) in a taxable transaction on Date 3. At the time of its acquisition by Corp 8b (now known as Controlled), Corp 7(now known as Corp 7b) was actively engaged in Business 3.

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As a single member LLC, LLC 1 is treated as an entity disregarded as separate from Controlled. Therefore, LLC 1's Business 3 activities are treated as a division of Controlled for federal income tax purposes.

Corp 9 (now known as Corp 9b) actively engaged in Business 3 was acquired by Corp 8b (now known as Controlled) in a taxable stock purchase on Date 6.

On Date 7, LLC 2 a single member State A LLC and treated for federal income tax purposes as a disregarded entity was organized by Controlled.

On Date 5, Corp 9b merged with and into LLC 2 in a tax free reorganization.

The Business 3 assets of LLC 2 have been actively operated as part of the Controlled Business 3 operations and for federal income tax purposes are considered to be an expansion of Business 3 conducted by Controlled's LLC 1 division.

Controlled acquired #a percent of the outstanding shares of Corp 6 on Date 8. Corp 6 engages in Business 4. Distributing also owns as an investment approximately #h of the stock of Corp 6 which was acquired in a series of open market transactions in Month 1 of Year 4. Neither Distributing nor Controlled will rely upon the activities of Corp 6 for purposes of meeting the active trade or business requirement of section 355(b).

Distributing has two classes of common stock, Class A and Class B. Distributing's Class A common stock is traded on Ex. Distributing's Class B common stock was traded on the Ex1 until Date 9, at which time all publicly held stock was retired. As of Date 10, #b shares of Distributing's Class A Common stock were outstanding. The Class A common stock shares represent #n of the total voting power of both classes of common stock. As of Date 10, Distributing had one shareholder (Corp 3) that holds five percent or more of its stock. Corp 3 owns #c shares of Distributing's Class A common stock. In addition, Corp 3 owns all of the issued and outstanding shares of Distributing's Class B common stock. Corp 3's total percentage ownership of Distributing stock is #d as of Date 10.

Presently, Distributing sponsors several stock option plans for its employees, including Stock Option Plan 1, Stock Option Plan 2, Stock Option Plan 3, Stock Option Plan 4, Stock Option Plan 5 and Stock Option Plan 6 ("Collectively, the Option Plans"). Outstanding incentive stock options ("ISOs") granted under the Option Plans are collectively referred to as "Current Distributing ISOs" and outstanding nonqualified stock options ("NQSOS") granted under the Option Plans are collectively referred to as "Current Distributing NQSOS."

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In addition, Distributing sponsors a Restricted Stock incentive Plan, under which restricted stock awards are made to employees of Corp 2 and its subsidiaries. Pursuant to the terms of the Restricted Stock Plan, Distributing has granted eligible employees Distributing restricted stock awards (“Current Distributing Restricted Stock”).

Each of the plans provides that an option will terminate 30 days after an employee ceases to be an employee of Distributing or a subsidiary of Distributing (as defined in Code section 424(f)). Distributing proposes to amend the plans to authorize the committee that administers each plan to make adjustments in the terms and conditions of, and the criteria included in, Adjusted Distributing Options in recognition of unusual and nonrecurring events, including the Distribution, affecting Distributing or any Distributing subsidiary.

Financial information has been received indicating that Distributing and Controlled have had gross receipts and operating expenses representing the active conduct of a trade or business for the past five years.

The principal corporate business purpose motivating the proposed transaction is to improve Controlled's financing structure including its ability to effectively and efficiently raise a significant amount of debt and/or equity in a PO to finance a number of corporate objectives. Additionally, the distribution will permit Distributing to access capital on terms and conditions significantly better than those currently available to it.

To meet the business purpose described above, Distributing intends to accomplish the distribution pursuant to the following transactions:

A. Distribution of Note by Controlled to Distributing

Prior to the distribution, Controlled will distribute an unsecured #g--year note in the amount of #e to Distributing as a dividend, in order to compensate Distributing for capital previously contributed by Distributing to Controlled to fund operations. Controlled will also continue to owe Distributing #f for amounts loaned to Controlled to acquire shares of Corp 6. Controlled will convert this loan to an unsecured #g-year note.

B. Recapitalization of Controlled and Exchange of Corp 6 Stock.

1. Thereafter, Controlled will recapitalize its common stock in order that its capital structure mirrors Distributing's Class A and Class B common stock capital structure.
2. As part of the distribution, Distributing will transfer its interest in Corp 6 (a #h interest) to Controlled for an #j-year promissory note (the “Controlled note”) equal to #i payable

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in monthly installments of principal and interest and additional shares of Controlled's Class A and Class B stock as part of a transaction intended to qualify as a reorganization under section 368(a)(1)(D). The Controlled note will require the monthly payment of 1/12th of the principal on the note plus accrued interest.

C. Transfer to Trusts

Immediately upon receipt of the Controlled note in the intended section 368(a)(1)(D) reorganization, and at a time that Distributing has accrued interest owing to its preferred security holders under the following Trusts, Distributing will irrevocably transfer the Controlled note to Trustee, the Trustee for Trust 1, Trust 2, Trust 3 and Trust 4 ("Trusts"). The Trustee will hold the Controlled note in escrow for the benefit of the preferred security holders of the Trusts. (Distributing's creditors). It will collect payments of principal and interest from the Controlled note and pay those proceeds to the preferred security holders of the Trusts. Effective with the irrevocable assignment and transfer of the Controlled note to the Trustee, Distributing will have no further ownership interest in the Controlled note, will have no further right, title, nor interest in the Controlled note, and Distributing will not be entitled to any payments from the Trustee with respect to the Controlled note. The Trustee is unrelated to Distributing or Controlled.

D. The Distribution

Within #k months after the receipt of a favorable private letter ruling from the IRS and as part of the distribution, Distributing will distribute, pro rata, class-by-class all of its outstanding Controlled Class A and Class B common stock to the holders of Distributing Class A and Class B common stock ("the Distribution") in a transaction meant to qualify under section 361(c)(1).

E. Stock Option Plan and Related Law

(1) Related Law

Section 1.83-7(a) of the Income Tax Regulations provides, in part, that if an option, to which section 421 (relating to certain qualified and other options) does not apply, is granted to an employee (or beneficiary thereof) in connection with the performance of services, section 83(a) applies to the grant if the option has a readily ascertainable fair market value at the time the option granted. If section 83(a) does not apply to the grant of the option because it does not have a readily ascertainable fair market value at the time of the grant, section 83 applies at the time the option is exercised or otherwise disposed of, even though the fair market value of the option may have become readily ascertainable before that time. If the option is exercised, section 83(a) applies to the

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transfer of the property pursuant to the exercise, and the employee recognizes compensation income upon the transfer at the time and in the amount determined under section 83(a).

(2) Option Plan

- a. Each current Distributing ISO ("Current Distributing ISO") that is outstanding immediately prior to the Distribution will be adjusted to reflect the change in value of Distributing stock that results from the Distribution (the "Adjusted Distributing ISOs") in a manner that (a) preserves the aggregate spread between the exercise price of the options and the fair market value of the underlying Distributing stock immediately before the adjustment and (b) produces a ratio of the exercise of the options to the fair market value of the underlying Distributing stock immediately after the Distribution that is equal to the ratio of the exercise price of the options to the fair market value of the underlying Distributing stock immediately before the Distribution (the "Distribution Ratio"). "Fair market values" for this purpose will be equal to the average of the high and low sale prices for Class A common stock of Distributing, in regular-way trading and without to regard to after-hours trades, reported on the _____ on the day before the Distribution date and on the Distribution Date. An adjusted Distributing ISO will otherwise be subject to the same terms and vesting schedule as the related Current Distributing ISO.
- b. No additional grants of Distributing options will be made pursuant to the Distribution.
- c. No options to purchase shares of Controlled will be granted pursuant to the Distribution.
- d. No other benefits will be provided to holders of Current Distributing ISOs pursuant to the Distribution.
- e. Adjusted Distributing ISOs that are held by persons who cease to be employed by Distributing or a parent or subsidiary of Distributing as a result of the Distribution ("Controlled Employees") and that remain exercisable but unexercised after a #1-month period following the Distribution will, upon exercise, be treated as non-qualifying stock options. ("NQSOs").
- f. Each Current Distributing NQSO that is outstanding immediately prior to the Distribution will be adjusted to reflect the change in the value of Distributing stock that results from the Distribution ("Adjusted Distributing NQSOs") in a manner that (a) preserves the aggregate spread between the exercise price of the

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options and the fair market value of the underlying Distributing stock immediately before the adjustment and (b) produces a ratio of the exercise price of the options to the fair market value of the underlying Distributing stock immediately after the Distribution that is equal to the ratio of the exercise price of the options to the fair market value of the underlying Distributing stock immediately before the Distribution (the "Distribution Ratio"). "Fair market values" for this purpose will be equal to the average of the high and low sale prices for Class A common stock of Distributing, in regular-way trading and without regard to after-hours trades, reported on the _____ on the day before the Distribution Date and on the Distribution Date. An Adjusted Distributing NQSO will otherwise be subject to the same terms and vesting schedule as the related Current Distributing NQSO.

- g. Distributing will amend the Option Plans to confer on their respective administrative committees the discretion to interpret or amend terms and conditions of Adjusted Distributing Options and provide that service with Controlled after the Distribution will be treated as employment with Distributing solely to prevent employment-termination related expiration of the options; provided, however, Controlled employees will not be treated as employees of Distributing after the Distribution Date for purposes of determining the federal tax treatment of their Adjusted Distributing ISOs.

F. The PO

Within a period beginning #m months before and ending no later than #k months after the distribution, Controlled intends to issue equity or debt through a public offering (the "PO"). The PO is expected to raise approximately #o to #p for Controlled.

G. After The Distribution

- (1) During a transitional period following the Distribution (not expected to exceed one year after the Distribution), it is anticipated that Distributing and Controlled will share routine and minor administrative services, including risk management and human resources. All transitional services will be negotiated at terms that would be obtained in an arm's length transaction.
- (2) After the Distribution, Distributing and Controlled will share the services of two individuals as directors and executive officers out of a total of at least five directors and executive officers.

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The following representations have been made in connection with the proposed transaction:

- (a) At the time of the Distribution, Distributing will own at least 80 percent of the stock of Controlled.
- (b) The Distribution is not part of a plan or series of related transactions (within the meaning of section 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Distributing or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.
- (c) The indebtedness owed by Controlled to Distributing after the Distribution will not constitute "stock or securities" within the meaning of section 355.
- (d) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (e) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock and securities of Corp 1 and Corp 2, which are controlled corporations engaged in the active conduct of a trade or business as defined in section 355(b)(2).
- (f) The 5 years of financial information submitted on behalf of Corp 1 and Corp 2, respectively, are representative of each respective corporation's present operations, and with regard to Corp 1 and Corp 2, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) The 5 years of financial information submitted on behalf of Controlled is representative of its present operations, and with regard to Controlled there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Following the Distribution, Distributing through Corp 1 will continue the active conduct of its business independently and with its separate employees. Two employees who are currently executive officers of Distributing, Controlled and Corp 1 ("Joint Employees") will continue in their respective capacities for these entities after the Distribution and will be paid on an arm's length basis for their services to each corporation.

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- (i) Following the Distribution, Distributing through Corp 2 will continue the active conduct of its business independently and with its separate employees.
- (j) Following the Distribution, Controlled will continue the active conduct of its business independently and with its separate employees. The Joint Employees will continue in their respective capacities for these entities after the Distribution and will be paid on an arm's length basis for their services to each corporation.
- (k) Subsequent to the Distribution, it is anticipated that Distributing and Controlled will share a number of administrative services for a transitional period not to exceed 12 months.
- (l) Immediately after the Distribution, the gross assets of the active business conducted by Corp 1 (as defined in section 355(b)(2)) will have a fair market value that is at least 5 percent of the total fair market value of Corp 1's gross assets.
- (m) Immediately after the Distribution, the gross assets of the active business conducted by Corp 2 (as defined in section 355(b)(2)) will have a fair market value that is at least 5 percent of the total fair market value of Corp 2's gross assets.
- (n) Immediately after the Distribution, the gross assets of the active business conducted by Controlled (as defined in section 355(b)(2)) will have a fair market value that is at least 5 percent of the total fair market value of Controlled's assets.
- (o) The Distribution will be carried out for the corporate business purpose of enhancing Controlled's capital structure by facilitating an equity or debt offering by Controlled and increasing Controlled's access to borrowing alternatives as well as improving the terms and conditions of capital available to Distributing. The equity/debt offering of Controlled will fund existing Business 3 and Business 4 operations, expansion of those operations through acquisitions, and the acquisition of AA or other future Business 3 and/or Business 4 activities.
- (p) There is no plan or intention by any shareholder who owns 5 percent or more of the stock of Distributing, and to its best knowledge the management of Distributing is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the transaction. Management of Distributing believes but does not know as a fact that some individuals who own less than 5

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percent of the Distributing or Controlled stock and who exercise outstanding vested stock options may sell some or all of these shares. The options that may be exercised are expected to vest post spin-off.

- (q) There is no plan or intention by either the Distributing corporation or the Controlled corporation, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.
- (r) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business.
- (s) No Distributing shareholder or shareholders will hold, immediately after the Distribution, disqualified stock within the meaning of section 355(d)(3) of the Code, which constitutes a 50 percent or greater interest in Distributing or Controlled.
- (t) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (u) Neither Distributing nor Controlled will accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.
- (v) Other than (i) trade account indebtedness created in the ordinary course of business through continuing transactions at terms comparable to those which could be obtained in an arm's length transaction, (ii) payables created for transitional services, if any, negotiated at arm's length, and (iii) approximately \$q worth of short-term notes from Controlled to Distributing (as described above), no inter-corporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (w) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable inter-company transaction regulations (See Treas. Reg. section 1.1502-13 and 1.1502-14 as in

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effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. section 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the stock of Controlled, if any, will be included in income before the Distribution (See Treas. Reg. section 1.1502-19).

- (x) Payments made in connection with all continuing transactions, if any, after the Distribution between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (y) Neither Distributing or Controlled is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (z) The purpose for the proposed Distribution is not to facilitate the personal planning of any Distributing shareholder.
- (aa) Distributing, Controlled, and the shareholders of Distributing will each pay their own expenses, if any, incurred in connection with the Distribution.
- (bb) Distributing is not an S corporation (within the meaning of section 1361(a)) and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to section 1362(a) after the Distribution.
- (cc) The distribution by Distributing of the Controlled Class A and Class B common stock will be pro rata class-by-class with respect to the Distributing Class A and Class B common shareholders. Distributing currently anticipates that each Distributing Class A common stock shareholder will receive approximately _____ share of Controlled Class A common stock for each share of Distributing Class A common. Likewise, the Distributing Class B common shareholder will receive approximately _____ share of Controlled Class B common stock for each share of Distributing Class B common stock held on the record date for the Distribution.
- (dd) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled (as determined under section 357(d)). The liabilities assumed in the transaction (as determined under 357(d)), if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

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- (ee) Within 12 months after receipt of a favorable private letter ruling from the Internal Revenue Service, Distributing will distribute pro rata to its shareholders the stock of Controlled based upon the class of Distributing stock they then hold.
- (ff) Either #m months prior to the Distribution or within #k months following the date of the Distribution, Controlled will engage in equity and/or debt offerings in the approximate amount of #o to #p and, to the extent an equity offering is completed prior to the Distribution, the equity offering will not constitute more than 19.9 percent of its outstanding shares of common stock.
- (gg) Current Distributing ISOs will, immediately prior to adjustment to account for the Distribution, comply with the requirements of section 422 and the regulations thereunder.
- (hh) None of the current Distributing NQSOs had a readily ascertainable fair market value, within the meaning of Treas. Reg. section 1.83-7(b), at the time such options were granted.
- (ii) Each Current Distributing ISO and Current Distributing NQSO will, immediately prior to adjustment to account for the Distribution, satisfy the requirements for “qualified performance-based compensation,” as defined in Treas. Reg. section 1.162-27(e).
- (jj) The exercise prices of, and the number of Distributing shares subject to, the outstanding Current Distributing ISOs will be adjusted to reflect the change in value of Distributing shares as a result of the Distribution in a manner that (a) preserves the aggregate spread between the exercise price of the options and the fair market value of the underlying Distributing stock immediately before the adjustment and (b) produces a ratio of the exercise price of the options to the fair market value of the underlying Distributing stock immediately after the Distribution that is equal to the ratio of the exercise price of the options to the fair market value of the underlying Distributing stock immediately before the spin off.
- (kk) Holders of Current Distributing ISOs or NQSOs who receive Adjusted Distributing ISOs or NQSOs, respectively, will not receive any additional benefits as part of the substitution of Adjusted Distributing ISOs or NQSOs for Current Distributing ISOs or NQSOs, respectively.
- (ll) Adjusted Distributing ISOs and Adjusted Distributing NQSOs to purchase Distributing stock under the Distributing Option Plans that are issued in substitution for Current Distributing ISOs and Current Distributing NQSOs pursuant to the Distribution will not have a readily ascertainable fair market value,

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within the meaning of Treas. Reg. section 1.83-7(b), at the time such options are issued.

- (mm) The payment of cash in lieu of fractional shares of Controlled stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained for consideration. The total cash consideration that will be paid instead of issuing fractional shares of Controlled stock will not exceed _____ of the total consideration that will be issued pursuant to the distribution of such stock. The fractional share interests will be aggregated, and no holder of Distributing stock will receive cash in an amount greater than the value of one full share of Controlled stock.

Based solely on the information submitted and the representations made, we have concluded that:

1. The transfer by Distributing to Controlled of its #h interest in the stock of Corp 6 in exchange for (i) an #i unsecured #j-year promissory note (immediately after the receipt by Distributing of the #j-year promissory note, Distributing will transfer such promissory note to the Trusts for the benefit of Distributing's public debt holder creditors), (ii) other boot, if any, and (iii) additional shares of Controlled's Class A and Class B common stock followed by the pro rata distribution by Distributing of all of the stock of Controlled to the Distributing shareholders will qualify as a reorganization within the meaning of sections 368(a)(1)(D) and 355. Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).
2. Distributing will recognize gain upon the transfer of its Corp 6 stock to Controlled in exchange for the Class A and Class B common stock of Controlled, a #i unsecured #j-year promissory note and any other boot received due to that transfer. Recognized gain will be equal to the lesser of: (i) realized gain, or (ii) the face amount of the unsecured # j year promissory note plus the value of any other boot less the accrued interest amount owed by Distributing to its public debt holders at the time the Trustee receives the #j year promissory note from Distributing. (Such accrued interest amount will be limited to the amount of such accrued interest paid to the public debt holders by the Trustee to the extent such accrued interest is paid from amounts derived from installment payments received by the Trustee from Controlled on its #j year promissory note.) (sections 361(a), 361(b)(1)(A), 361(b)(1)(B), (b)(3)).
3. No gain or loss will be recognized by Controlled upon the receipt of the Corp 6 stock from Distributing in exchange for (i) the stock of Controlled; (ii) Controlled's

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#j year promissory note and (iii) any other boot deemed transferred from Controlled to Distributing in the exchange. (section 1032(a)).

4. The basis of the Corp 6 stock received by Controlled will be the same as its basis in the hands of Distributing immediately prior to the transaction plus any gain recognized by Distributing on the transfer of the Corp 6 stock. (section 362(b)).
5. The holding period of the Corp 6 stock received by Controlled will include the holding period during the period this asset was held by Distributing (section 1223(2)).
- 6(a) No gain or loss will be recognized by Distributing upon the pro rata distribution class-by-class of the shares of Class A and Class B common stock of Controlled to the Distributing Class A and Class B common stock shareholders (section 361(c)(1))
- 6(b) No gain or loss will be recognized by Distributing upon the transfer of the #j-year promissory note to the Trustee for the benefit of Distributing's public debt creditors. (361(c)(1), 361(c)(3) and 1012.)
7. No income, gain or loss will be recognized by the Distributing Class A or Class B common stock shareholders upon their receipt of the shares of Class A or Class B Controlled common stock pursuant to the Distribution (section 355(a)).
8. The aggregate basis of the Class A and Class B Distributing common stock and the Class A and Class B Controlled common stock will be the same as the basis in the Distributing Class A or Class B common stock held by the Distributing shareholders immediately prior to the Distribution. The total basis will be allocated in proportion to the fair market values of the Distributing and the Controlled Class A or Class B common stock in accordance with Treas. Reg. section 1.358-2(a)(2), (4) and sections 358(a)(1), (b) and (c).
9. The holding period of the Controlled Class A or Class B common stock will, in each instance, include the holding period of the Distributing Class A or Class B common stock with respect to which the distribution of the Controlled Class A or Class B common stock is made, provided that the Distributing Class A or Class B common stock is held as a capital asset on the date of the Distribution. (section 1223(1)).
10. As provided in section 312(h), proper allocation of earnings and profits between Controlled and Distributing will be made in accordance with Treas. Reg. section 1.312-10(a).

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11. Following the Distribution, Controlled and its subsidiaries, if any, which are “includible corporations” under section 1504(b) and satisfy the ownership requirements of section 1504(a)(2) will be an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.
12. Payments made by Distributing to Controlled or by Controlled to Distributing under a tax sharing agreement that (a) have arisen or will arise for a taxable period ending before the Distribution or for a taxable period beginning on or before and ending after the Distribution, and (b) will not become fixed or determinable until after the Distribution, will be treated as occurring immediately before the Distribution.
13. Any payment of cash in lieu of a fractional share interest in Controlled will be treated for federal income tax purposes as if the fractional share interest had been issued in the distribution of stock of Controlled and then redeemed by Controlled. The cash payment will be treated as having been received in exchange for the constructively redeemed fractional share under section 302(a).

Assuming the Current Distributing ISOs satisfy the requirements of section 422 and that the spread and ratio tests of section 424(a) and sections 1.425-1(a)(4) and 1.425-1(e)(5)(ii)(b) are met, and assuming that the Current Distributing options constitute qualified performance-based compensation under section 162(m)(4)(C) and 1.162-27(e), then, based on the facts submitted, we rule as follows:

14. The substitution of Adjusted Distributing ISOs for Current Distributing ISOs pursuant to the Distribution will not result in income, gain or loss to the holders of such options or the person to whom such options were initially granted in connection with the performance of services for Distributing or a parent or subsidiary of Distributing.
15. The substitution pursuant to the Distribution of Adjusted Distributing ISOs for Current Distributing ISOs held by individuals who are employees of Distributing or of a subsidiary of Distributing immediately after the Distribution is not a modification within the meaning of Code section 424(h); thus, the substitution will not be treated as a grant of new options to such individuals for purposes of section 422.
16. The adjustment of Current Distributing Options to constitute Adjusted Distributing Options pursuant to the Distribution will not cause any such options to fail to

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satisfy the performance goal requirements of section 162(m) and Treas. Reg. section 1.162-27(e).

17. The substitution of Adjusted Distributing NQSOs for Current Distributing NQSOs pursuant to the Distribution will not result in income, gain or loss to the holders of such options or the person to whom such options were initially granted in connection with the performance of services for Distributing or a parent or subsidiary of Distributing.
18. Neither Distributing nor Controlled will recognize income, gain or loss upon the substitution of Adjusted Distributing ISOs for Current Distributing ISOs pursuant to the Distribution or upon the exercise of those options.
19. Neither Distributing nor Controlled will recognize income, gain or loss upon the substitution of Adjusted Distributing NQSOs for Current Distributing NQSOs pursuant to the Distribution or upon the exercise of those options.
20. In the event that amounts are includible in the gross income of a holder of Adjusted Distributing Options as a result of the exercise of such options or a disqualifying disposition of shares acquired through the exercise of such options and a deduction is allowable for such amounts, Distributing will be entitled to such deduction if the employee was employed by Distributing or a subsidiary of Distributing from the date the option was granted through the date of exercise (or any earlier termination of employment) and Controlled will be entitled to such deduction if the employee was employed by Controlled or a subsidiary of Controlled from the date the option was granted through the date of exercise (or any earlier termination of employment). No opinion is expressed concerning situations where the holder of the option was not employed by the same corporation continuously from the date of grant.

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. In particular, no opinion is expressed regarding the qualification of the options that are intended to qualify as incentive stock options under section 422 of the Code, including the effect of the proposed amendment to such options, and whether the substitution of Adjusted Distributing ISOs for Distributing ISOs held by employees of Controlled after the Distribution will constitute a modification within the meaning of Code section 424(h).

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

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A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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 material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

Alfred C. Bishop Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)

cc: