

Internal Revenue Service

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Date:

August 10, 2000

Distributing =

S1 =

S3 =

NF1 =

NF2 =

NF3 =

FF1 =

FF2 =

Year 1 =

Year 2 =

Year 3 =

Business A =

Business B =

Country F =

Country I =

Country N =

We respond to your April 28, 2000 request for rulings on certain federal income tax consequences of several proposed transactions. Distributing's predecessors received rulings on prior transactions during Year 1, Year 2, and Year 3 (the "Prior

Ruling Letters”). Further, this ruling letter, two other ruling letters issued with this letter (PLR-109432-00 and PLR-109430-00), and a ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00) all address aspects of the same overall transaction (the “Overall Transaction”).

The rulings in this letter are based on facts and representations submitted under penalties of perjury in support of the request. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of that information may be required as part of the audit process.

Summary of Facts

Publicly traded Distributing is the common parent of a corporate group whose includible affiliates join in filing a consolidated federal income tax return. Distributing wholly owns S1 (a domestic corporation); S1 wholly owns S3 (also domestic); S3 wholly owns NF1 (a Country N corporation); NF1 wholly owns NF2 (also Country N) and IF1 (Country I); NF2 wholly owns NF3 (Country N) and FF1 (Country F); and FF1 wholly owns FF2 (Country F). Distributing, NF1, and NF2 are holding companies.

S1, IF1, NF3, and FF1 conduct Business A. S3 owns branches and subsidiaries engaged in Business A and Business B. FF2 is engaged in Business B. We have received financial information indicating that each of these businesses has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The operation of Business A and Business B within the same group creates managerial, systemic, and other problems and produces no significant synergies. Distributing’s management has therefore decided, based on the advice of consultants and other information, that the two businesses should be separated (the “Separation”).

Proposed Transactions

To accomplish the Separation, Distributing has proposed the following series of transactions to be carried out in conjunction with the other steps of the Overall Transaction:

- (i) FF1 will sell the shares of FF2 to NF2 in exchange for a receivable (the “Transitory Debt”), and the Transitory Debt will immediately be satisfied through a reduction of FF1 share capital. (This step, as recharacterized by ruling (1) below, will be referred to hereinafter as “Distribution 1”).
- (ii) NF2 will distribute the shares of FF2 to NF1 as a repayment of share premium under Country N law (“Distribution 2”).
- (iii) NF1 will undertake a transaction under Country N law pursuant to which a

new Country N company ("NewcoN") will be formed, NF1 will transfer the FF2 stock to NewcoN, the stock of NewcoN will be issued directly to S3, and S3 will continue to own the shares of NF1. (This step, as recharacterized by ruling (10) below, will be referred to hereinafter as the "Contribution" and "Distribution 3").

(iv) S3 will distribute the shares of NewcoN to S1 ("Distribution 4").

(v) S1 will distribute the shares of NewcoN to Distributing ("Distribution 5").

Representations

Distribution 1

Distributing has made the following representations concerning Distribution 1 (based on the recharacterization of step (i) above in ruling (1) below, which treats FF1 as distributing the FF2 stock to NF2):

(1a) The fair market value of the FF2 stock to be received by NF2 will approximately equal the fair market value of the FF1 stock deemed surrendered by NF2 in the exchange.

(1b) No part of the FF2 stock distributed by FF1 will be received by NF2 as a creditor, employee, or in any capacity other than that of a shareholder of FF1.

(1c) The five years of financial information submitted for FF1 (regarding its Business A) and FF2 (regarding its Business B) represents the present business operations of FF1 and FF2, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1d) Following Distribution 1, FF1 and FF2 each will continue the active conduct of its business, independently and with its separate employees.

(1e) Distribution 1 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(1f) Except for Distribution 2, there is no plan or intention by NF2 to sell, exchange, transfer by gift, or otherwise dispose of any stock in FF1 or FF2 after Distribution 1.

(1g) There is no plan or intention by FF1 or FF2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1.

(1h) There is no plan or intention to liquidate FF1 or FF2, to merge either

corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(1i) Any indebtedness owed by FF2 to FF1 following the Separation will not be stock or securities under § 355 of the Internal Revenue Code.

(1j) Immediately before Distribution 1, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(1k) Payments made in any continuing transactions between FF1 and FF2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1l) Distribution 1 is not a part of a plan or series of related transactions (within the meaning of § 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 either FF1 or FF2 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either FF1 or FF2.

Distribution 2

Distributing has made the following representations concerning Distribution 2:

(1m) The fair market value of the FF2 stock to be received by NF1 will approximately equal the fair market value of the NF1 stock deemed surrendered by NF1 in the exchange.

(1n) No part of the stock of FF2 distributed by NF2 will be received by NF1 as a creditor, employee, or in any capacity other than that of a shareholder of NF2.

(1o) The five years of financial information submitted for NF3 (regarding its Business A), FF1, and FF2 represents the present business operations of NF3, FF1, and FF2, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1p) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of NF2 will consist of the stock and securities of NF3 and FF1, controlled corporations that are engaged in the active control of a trade or business as defined in § 355(b). Following Distribution 2, NF3, FF1, and FF2 each will continue the active conduct of its business, independently and with its separate employees.

(1q) Distribution 2 is being undertaken to resolve managerial, systemic, and

other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(1r) Except for the Contribution and Distribution 3, there is no plan or intention by NF1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in NF2 or FF2 after Distribution 2.

(1s) There is no plan or intention by NF2 or FF2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2.

(1t) There is no plan or intention to liquidate NF2 or FF2, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(1u) Any indebtedness owed by FF2 to NF2 following the Separation will not be stock or securities under § 355.

(1v) Immediately before Distribution 2, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(1w) Payments made in any continuing transactions between NF2 and FF2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1x) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 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 either NF2 or FF2 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either NF2 or FF2.

Contribution and Distribution 3

Distributing has made the following representations concerning the Contribution and Distribution 3 (based on the recharacterization of step (iii) above by ruling (10) below, which treats step (iii) as a contribution of the FF2 stock by NF1 to NewcoN (the "Contribution"), followed by a distribution of NewcoN to S3 ("Distribution 3")):

(1y) No part of the stock of NewcoN distributed by NF1 will be received by S3 as a creditor, employee, or in any capacity other than that of a NF1 shareholder.

(1z) The five years of financial information submitted for IF1 (regarding its

Business A), NF3, FF1, and FF2 represents the present business operations of IF1, NF3, FF1, and FF2, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2a) Immediately after Distribution 3, at least 90 percent of the fair market value of the gross assets of NF1 will consist of the stock and securities of NF2 and IF1, at least 90 percent of the fair market value of the gross assets of NewcoN will consist of the stock and securities of FF2, and at least 90 percent of the fair market value of the gross assets of NF2 will consist of stock and securities of NF3 and FF1. IF1, NF3, FF2, and FF1 are controlled corporations that are engaged in the active control of a trade or business as defined in § 355 (b). Following Distribution 3, IF1, NF3, FF1, and FF2 each will continue the active conduct of its business, independently and with its separate employees.

(2b) Distribution 3 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(2c) Except for Distribution 4, there is no plan or intention by S3 to sell, exchange, transfer by gift, or otherwise dispose of any stock in NF1 or NewcoN after Distribution 3.

(2d) There is no plan or intention by NF1 or NewcoN, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 3.

(2e) There is no plan or intention to liquidate NF1 or NewcoN, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 3, except in the ordinary course of business.

(2f) The total adjusted basis and the fair market value of the assets transferred to NewcoN by NF1 in the Contribution will, in each instance, equal or exceed the liabilities, if any, assumed (as determined under § 357(d)) by NewcoN.

(2g) The liabilities assumed (as determined under § 357(d)) in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(2h) Any indebtedness owed by NewcoN to NF1 following the Separation will not be stock or securities under § 355.

(2i) Immediately before Distribution 3, any items of income gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(2j) Payments made in any continuing transactions between NF1 and NewcoN will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(2k) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(2l) Distribution 3 is not a part of a plan or series of related transactions (within the meaning of § 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 either NF1 or NewcoN stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either NF1 or NewcoN.

Distribution 4

Distributing has made the following representations concerning Distribution 4:

(2m) No part of the stock of NewcoN distributed by S3 will be received by S1 as a creditor, employee, or in any capacity other than that of an S3 shareholder.

(2n) The five years of financial information submitted for S3 (regarding its Business A and Business B) and FF2 represents the present business operations of S3 and FF2, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2o) Immediately after Distribution 4, at least 90 percent of the fair market value of the gross assets of NewcoN will consist of the stock and securities of FF2, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b). Following Distribution 4, S3 and FF2 each will continue the active conduct of its business(es), independently and with its separate employees.

(2p) Distribution 4 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 4 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(2q) Except for Distribution 5 and except for the transfer of the S3 stock to a new corporation that will be distributed to the shareholders of Distributing (described in step (vi) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by S1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in S3 or NewcoN after Distribution 4.

(2r) There is no plan or intention by S3 or NewcoN, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 4.

(2s) There is no plan or intention to liquidate S3 or NewcoN, to merge either

corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 4, except in the ordinary course of business.

(2t) Any indebtedness owed by NewcoN to S3 following the Separation will not be stock or securities under § 355.

(2u) Immediately before Distribution 4, any items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(2v) Payments made in any continuing transactions between S3 and NewcoN will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(2w) Distribution 4 is not a part of a plan or series of related transactions (within the meaning of § 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 either S3 or NewcoN stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S3 or NewcoN.

Distribution 5

Distributing has made the following representations concerning Distribution 5:

(2x) No part of the stock of NewcoN distributed by S1 will be received by Distributing as a creditor, employee, or in any capacity other than that of an S1 shareholder.

(2y) The five years of financial information submitted for S1 (regarding its Business A) and FF2 represents the present business operations of S1 and FF2, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2z) Immediately after Distribution 5, at least 90 percent of the fair market value of the gross assets of NewcoN will consist of the stock and securities of FF2, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2). Following Distribution 5, S1, and FF2 each will continue the active conduct of its business, independently and with its separate employees.

(3a) Distribution 5 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 5 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(3b) Except for the transfer of S1 to a new corporation that will be distributed to the shareholders of Distributing (described in step (v) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in S1 or NewcoN after Distribution 5.

(3c) There is no plan or intention by S1 or NewcoN, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 5.

(3d) There is no plan or intention to liquidate S1 or NewcoN, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 5, except in the ordinary course of business.

(3e) Any indebtedness owed by NewcoN to S1 following the Separation will not be stock or securities under § 355.

(3f) Immediately before Distribution 5, any items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(3g) Payments made in any continuing transactions between S1 and NewcoN will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(3h) Distribution 5 is not a part of a plan or series of related transactions (within the meaning of § 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 either S1 or NewcoN stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S1 or NewcoN.

International

(3i) FF2, FF1, NF2, and NF1 are corporations for federal tax purposes and will be controlled foreign corporations within the meaning of § 957 immediately before and immediately after the proposed transactions.

(3j) NewcoN will be a corporation for federal tax purposes and a controlled foreign corporation within the meaning of § 957 at the time of its formation and immediately after the proposed transactions.

Rulings

Distribution 1

Based on the information submitted and the representations made, we rule as follows on Distribution 1:

(1) For federal income tax purposes, the Transitory Debt will be disregarded and step (i) of the proposed transactions will be treated as if FF1 had distributed the FF2 shares to NF2.

(2) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) NF2 on Distribution 1 (§ 355(a)(1)).

(3) No gain or loss will be recognized by FF1 on Distribution 1 (§ 355(c)).

(4) The holding period of FF2 stock received by NF2 in Distribution 1 will include the holding period of the FF1 stock for which the FF2 stock is deemed exchanged, provided the FF1 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

(5) FF1's transfer of the FF2 stock in Distribution 1 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If NF2's postdistribution amount with respect to FF1 or FF2 is less than NF2's predistribution amount with respect to FF1 or FF2, NF2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, NF2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, NF2 must instead include such amount in income as a deemed dividend from such corporation. Such income shall not be foreign personal holding company income under § 954(c).

Distribution 2

Based on the information submitted and the representations made, we rule as follows on Distribution 2:

(6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) NF1 on Distribution 2 (§ 355(a)(1)).

(7) No gain or loss will be recognized by NF2 on Distribution 2 (§ 355(c)).

(8) The holding period of FF2 stock received by NF1 in Distribution 2 will include the holding period of the NF2 stock for which the FF2 stock is deemed exchanged, provided the NF2 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(9) NF2's transfer of the FF2 stock in Distribution 2 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If NF1's postdistribution amount with respect to NF2 or FF2 is less than NF1's predistribution amount with respect to NF2 or FF2, NF1's basis in such stock immediately after the

distribution must be reduced by the amount of the difference. However, NF1's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, NF1 must instead include such amount in income as a deemed dividend from such corporation. Such income shall not be foreign personal holding company income under § 954(c).

Contribution and Distribution 3

Based on the information submitted and the representations made, we rule as follows on the Contribution and Distribution 3:

(10) For federal income tax purposes, step (iii) of the proposed transactions will be treated as if NF1 had transferred all of the FF2 stock to newly formed NewcoN in exchange for the NewcoN stock and then had distributed the NewcoN stock to S3 (cf. Rev. Rul. 77-191, 1977-1 C.B. 94).

(11) The Contribution, followed by Distribution 3, will qualify as a reorganization under § 368(a)(1)(D). NF1 and NewcoN each will be a party to the reorganization under § 368(b).

(12) No gain or loss will be recognized by NF1 on the Contribution (§§ 357(a) and 361(a)).

(13) No gain or loss will be recognized by NewcoN on the Contribution (§ 1032(a)).

(14) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) S3 on Distribution 3 (§ 355(a)(1)).

(15) No gain or loss will be recognized by NF1 on Distribution 3 (§ 361(c)).

(16) The holding period of NewcoN stock received by S3 in Distribution 3 will include the holding period of the NF1 stock on which Distribution 3 is made, provided the NF1 stock is held as a capital asset on the date of Distribution 3 (§ 1223(1)).

(17) The Contribution is an exchange to which § 1.367(b)-1(c) and § 1.367(b)-4(a) apply.

(18) No gain or loss will be recognized under § 367(b) on the Contribution (§ 1.367(b)-4(b)).

(19) NF1's transfer of the NewcoN stock in Distribution 3 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If S3's postdistribution amount with respect to NF1 or NewcoN is less than S3's predistribution amount with respect to NF1 or NewcoN, S3's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, S3's basis in

such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, S3 must instead include such amount in income as a deemed dividend from such corporation.

Distribution 4

Based on the information submitted and the representations made, we rule as follows on Distribution 4:

(20) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) S1 on Distribution 4 (§ 355(a)(1)).

(21) No gain or loss will be recognized by S3 on Distribution 4 (§ 355(c)).

(22) Immediately following Distribution 4, the basis of the NewcoN stock in the hands of the S1 will be the lesser of the adjusted basis of the NewcoN stock in the hands of S3 or the substituted basis allocated to the NewcoN stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(23) Immediately following Distribution 4, S1's holding period in NewcoN stock received in the § 355 distribution will be the greater of the holding period of the NewcoN's stock in the hands of S3 or the holding period of the S3 stock in the hands of S1 (§ 1248(f)(2); Notice 87-64).

Distribution 5

Based on the information submitted and the representations made, we rule as follows on Distribution 5:

(24) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on Distribution 5 (§ 355(a)(1)).

(25) No gain or loss will be recognized by S1 on Distribution 5 (§ 355(c)).

(26) Immediately following Distribution 5, the basis of the stock of NewcoN in the hands of the Distributing will be the lesser of the adjusted basis of the NewcoN stock in the hands of the S1 or the substituted basis allocated to the NewcoN stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64).

(27) Immediately following Distribution 5, Distributing's holding period in the NewcoN's stock received in the § 355 distribution will be the greater of the holding period of the NewcoN's stock in the hands of S1 or the holding period of the S1 stock in the hands of Distributing (§ 1248(f)(2); Notice 87-64).

Miscellaneous

(28) The proposed transactions will not adversely affect the Prior Ruling Letters, which will retain full force and effect.

Caveats

We express no opinion on the tax effects of the transactions under any other provisions of the Code or regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the rulings.

In particular, no opinion is expressed on whether any or all of the above-described foreign corporations are passive foreign investment companies within the meaning of § 1297(a) and the related regulations to be promulgated. If it is determined that any of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed related to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

Procedural Statements

This ruling is directly only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in these transactions should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transactions covered by this ruling letter are consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By: _____
Wayne T. Murray
Senior Technician/Reviewer
Branch 4