

## Internal Revenue Service

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Department of the Treasury

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CC:INTL:BR5

PLR-108934-21

Date:

October 01, 2021

## Legend

Amount A =

Amount B =

Amount C =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

Amount I =

Amount J =

Bank =

Business A =

Business B =

Country A =

Currency A =

Date A =

Date B =

Date C =

Method 1 =

Method 2 =

Number A =

Parent =

Plan A =

Subsidiary =

Target =

Dear :

This letter responds to a letter dated Date A, requesting a ruling pursuant to Treas. Reg. §1.988-5(e) regarding the U.S. federal income tax treatment of hedges of Subsidiary's foreign currency exposure with respect to the anticipated acquisition of Target shares.

The rulings contained in this letter are based on information and representations submitted by you and your representatives and accompanied by a penalties of perjury statement executed by the appropriate party. While this office has not verified any of the materials submitted in support of the ruling request, it is subject to verification on examination.

### **Facts**

Parent represents the following facts:

Parent is a widely-held, publicly-traded domestic corporation and the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return. Subsidiary is an indirect, wholly-owned subsidiary of Parent that is a member of Parent's consolidated group. All the entities between Parent and Subsidiary are wholly-owned directly or indirectly by Parent and members of Parent's consolidated group. Parent and Subsidiary's functional currency (as defined in section 985(b)) is the United States dollar ("USD"). Parent and Subsidiary are calendar year taxpayers that use the accrual method of accounting.

The Parent consolidated group engages in Business A, which is subject to significant regulation. Subsidiary was formed on Date B to acquire Target. Subsidiary will not have any assets or activities unrelated to the acquisition of the Target shares (the "Acquisition") and will not have any Currency A hedges (including Currency A deposits) other than the hedges for the Maximum Cash Amount (as defined below) and the refinancing of certain Target debt.

Target is a widely-held, publicly-traded Country A entity that is treated as a corporation for U.S. federal income tax purposes. Target and its subsidiaries engage in Business B.

In addition to outstanding Target shares, certain employees of Target have, or will have, stock options awarded under Plan A that vest and become exercisable on the date the

court approves the Acquisition under Method 1 or the date the Method 2 closing and acceptance conditions are satisfied, as applicable, resulting in additional Target shares outstanding immediately prior to the closing of the Acquisition or if the closing occurs in multiple stages, the first closing (the stock options, the “Employee Stock Options” and the Target shares that result from the deemed exercise of the Employee Stock Options, the “Employee Shares”). An Employee Stock Option may lapse for various reasons, including, except in certain limited permitted circumstances, when a Target employee ceases to be an employee of the Target before the Employee’s Stock Option vests. Any Employee Stock Option not outstanding on Date A will be projected based on Plan A to be issued between Date A and the closing date and is limited pursuant to the terms of the offer announcement to Employee Stock Option issuances that would occur in the ordinary course of business, which projections will be updated as necessary.

Parent and Subsidiary (together, the “Offerors”) intend to acquire 100% of the outstanding Target shares (including the Employee Shares, which will be outstanding Target shares immediately prior to the closing of the Acquisition), and, unless the Acquisition does not occur, there should not be any scenario in which the Offerors acquire less than 100% of Target. The Acquisition will occur pursuant to Method 1 or Method 2, and in either case will be completed within one year of Date A. The Offerors have not and will not acquire Target shares other than pursuant to the Acquisition.

Method 1 requires acceptances of an acquisition by a target’s shareholders attending a special shareholder meeting representing (i) more than Amount I in number of shareholders voting, in person or by proxy, and (ii) at least Amount G in value of the shares being voted on a class-by-class basis, as well as approval of the applicable court under Country A law. This is the Method 1 acceptance requirement.

Method 2 requires acceptances of more than Amount I of a target’s voting stock. The Method 2 acceptance requirement is the acceptance percentage specified by an offeror that is more than Amount I. If Amount H of target’s voting stock accepts, then the offeror can squeeze out any remaining target shareholders. To squeeze-out shareholders that did not accept the offer, the offeror must provide those shareholders with a notice that states the shares will be compulsorily acquired at the end of a six-week period (the “Squeeze-out Period”). If no squeeze-out shareholder succeeds in overturning the squeeze-out in court by the last day of the Squeeze-out Period, the offeror will acquire the shares on that day (the “Squeeze-out Date”).

Under both Method 1 and Method 2, an offering is commenced by an announcement (the “offering announcement”), which effectively commits the offeror to make the offer. The offeror must proceed with the offer unless a condition to the offer is not met. The permitted conditions are narrow and outside the control of the offeror, and generally cannot include financing. An offeror can make an offering announcement only if it has the ability to satisfy any cash consideration offered to the target shareholders.

Under the laws of Country A, the offeror is required to proceed with an announced offer unless, subject to those laws, a condition set forth in the announcement is not met. Under the laws of Country A, the offeror may invoke the failure to obtain regulatory approval or the occurrence of a material adverse change in only very limited circumstances. To the best of Parent's knowledge, there has never been a successful attempt to invoke a material adverse change condition to terminate an offer under Country A law.

Parent issued an offering announcement on Date A to acquire Target shares pursuant to Method 1 on behalf of the Offerors, subject to the following closing conditions: (i) approval of Parent's shareholders to issue new Parent stock for the Stock Consideration (as defined below), which requires a majority of votes cast by Parent shareholders at Parent's shareholder meeting, (ii) approval from certain regulators in a limited number of jurisdictions, and (iii) the absence of a material adverse change. The announcement was made with the support of Target's board of directors, which voted to support the Acquisition. Under the terms of Parent's announcement, a Target shareholder receives Amount A per Target share (the "Cash Consideration") or, at the election of the Target shareholder, Amount B of Parent shares per Target share (the "Stock Consideration"), the value of which equaled Amount C per Target share on Date A. A Target shareholder (including any person that will be a Target shareholder as a result of the exercise of an Employee Stock Option) will receive Cash Consideration unless the Target shareholder elects Stock Consideration.

All Cash Consideration will be paid by Subsidiary. All Stock Consideration will be paid by Parent. Parent will contribute the Target shares it acquires down the chain of ownership to Subsidiary, and Subsidiary will receive the Target shares acquired by Parent in the Acquisition within two days of Parent acquiring the shares.

Under Method 1, Target shareholders have until a week before the court approval to make or revoke an election to take Stock Consideration. Under Method 2, Target shareholders that accept the Acquisition offer can elect Stock Consideration at that time, which cannot be subsequently revoked unless the acceptance condition for Method 2 is not satisfied within 42 days after the offering circular has been mailed to the Target shareholders, in which case any Target shareholder may change the type of consideration it is requesting until the acceptance condition is met or the offer under Method 2 lapses. No changes to the form of consideration that a Target shareholder will receive can be made after the offer under Method 2 becomes unconditional (in other words, once all the acceptance and closing conditions are satisfied). The Offerors will provide Target shareholders subject to the squeeze out with an additional opportunity to elect Stock Consideration, which also cannot be subsequently revoked. Employee Shares are not taken into account in determining whether the acceptance condition has been satisfied under Method 1 or Method 2. Under Method 2, the Employee Shares are acquired when Method 2 becomes unconditional. The Employee Shares will not be part of the squeeze out.

As of Date A, Target shareholders representing Amount D of Target's outstanding stock have irrevocably agreed to vote for the Acquisition and Target shareholders representing Amount E of Target's outstanding stock have irrevocably agreed to elect Stock Consideration (the "Irrevocable Stock Elections"). In addition, as of Date A, Parent shareholders representing Amount F of the outstanding Parent stock have irrevocably agreed to vote for the issuance of new shares to pay the Stock Consideration.

While the Offerors may be entitled to switch to Method 2 in additional circumstances, the Offerors will only switch to Method 2 if (i) a third party announces a firm intention to make an offer for all or part of the Target stock or (ii) Method 1 does not receive the required court approval, neither of which is expected to occur. It is not expected that the Offerors will switch to Method 2. If the Offerors switch to Method 2, they intend to require acceptances by Amount H of Target's outstanding shares and follow up with a squeeze out transaction to acquire any remaining outstanding Target shares.

Taking into account the Irrevocable Stock Elections, the amount of Currency A that Subsidiary would be required to pay for Target shares pursuant to the Acquisition if no other Target shareholders elected Stock Consideration as of Date A (the "Initial Maximum Cash Amount") is Amount J. Amount J equals the Cash Consideration for (1) all outstanding Target shares on Date A other than the Target shares subject to an Irrevocable Stock Election (the Target shares subject to the election, the "Irrevocable Stock Election Shares"), (2) all Employee Shares resulting from the conversion of the Employee Stock Options outstanding as of Date A pursuant to the Acquisition, and (3) all Employee Shares resulting from the conversion of the Employee Stock Options pursuant to the Acquisition projected based on Plan A to be issued between Date A and the closing date, limited pursuant to the terms of the offer announcement to Employee Stock Option issuances that would occur in the ordinary course of business as of Date A.

Subsidiary has potential Currency A exposure as a result of the Acquisition because the Cash Consideration must be paid in Currency A and Subsidiary has the USD as its functional currency. Subsidiary will purchase Currency A and Currency A derivatives to hedge its Currency A exposure relative to the USD up to the Maximum Cash Amount. The "Maximum Cash Amount" is, at any given time, the total Cash Consideration that Subsidiary would be required to pay for all outstanding Target shares and Employee Shares other than Target shares that are (i) required to elect Stock Consideration (for example, the Irrevocable Stock Election Shares) or (ii) subject to an election to receive Stock Consideration that cannot be changed.

The Maximum Cash Amount will start as the Initial Maximum Cash Amount and will only be reduced when the amount of Cash Consideration required to be paid to the Target shareholders decreases because: (1) additional outstanding Target shares or Employee Shares are irrevocably required to be acquired with consideration other than Cash Consideration (for example, as a result of an election to receive Stock Consideration

that cannot be changed subsequently or because the Target shareholder has irrevocably agreed to make an election to receive Stock Consideration as consideration for its Target shares), (2) the Cash Consideration required to be paid for a Target share is reduced (for example, as a result of a distribution other than an ordinary course dividend in the amount specified in the offer announcement), (3) the number of outstanding Target shares or Employee Shares to be acquired has declined (for example, as a result of Target shares being acquired pursuant to the Acquisition or an Employee Stock Option lapsing or not being issued as projected), or (4) the Acquisition is terminated (each, a "Reduction Event"). The Maximum Cash Amount will be reduced by the amount necessary to reflect the reduction in the amount of Cash Consideration required to be paid for the Reduction Event (each, a "Reduction"). The Maximum Cash Amount will only be increased if the Cash Consideration offered for Target shares pursuant to the Acquisition is increased and then only by the amount of that increase. The Maximum Cash Amount will never be adjusted based on projections of the Maximum Cash Amount, including projections regarding the number of Target shares that will elect Stock Consideration or the number of Employee Shares (except the number of Employee Shares resulting from the conversion of the Employee Stock Options pursuant to the Acquisition projected based on Plan A to be issued between Date A and the closing date).

It is expected that at a minimum, the Maximum Cash Amount will be reduced on any of the following days (in the case of (1) and (2), only to the extent of Target shareholders electing Stock Consideration beyond the Irrevocable Stock Elections): (1) the date the applicable court approves the Acquisition under Method 1, (2) the date the offer under Method 2 becomes unconditional (and any subsequent dates on which a Target shareholder elects Stock Consideration and the Squeeze-out Date), and (3) the date the Acquisition is terminated. However, if at any other time there is a Reduction (for example, a lapsed Employee Stock Option), the Maximum Cash Amount will be reduced at that time too.

Until all the conditions for the Acquisition are satisfied, Subsidiary will not know when the Acquisition will accrue or close. Whether the conditions for the Acquisition will be satisfied and the aggregate amount of Cash Consideration will not be known until very close to the time of the Acquisition. For example, the Acquisition is dependent on regulatory approvals. In addition, under Method 1 the Acquisition is dependent on court approval, and under Method 2 the timing might be determined by Target shareholder acceptances, if the minimum percentage is reached after the regulatory approvals have been received.

With the exception of the expiration date of the option between Subsidiary and Bank acquired on Date C with reference number Number A, each hedge that Subsidiary has or will both acquire and identify as a hedge of the anticipated Acquisition of outstanding Target shares and Employee Shares, other than the Irrevocable Stock Election Shares, that might be acquired for Cash Consideration (the acquisition of those Target shares, the "Target Share Acquisition," and those Target shares acquired pursuant to the Target

Share Acquisition, the “Target Share Acquisition Shares”) for purposes of Treas. Reg. §1.988-5(e) has and will satisfy the requirements of Treas. Reg. §1.988-5(b) (treating the offer announcement as the date on which the executory contract is entered and the anticipated Target Share Acquisition as the executory contract) (each of those hedges, a “Hedge”), including:

- (i) each Hedge is either (A) a Currency A deposit placed in a hedging account as defined in Treas. Reg. §1.988-5(b)(2)(iii)(D) (any such Hedge, a “Deposit”) or (B) a forward, future, or option described in Treas. Reg. §1.988-1(a)(1)(ii) and (2)(iii) and Treas. Reg. §1.988-5(b)(2)(iii)(A), in either case that is a “section 988 transaction” within the meaning of section 988(c)(1),
- (ii) each Hedge has or will be timely identified in accordance with Treas. Reg. §1.988-5(b)(3) as a hedge for integration with the anticipated Target Share Acquisition pursuant to the Treas. Reg. §1.988-5(e) private letter ruling, if received,
- (iii) each Hedge was or is entered into on or after the offer announcement (and after Date A) and before the accrual date as defined in Treas. Reg. §1.988-5(b)(2)(iv) (the “Accrual Date”) in accordance with Treas. Reg. §1.988-5(b)(2)(i)(B), treating each transaction separately and not combining any Hedge with a subsequent transaction, even if the item is or was acquired or entered into to replace or otherwise succeed a Hedge,
- (iv) the anticipated Target Share Acquisition is hedged in whole or in part with Hedges through the period beginning with the date the first Hedge was identified in accordance with Treas. Reg. §1.988-5(b)(3) and ending on or after the Accrual Date,
- (v) none of the parties to any Hedge are related within the meaning of section 267(b) or 707(c)(1), and
- (vi) each Hedge will only hedge Subsidiary’s Currency A exposure to the anticipated Target Share Acquisition.

Subsidiary will never hedge more than the Maximum Cash Amount. Subsidiary has not and will never reduce and then increase afterwards the Currency A amount of the Hedges, even if the Maximum Cash Amount increases subsequently. On any day the Maximum Cash Amount is subject to a Reduction, Subsidiary will reduce (or treat as sold for its fair market value at that time) the portion of the Hedges in excess of the Maximum Cash Amount that day and clearly identify what portion of the Hedges has been reduced (or treated as sold).

The Accrual Date for the Target Share Acquisition under Method 1 is the date the applicable court approves the Acquisition. The Accrual Dates for the Target Share Acquisition under Method 2 are the dates the offer becomes unconditional (in other words, the date all the closing and acceptance conditions are satisfied), any subsequent dates on which a Target shareholder accepts the offer during the offer period, and if there is a squeeze-out, the Squeeze-out Date.

Subsidiary will include any interest income from Deposits in income as provided in section 61. Subsidiary will not treat any item as a Hedge that does not meet the definition of a “Hedge,” including the requirements listed above. Hedges will be used only to pay Cash Consideration. If all or a portion of the Hedges are determined to be unneeded as a result of a Reduction (the “Unneeded Hedge”), the Unneeded Hedge will be sold or terminated, or treated as sold for its fair market value at that time, on the day of the Reduction. Subsidiary has not and will not make an election pursuant to section 988(a)(1)(B) with respect to any Hedge.

Parent has determined that the Acquisition and the Hedges are not eligible for hedge accounting treatment. Subsidiary will only adjust the amount of the Hedges as provided above and will not engage in speculative trading with respect to any foreign currency.

### **Law and Analysis**

Section 988(d)(1) of the Code provides that, to the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purpose of this subtitle.

Section 988(d)(2) of the Code provides that the term “988 hedging transaction” means any transaction—(A) entered into by the taxpayer primarily—(i) to manage risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or (ii) to manage risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and (B) identified by the Secretary or the taxpayer as being a 988 hedging transaction

Treas. Reg. §1.988-5(b)(2)(i) provides that a hedged executory contract is an executory contract as defined in paragraph (b)(2)(ii) of this section that is the subject of a hedge as defined in paragraph (b)(2)(iii) of this section, provided that the following requirements are satisfied—(A) The executory contract and the hedge are identified as a hedged executory contract as provided in paragraph (b)(3) of this section; (B) The hedge is entered into (*i.e.*, settled or closed, or in the case of nonfunctional currency deposited in an account with a bank or other financial institution, such currency is acquired and deposited) on or after the date the executory contract is entered into and before the accrual date as defined in paragraph (b)(2)(iv) of this section; (C) The executory contract is hedged in whole or in part throughout the period beginning with the date the hedge is identified in accordance with paragraph (b)(3) of this section and ending on or after the accrual date; (D) None of the parties to the hedge are related. The term related means the relationships defined in section 267(b) and section 707(c)(1); (E) In the case of a qualified business unit with a residence, as defined in section 988(a)(3)(B), outside of the United States, both the executory contract and the hedge are properly reflected on the books of the same qualified business unit; (F) Subject to the limitations of paragraph (b)(2)(i)(E) of this section, both the executory contract and the hedge are entered into by the same individual, partnership, trust, estate, or corporation. With



respect to a corporation, the same corporation must enter into both the executory contract and the hedge whether or not such corporation is a member of an affiliated group of corporations that files a consolidated return; and (G) With respect to a foreign person engaged in a U.S. trade or business that enters into an executory contract or hedge through such trade or business, all items of income and expense associated with the executory contract and the hedge would have been effectively connected with such U.S. trade or business throughout the term of the hedged executory contract had this paragraph (b) not applied.

Treas. Reg. §1.988-5(b)(2)(ii) provides that an “executory contract” is an agreement entered into before the accrual date to pay nonfunctional currency (or an amount determined with reference thereto) in the future with respect to the purchase of property used in the ordinary course of the taxpayer's business, or the acquisition of a service (or services), in the future, or to receive nonfunctional currency (or an amount determined with reference thereto) in the future with respect to the sale of property used or held for sale in the ordinary course of the taxpayer's business, or the performance of a service (or services), in the future. Notwithstanding the preceding sentence, a contract to buy or sell stock shall be considered an executory contract. On the accrual date, such agreement ceases to be considered an executory contract and is treated as an account payable or receivable.

Treas. Reg. §1.988-5(b)(2)(iii)(A) provides that the term “hedge” means a deposit of nonfunctional currency in a hedging account (as defined paragraph (b)(2)(iii)(D) of this section), a forward or futures contract described in § 1.988-1(a)(1)(ii) and (2)(iii), or combination thereof, which reduces the risk of exchange rate fluctuations by reference to the taxpayer's functional currency with respect to nonfunctional currency payments made or received under an executory contract. The term hedge also includes an option contract described in § 1.988-1(a)(1)(ii) and (2)(iii), but only if the option's expiration date is on or before the accrual date. The premium paid for an option that lapses shall be integrated with the executory contract.

Treas. Reg. §1.988-5(b)(2)(iii)(D) provides that a hedging account is an account with a bank or other financial institution used exclusively for deposits of nonfunctional currency used to hedge executory contracts. For purposes of determining the basis of units in such account that comprise the hedge, only those units in the account as of the accrual date shall be taken into consideration. A taxpayer may adopt any reasonable convention (consistently applied to all hedging accounts) to determine which units comprise the hedge as of the accrual date and the basis of the units as of such date.

Treas. Reg. §1.988-5(b)(3) provides that a taxpayer must establish a record and before the close of the date the hedge is entered into, the taxpayer must enter into the record a clear description of the executory contract and the hedge and indicate that the transaction is being identified in accordance with paragraph (b)(3) of this section.

Treas. Reg. §1.988-5(b)(4)(i) provides that if a taxpayer enters into a hedged executory contract, amounts paid or received under the hedge by the taxpayer are treated as paid or received by the taxpayer under the executory contract, or any subsequent account payable or receivable, or that portion to which the hedge relates. Also, the taxpayer recognizes no exchange gain or loss on the hedge. If an executory contract, on the accrual date, becomes an account payable or receivable, the taxpayer recognizes no exchange gain or loss on such payable or receivable for the period covered by the hedge.

Treas. Reg. §1.988-5(b)(4)(ii) provides the effect of integrating an executory contract and a hedge that partially hedges such contract is to treat the amounts paid or received under the hedge as paid or received under the portion of the executory contract being hedged, or any subsequent account payable or receivable. The income or expense of services performed or received under the executory contract, or the amount realized or basis of property sold or purchased under the executory contract, that is attributable to that portion of the executory contract that is not hedged shall be translated into functional currency on the accrual date. Exchange gain or loss shall be realized when payment is made or received with respect to any payable or receivable arising on the accrual date with respect to such unhedged amount.

Treas. Reg. §1.988-5(b)(4)(iii) provides that if a taxpayer identifies an executory contract as part of a hedged executory contract as defined in paragraph (b)(2) of this section, and disposes of (or otherwise terminates) the executory contract prior to the accrual date, the hedge shall be treated as sold for its fair market value on the date the executory contract is disposed of and any gain or loss shall be realized and recognized on such date. Such gain or loss shall be an adjustment to the amount received or expended with respect to the disposition or termination, if any. The spot rate on the date the hedge is treated as sold shall be used to determine subsequent exchange gain or loss on the hedge. If a taxpayer identifies a hedge as part of a hedged executory contract as defined in paragraph (b)(2) of this section, and disposes of the hedge prior to the accrual date, any gain or loss realized on such disposition shall not be recognized and shall be an adjustment to the income from, or expense of, the services performed or received under the executory contract, or to the amount realized or basis of the property sold or purchased under the executory contract.

Treas. Reg. §1.988-5(e) provides that in his sole discretion, the Commissioner may issue an advance ruling addressing the income tax consequences of a taxpayer's system of hedging either its net nonfunctional currency exposure or anticipated nonfunctional currency exposure. The ruling may address the character, source, and timing of both the section 988 transaction(s) making up the hedge and the underlying transactions being hedged. The procedures for obtaining a ruling shall be governed by such pertinent revenue procedures and revenue rulings as the Commissioner may provide. The Commissioner will not issue a ruling regarding hedges of a taxpayer's investment in a foreign subsidiary.

The anticipated Target Share Acquisition is not an executory contract as defined in Treas. Reg. §1.988-5(b)(2)(ii) and therefore there is no executory contract at the time the hedging transactions are entered into which would qualify for integrated hedging treatment under Treas. Reg. §1.988-5(b). Absent an advance ruling to the contrary under Treas. Reg. §1.988-5(e), Subsidiary is required to treat the Hedges as separate section 988 transactions that are not integrated with the anticipated Target Share Acquisition. Without an advance ruling, foreign currency gains or losses on Hedges would be realized and recognized under appropriate timing principles of the Internal Revenue Code. We have determined that Subsidiary should be allowed to generally apply the principles of Treas. Reg. §1.988-5(b) (with the modifications set forth below) to integrate its hedges of underlying foreign currency exposure with respect to its anticipated Target Share Acquisition.

### **Rulings**

Based solely on the information provided and the facts set forth above, we rule as follows:

Under the authority provided in Treas. Reg. §1.988-5(e):

- (1) If the Acquisition is completed within one year of Date A or if the Acquisition is terminated within one year of Date A (including a termination because the closing or acceptance conditions were not satisfied or Method 1 was rejected and the Offerors determined not to pursue Method 2), we grant Subsidiary permission to apply the principles of Treas. Reg. §1.988-5(b) (treating the anticipated Target Share Acquisition as an executory contract under Treas. Reg. §1.988-5(b)(2)(ii) and the Hedges as hedges under Treas. Reg. §1.988-5(b)(2)(iii)) subject to the following modifications:
  - a. For any Unneeded Hedge amount, Subsidiary will dispose of (or treat as sold for fair market value) the Hedges in an amount equal to the Unneeded Hedge amount on the day it is determined that there is an Unneeded Hedge, which will be the same day as the relevant Reduction, in the order in which the Hedges were acquired (in other words, under a first in, first out method). For this purpose, each transaction is treated separately and no subsequent transaction is combined with a prior Hedge, even if the item is or was acquired or entered into to replace or otherwise succeed a Hedge. If more than one Hedge was acquired on a single day, the Hedges for that day will be disposed of on a pro rata basis (based on the number of Currency A hedged by each transaction). Any amount disposed of (or treated as sold) will no longer be a Hedge and Subsidiary will revise the identification for any amount it treated as sold at that time. The foreign currency gain or loss from any Unneeded Hedge amount will be

- treated the same as the other Hedges. Any foreign currency gain or loss from a section 988 transaction that is retained after it is no longer a Hedge will not be covered by this ruling and instead will be subject to the general rules under section 988.
- b. Subsidiary will allocate a pro rata portion of the net foreign currency gain or loss from the Hedges to the basis of each Target Share Acquisition Share acquired in the Target Share Acquisition by Subsidiary, whether acquired directly by Subsidiary for Cash Consideration or by Parent for Stock Consideration and then contributed down to Subsidiary (which, for the avoidance of doubt, excludes all Irrevocable Stock Election Shares).
  - c. If the amount of the Hedges is less than the total Cash Consideration required to be paid pursuant to the Target Share Acquisition, Subsidiary will apply the rule in Treas. Reg. §1.988-5(b)(4)(ii) to the portion of the Target Share Acquisition Shares for which the Hedges were not sufficient to pay for the Cash Consideration, except paragraph (1)b will still apply to those shares.
- (2) If the Acquisition is not completed within one year of Date A for any reason not addressed by paragraph (1), Subsidiary will treat the Hedges as sold for fair market value on the day that is one year after Date A and the resulting gain or loss is recognized on such date as section 988 gain or loss.
  - (3) The basis for Currency A in the Deposit account will not be averaged but instead will be determined under the first in, first out method.

### **Closing Agreement**

We have approved a closing agreement with Parent with respect to those issues affecting its tax liability on the basis set forth above. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of the agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

### **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 or the method for computing exchange gain or loss for any item not addressed by these rulings. In particular, other than as provided above, no opinion is expressed or implied about the U.S. federal income tax consequences of the Acquisition or any related hedges, including what the accrual date is for any item.

### **Procedural Information**

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.

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.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representatives.

Sincerely,

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Anthony J. Marra  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel (International)

cc: