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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Date:

October 21, 2008

Legend

Shareholder 1 =

Shareholder 2 =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Distributing =

Holdco 1 =

Holdco 2 =

Joint Venture LLC =

GP =

LLC 1 =

LLC 2 =

Date 1 =

Date 2 =

Business A =

Business B =

Business C =

Customers =

Merchant Contracts =

Intermediary Contracts =

Sponsorship Agreement =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your July 3, 2008 request for rulings on certain Federal income tax consequences of a proposed transaction. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Split-Off (described below): (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, or (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)). Normally, this office does not determine whether a distribution and acquisition 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)(2)(A)(ii) and § 1.355-7); however, in this transaction, §355(d) applies to the Split-Off and, therefore, §355(e) will not apply. See §355(e)(2)(D).

Facts

Distributing and its direct and indirect subsidiaries hold a portion of Joint Venture LLC, a joint venture between Shareholder 1 and Shareholder 2. Shareholder 1 owns a percent (greater than 10-percent) of Distributing and Sub 2 owns b percent of Distributing. Shareholder 2 wholly owns Sub 1, and Sub 1 wholly owns Sub 2. Parent purchased all the stock of Shareholder 1 on Date 1 (a date within the past 5 years) in a taxable transaction. Each of Parent, Shareholder 2, and Distributing is a common parent of a group of affiliated corporations that files a consolidated Federal income tax return.

Shareholder 1 wholly owns Sub 3; Sub 3 wholly owns Sub 4; Sub 4 wholly owns Sub 5 and Sub 5 wholly owns Sub 6. Sub 5 also holds c percent of the general partner interests of GP. Sub 5 and Sub 2 each hold d percent of the interests of LLC 1.

Distributing wholly owns Holdco 1; Holdco 1 wholly owns Holdco 2. Holdco 2 owns e percent of the interests of Joint Venture LLC. Sub 6 owns f percent, GP owns g percent, LLC 1 owns h percent and Sub 2 owns the remaining i percent of the interests in Joint Venture LLC. Together Sub 2's directly owned j percent of the interests and indirectly owned k percent of interests (through LLC 1) constitutes an ownership of a significant amount of the interests of Joint Venture LLC.

Joint Venture LLC directly conducts Business A. Business B is a division of Business A. Business C is a component of Business B. Business B engages in business with Customers. Business A assets consist primarily of Merchant Contracts, Intermediary Contracts, related goodwill, other intangibles, and accounts receivable. All employees of Business A and its related businesses are nominally employed by LLC 2, an entity that is disregarded as separate from its owner, Holdco2, for Federal tax purposes under §301.7701-3 of the Administration and Procedure Regulations (a "disregarded entity").

The financial information submitted by Distributing indicates that Business A and Business C each had gross receipts and operating expenses representing the active conduct of a trade or business for the past five years.

Proposed Transaction

For what has been represented as a valid business purpose, the following transactions have been partially consummated and proposed (together, the "Proposed Transaction"):

- (i) LLC 1 distributed l dollars to Sub 2 and a promissory note in the amount of l dollars to Sub 5.
- (ii) Following Step (i), Sub 2 merged into Distributing in the Sub 2 Merger. In the merger, Sub 1, the sole shareholder of Sub 2, received stock of Distributing in exchange for all of its Sub 2 stock. After the merger, the Distributing separate affiliated group ("SAG") owned m percent (a significant amount of the interests) of Joint Venture LLC.
- (iii) Distributing will contribute a one percent interest in LLC 1 to Holdco 1.

- (iv) Joint Venture LLC will distribute a portion of its Merchant Contracts and other assets to its members that are related to Shareholder 1, and these members will assume a portion of the liabilities of Joint Venture LLC, as follows:
 - a. Joint Venture LLC will distribute a portion of its Merchant Contracts and other assets to Sub 6 in liquidation of Sub 6's interest in Joint Venture LLC, and Sub 6 will assume a portion of the liabilities of Joint Venture LLC;
 - b. Joint Venture LLC will distribute a portion of its Merchant Contracts and other assets to GP in liquidation of GP's interest in Joint Venture LLC, and GP will assume a portion of the liabilities of Joint Venture LLC;
 - c. Joint Venture LLC will distribute a portion of its Merchant Contracts and other assets to LLC 1 in proportionate reduction of LLC 1's interest in Joint Venture LLC, and LLC 1 will assume a portion of the liabilities of Joint Venture LLC; and
 - d. LLC 1 will distribute the Merchant Contracts and other assets received in Step (iv)(c) to Sub 5 in liquidation of Sub 5's interest in LLC 1, and Sub 5 will assume the liabilities assumed by LLC 1 in Step (iv)(c).
- (v) Joint Venture LLC will distribute a portion of its Merchant Contracts and other assets (including Business C) to Distributing, and Distributing will assume a portion of its liabilities of Joint Venture LLC (including certain liabilities related to Business C) as follows:
 - a. Joint Venture LLC will form a new limited liability company ("New LLC"), a disregarded entity;
 - b. Joint Venture LLC will contribute a portion of its Merchant Contracts and other assets (including Business C, Intermediary Contracts, and accounts receivable) to New LLC in exchange for a 100 percent interest in New LLC and the assumption by New LLC of a portion of the liabilities of Joint Venture LLC (including certain liabilities related to Business C);
 - c. Joint Venture LLC will distribute New LLC to Holdco 2;
 - d. Holdco 2, after transferring a portion of the employees currently housed in LLC 2 (including Business C employees) to New LLC, will distribute New LLC to Holdco 1, a distribution to which §311(b) will apply.
 - e. Holdco 1 will distribute New LLC to Distributing; and

- f. New LLC may transfer some or all of the accounts receivable it receives in Step (v)(b) to Distributing in exchange for the assumption by Distributing of related accounts payable.
- (vi) Distributing will transfer New LLC to a newly formed corporation (“Controlled”) in exchange for all the stock of Controlled (the “Controlled Common Stock”) (the “Contribution”).
- (vii) Distributing will distribute the Controlled Common Stock to Shareholder 1 in exchange for all the Distributing stock owned by Shareholder 1 (the “Split-Off”).
- (viii) Following completion of the Split-Off in Step (vii), Shareholder 1 will cause Controlled to merge into Sub 6 in a transaction intended to meet the requirements of §368(a)(1) (the “Controlled Merger”). Following the Controlled Merger, Sub 6 will continue the active conduct of Business C with its separate employees.
- (ix) Also following the Split-Off, there will be true-up distributions or contributions under the separation agreement and tax sharing agreement executed in connection with the Split-Off to conform the actual aggregate distributions and contributions to the agreed economic terms (the “True-ups”).

Following the Controlled Merger, Sub 6 may contribute all or a significant portion of the assets received from Controlled in the Controlled Merger to a partnership with an unrelated third party (the “Partnership Contribution”), following which the partnership would continue the active conduct of Business C. Sub 6 would own at least a significant interest in the partnership following the Partnership Contribution.

Also following the Proposed Transaction, Shareholder 1 (and any entity controlled by Shareholder 1, including Controlled) (collectively, the “Shareholder 1 Group”) and Shareholder 2 (and any entity controlled by Shareholder 2, including Distributing) (collectively, the “Shareholder 2 Group”) will engage in certain continuing transactions (the “Continuing Transactions”).

These Continuing Transactions will be formalized in various agreements between the Shareholder 1 Group and Shareholder 2 Group (the “Continuing Transaction Agreements”). Although the subject matter and terms of the Continuing Transaction Agreements may vary, the arrangement will fall into two categories: (i) agreements involving obligations that arose or will arise for a taxable period ending on or before the Split-Off but will not become fixed and ascertainable until after the Split-Off (the “Contingent Liability Agreements”); and (ii) agreements involving obligations that will arise after the Split-Off and relate to the on-going operational and business services that the Shareholder 1 Group has chosen to obtain from the Shareholder 2 Group, or that

the Shareholder 2 Group has chosen to obtain from the Shareholder 1 Group, in each case as its third party vendor, for the period of time and on the terms and conditions the parties will have specifically negotiated as to those services (the “On-Going Transaction Agreements”).

The On-Going Transaction Agreements include the Sponsorship Agreement. The Sponsorship Agreement is required for regulatory requirements. The services under the Sponsorship Agreement will be provided at no cost until Date 2. Any services provided under the Sponsorship Agreement after Date 2 will be performed for fair market value consideration. Except for services provided under the Sponsorship Agreement, all services provided under the Continuing Transaction Agreements will be performed for fair market value consideration.

Representations

Parent 1, Shareholder 2, and Distributing make the following representations regarding the Contribution and the Split-Off:

- (a) The Sub 2 Merger will qualify as a reorganization under §368(a)(1).
- (b) The Controlled Merger will qualify as a reorganization under §368(a)(1).
- (c) Any indebtedness owed by Controlled to Distributing (or any entity controlled directly or indirectly by Distributing) after the Split-Off will not constitute stock or securities.
- (d) The fair market value of the Controlled common stock to be received by Shareholder 1 will approximately equal the fair market value of the Distributing common stock surrendered by Shareholder 1 in the Split-Off.
- (e) No part of the consideration distributed by Distributing will be received by Shareholder 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (f) The five years of financial information submitted on behalf of Business A and Business C are representative of the present operations of each business, and there have been no substantial operational changes, in either business since the date of the last financial statements submitted.
- (g) Immediately after the Split-Off, each of the Distributing SAG (through attribution from Joint Venture LLC) and Controlled will be directly engaged in its active business.

- (h) Neither Business A conducted by Joint Venture LLC (and attributable to Distributing) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (i) Neither Business C conducted by Joint Venture LLC (and attributable to Distributing) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Split-Off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (j) Apart from the Continuing Transactions, Joint Venture LLC will continue the active conduct of Business A, independently and with its separate employees, following the Split-Off.
- (k) Apart from the Continuing Transactions, Sub 6 will continue the active conduct of Business C, independently and with its separate employees, following the Split-Off and Controlled Merger either directly or through a partnership in which Sub 6 will own a significant interest.
- (l) The Split-Off will be carried out to facilitate a division of Business A with the purpose of eliminating the adverse effects on the business of Joint Venture LLC resulting from the different viewpoints of Shareholder 1 and Shareholder 2 regarding business philosophy. The Split-Off will be motivated in whole or substantial part by this corporate business purpose.
- (m) The Split-Off will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (n) Apart from the Controlled Merger and the possible Partnership Contribution, there is no plan or intention to liquidate Distributing or Controlled, to merge either of these corporations with any other entity, or to sell or otherwise dispose of the assets of either of these corporations after the Split-Off, except in the ordinary course of business.
- (o) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under §357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of §361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

- (p) Other than the obligation with respect to True-ups, any liabilities assumed (as defined under §357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (q) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under §357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under §361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (r) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled or any successor of any of these) at the time of, or after the Split-Off, other than intercompany loans or other obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the True-ups or the Continuing Transactions.
- (s) Apart from transactions described in the Sponsorship Agreement, any payments made in connection with transactions covered by the Continuing Transaction Agreements between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled or any successor of any of these) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (t) Immediately before the Split-Off, 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, 1995-2 C.B. 147, and as currently in effect; §1.1502-13 as published by T.D. 8597). Further, any excess loss account that Distributing has in the Controlled stock will be included in income immediately before the Split-Off to the extent required by regulations (see §1.1502-19). At the time of the Split-Off, Distributing will not have an excess loss account in the stock of Controlled.

- (u) No two parties to the Split-Off are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (v) Immediately after the Split-Off, Controlled will not be a disqualified investment corporation within the meaning of §355(g)(2) because the value of the accounts receivable and other investment assets held by New LLC will not equal or exceed two thirds or more of the fair market value of all of the assets of New LLC. In making the foregoing representation, accounts receivable arising in the ordinary course of business after the Split-Off will not be treated as “investment assets” within the meaning of §355(g)(2)(B) held by Controlled “immediately after” the Split-Off (as defined in §355(g)(4)).
- (w) Immediately after the transaction (as defined in §355(g)(4)), Sub 1 will hold a 50 percent or greater interest (within the meaning of §355(g)(3)) in Distributing, but Sub 1 will have held such interest in Distributing immediately before the transaction.
- (x) No shareholder of Distributing will hold immediately after the Split-Off a 50 percent or greater interest in Distributing that such shareholder did not hold immediately before the Split-Off.
- (y) The Split-Off will be a disqualified distribution under §355(d).

Rulings

Based solely on the information submitted and the representations made, we rule as follows on the Proposed Transaction:

- (1) The Contribution, followed by the Split-Off, will be a reorganization under §368(a)(1)(D). Each of Distributing and Controlled will be “a party to the reorganization” under §368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution (§§361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (§1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§362(b)). The basis of each asset that Distributing contributes to Controlled in the Contribution, and thus the basis of each asset in the hands of Controlled, will take into account the basis of that asset as

determined under the principles of §311(b) and §1.1502-13 which may result from an earlier step or steps in the Proposed Transaction.

- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§1223(2)).
- (6) Any gain in the Controlled stock will be recognized by Distributing on the Split-Off (§355(d)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Shareholder 1 on the Split-Off (§355(a)(1)).
- (8) The basis of the Controlled stock in the hands of Shareholder 1 immediately after the Split-Off will equal the aggregate basis of the Distributing stock surrendered by Shareholder 1 in exchange for the Controlled stock in the Split-Off in accordance with §1.358-1(a) (§358(a)).
- (9) The holding period of the Controlled stock received by Shareholder 1 in the Split-Off will include the holding period of the Distributing stock surrendered in the Split-Off, provided the Distributing stock was held as a capital asset on the date of the Split-Off (§1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with §312(h) and §§1.312-10(a) and 1.1502-33(e)(3).
- (11) Payments made between Distributing and Controlled and their respective affiliates under the True-ups or under the Contingent Liability Agreements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Split-Off, or for a taxable period beginning before and ending after 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. See Arrowsmith v. Comm'r, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73; 1983-1 C.B. 84.

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:

- (i) Whether the Split-Off satisfies the business purpose requirement of §1.355-2(b);

- (ii) Whether the Split-Off 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) and §1.355-2(d);
- (iii) The Federal income tax consequences of any transactions under the Sponsorship Agreement.

Normally, this office does not determine whether a distribution and acquisition 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)(2)(A)(ii) and § 1.355-7); however, in this transaction, §355(d) applies to the Split-Off and, therefore, §355(e) will not apply. See §355(e)(2)(D).

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.

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

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.

Sincerely,

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

cc: