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### Legend:

Distributing =

Controlled1 =

Controlled2 =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

Sub9 =

Sub10 =

Sub11 =

FSub1 =

LLC1 =

LLC2 =

LLC3 =

LLC4 =

LLC5 =

Newco =

Corp1 =

Corp2 =

Corp3 =

Corp4 =

Corp5 =

Corp6 =

Corp7 =

Corp8 =

Corp9 =

Corp10 =

Corp11 =

Corp12 =

Corp13 =

Investor =

Business A =

Business B =

Business C =

a =

b% =

c% =

d% =

e% =

f% =

g% =

h% =

i% =

j% =

k% =

l% =

m% =

n% =

o% =

p% =

q% =

\$r =

\$s =

t% =

u% =

v% =

w% =

x% =

\$y =

Date 1 =

Year X =

State A =

Subscription  
Agreement =

X System =

Dear :

This letter responds to your May 11, 2005 request for rulings on certain federal income tax consequences of a series of proposed transactions. Additional information was received in letters dated July 22, 2005, August 11, 2005, and December 2, 2005. The material submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material 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 distributions described below satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b), whether the distributions described below are used principally as a device for the distribution of earnings and profits of any distributing corporation or controlled corporation (see section 355(a)(1)(B) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.355-2(d)). Except with respect to the First Issuance and Second Issuance (each as defined below), this office has made no determination regarding whether the distributions described below 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 any

distributing corporation or any controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

Section 3.01(31) of Rev. Proc. 2005-3, 2005-1 I.R.B. 118, provides that the Service will not rule on the qualification of a transaction as a reorganization under Section 368(a)(1)(A) unless the Service determines that there is a significant issue that is not clearly and adequately addressed by published authority. The taxpayer has submitted information indicating that a significant issue exists with respect to the Section 368(a)(1)(A) transaction described below.

### SUMMARY OF FACTS

Distributing is a publicly traded corporation and the common parent of an affiliated group of companies that files a consolidated Federal income tax return on a calendar-year basis (the “Distributing Group”) using the accrual method of accounting. Distributing has outstanding one class of voting common stock, one class of non-voting preferred stock, and one class of voting preference stock. There are a institutional shareholders that through various funds and entities may own more than 5% of Distributing’s common stock. To the best knowledge of Distributing, the remainder of its common stock is held by less than 5-percent shareholders.

Distributing directly conducts Business A and indirectly conducts several other businesses. Distributing wholly owns Controlled1. Controlled1 directly and indirectly conducts Business B and Business C. Distributing also wholly owns Sub3 and owns b% of Sub2. Sub2 is not included in the Distributing Group for federal income tax purposes.

Sub3 owns the sole membership interest in LLC1. Sub2 wholly owns FSub1. FSub1 is a foreign entity.

Controlled1 wholly owns Sub1 and Sub4. Controlled1 currently owns c% of Controlled2, but will own d% of Controlled2 following step (i) of the Transactions (as defined below). The remaining shares of Controlled2 are owned by Corp2 through Corp13 as described below.

Corp1 is a wholly owned subsidiary of Controlled1. Corp2 through Corp12 are each wholly owned subsidiaries of Corp1 and own the following percentages of Controlled2 stock: Corp2 owns e%, Corp3 owns f%, Corp4 owns g%, Corp5 owns h%, Corp6 owns i%, Corp7 owns j%, Corp8 owns k%, Corp9 owns l%, Corp10 owns m%, Corp11 owns n%, and Corp12 owns o%. Corp13 is owned by Controlled1 and Corp2 through Corp12. Corp13 owns p% of Controlled2. Corp2 through Corp13 are collectively referred to as the “Controlled2 Shareholders.”

Controlled1 wholly owns the stock of Sub5, Sub6, Sub7 and Sub8. Controlled1 owns the sole membership interests in LLC2, LLC3, LLC4 and LLC5. Controlled1 owns

a g% convertible preferred stock interest in Sub9. Sub5 through Sub9 and LLC2 through LLC5 are collectively referred to as the “Business A Subsidiaries.” Controlled2 wholly owns Sub10 and Sub11.

For federal income tax purposes, Distributing, Controlled1, Controlled2, Sub1 through Sub11, FSub1, Newco, and Corp1 through Corp13 are all treated as corporations. LLC1 through LLC3, and LLC5 are each disregarded entities for federal income tax purposes. LLC4 is treated as a partnership for federal income tax purposes.

The financial information submitted by Distributing indicates that Business A conducted by Distributing and Business B and Business C conducted by Controlled1 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

On Date 1, the shareholders of Sub10 (Controlled1, Corp2, Corp3, Corp5, Corp6, Corp7, Corp9, Corp10, and Corp13) contributed their Sub10 stock to Controlled2 in exchange for Controlled2 common stock (the “Sub10 Transaction”). Additionally, on Date 1, the shareholders of Sub11 (Controlled1, Corp4, Corp8, Corp11, Corp12, and Corp13) contributed their Sub11 stock to Controlled2 in exchange for Controlled2 common stock (the “Sub11 Transactions”).

In Year X, Corp1 sold certain stock and real estate assets (the “Corp1 Sales”). At the end of Year X, Distributing made a capital contribution to Controlled1 of a subordinated note receivable from Corp1. As a result, Controlled1 has an intercompany receivable owing from Corp1 (the “Corp1 Debt”). Controlled1’s basis in the Corp1 Debt is the adjusted issue price of the debt. The Corp1 Debt will be extinguished in the Second Sub Merger. In addition, several of the Controlled2 Shareholders have intercompany debt outstanding with Controlled1 and/or Corp1 (the “Intercompany Debt”) that will be extinguished in either the Sub Mergers or the Second Sub Merger.

### **The Transactions**

For what is represented to be a valid business purpose, the following series of transactions is proposed (the “Transactions”):

- (i) In order to merge the Controlled2 shareholders into Controlled1: (a) Corp2 through Corp12 will merge into Corp1, each pursuant to a plan of complete liquidation (merger) (collectively, the “Sub Mergers”), (b) Corp1 will merge into Controlled1 pursuant to a plan of complete liquidation (merger) (the “Second Sub Merger”), (c) Corp13 will merge into Controlled1 pursuant to a plan of complete liquidation (merger) (the “Third Sub Merger”).
- (ii) Sub1 will merge into Controlled1 in accordance with State A law (the “Merger”).

- (iii) Controlled1 will contribute its Business C assets, its stock and ownership interests in the Business A Subsidiaries, and intellectual property, some of which is related to Business C, to Controlled2 (the "Contribution").
- (iv) Controlled2 will assume approximately \$r of Controlled1's debt.
- (v) Controlled2 will contribute certain assets formerly held by Sub1 to Newco in exchange for all of the Newco stock.
- (vi) Sub2 will sell all of its stock in FSub1 to Controlled1.
- (vii) Sub3 will sell its sole membership interest in LLC1 to Controlled1.
- (viii) Sub4 will sell certain assets that are not related to Business B to Controlled2.
- (ix) Controlled1 will distribute all of the stock of Controlled2 to Distributing (the "First Distribution").
- (x) Controlled1 will consummate one or more financing transactions taking the form of a public debt offering, institutional loans, revolving credit facility and/or a securitization of certain receivables that will, collectively, raise approximately \$s (the "Financing Transactions"). Controlled1 will use the proceeds of the Financing Transactions to repay intercompany debt owing to Distributing and other members of the Distributing Group. Distributing will cancel or assume any of Controlled1's remaining intercompany debt.
- (xi) Distributing will transfer the Business B assets it holds to Controlled1 (the "Second Contribution").
- (xii) The Investor will purchase t% of Controlled1's common stock (the "First Issuance") pursuant to the Subscription Agreement.
- (xiii) Distributing will distribute u% of the common stock of Controlled1 pro rata to the shareholders of Distributing, but will not issue fractional shares (the "Second Distribution"). Instead, the distribution agent will aggregate and sell on the open market all fractional shares and distribute the proceeds to those shareholders otherwise entitled to fractional shares.
- (xiv) The Investor will purchase Controlled1's non-voting series A convertible preferred stock (the "Preferred Stock"), representing a v% economic interest on a fully diluted basis in Controlled1 (the "Second Issuance") pursuant to the Subscription Agreement. Following the Second Issuance, the common stock and Preferred Stock held by the Investor in the aggregate will represent a w% interest on a fully diluted basis in Controlled1. The Preferred Stock is convertible at any time after the second anniversary of the Second



Distribution into Controlled1 common stock representing x% of the voting power in Controlled1.

It is intended that Distributing and Controlled1 will enter into various agreements in connection with the Second Distribution that will result in continuing transactions between Distributing and Controlled1, including a Separation and Distribution Agreement, Transition Services Agreements, Tax Indemnity Agreement, Employee Benefits Agreement, and Intellectual Property Agreement.

## REPRESENTATIONS

In connection with the Sub Mergers described above in step (i)(a), the following representations have been made:

- (a) Corp1, on the date of the adoption of the plans of liquidation (merger), and at all times until the Sub Mergers occur, will be the owner of at least 80% of the single outstanding class of stock of each of Corp2 through Corp12 (the "Liquidating Entities").
- (b) No shares of any of the Liquidating Entities' stock will have been redeemed during the three years preceding the adoption of the plans of liquidation (merger).
- (c) All distributions from the Liquidating Entities to Corp1 pursuant to the plans of complete liquidation (merger) will be made within a single taxable year of the Liquidating Entities.
- (d) Each of the Liquidating Entities will cease to exist for federal income tax purposes at the effective time of the Sub Mergers.
- (e) The Liquidating Entities will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years before the date of adoption of the plan of liquidation (merger), (ii) the Sub10 Transactions, and (iii) the Sub11 Transactions.
- (f) No assets of the Liquidating Entities have been, or will be, disposed of by either the Liquidating Entities or Corp1, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before adoption of the plans of liquidation (merger), and (iii) the Second Sub Merger.
- (g) The Sub Mergers will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of the Liquidating Entities, if persons holding, directly or indirectly, more than 20% in value of the stock of the Liquidating Entities immediately before the Sub Mergers also hold, directly or indirectly, more than 20% in value of the stock of the Recipient. For purposes of this representation, ownership is determined

by applying the constructive ownership rules of section 318(a) as modified by section 304(c)(3).

- (h) Prior to adoption of the plans of liquidation (merger), no assets of the Liquidating Entities will have been distributed in kind, transferred, or sold to Corp1, except for (i) transactions occurring in the ordinary course of business and (ii) transactions occurring more than three years before adoption of the plans of liquidation (merger).
- (i) The Liquidating Entities will report all earned income represented by assets that will be distributed to Corp1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (j) The fair market value of the assets of each of the Liquidating Entities, respectively, will exceed the respective liabilities of each of the Liquidating Entities both at the date of the adoption of the plan of liquidation (merger) and immediately before the Sub Mergers.
- (k) Other than the Intercompany Debt, there is no intercorporate debt existing between Corp1 and any of the Liquidating Entities, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the Liquidating Entities' plans of liquidation (merger).
- (l) Corp1 is not an organization exempt from federal income tax under section 501 or any other provision of the Code.
- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub Mergers have been fully disclosed.

In connection with the Second Sub Merger described above in step (i)(b), the following representations are made:

- (a) Controlled1, on the date of the adoption of the plan of liquidation (merger), and at all times until the Second Sub Merger occurs, will be the owner of at least 80% of the single outstanding class of stock of Corp1.
- (b) No shares of Corp1 stock will have been redeemed during the three years preceding the adoption of the plan of liquidation (merger).
- (c) All distributions from Corp1 to Controlled1 pursuant to the plan of complete liquidation (merger) will be made within a single taxable year of Corp1.

- (d) Corp1 will cease to exist for federal income tax purposes at the effective time of the Second Sub Merger.
- (e) Except for the Sub Mergers, Corp1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation (merger).
- (f) No assets of Corp1 have been, or will be, disposed of by either Corp1 or Controlled1, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before adoption of the plan of liquidation (merger), and (iii) the Corp1 Sales.
- (g) The Second Sub Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Corp1, if persons holding, directly or indirectly, more than 20% in value of the stock of Corp1 immediately before the Second Sub Merger also hold, directly or indirectly, more than 20% in value of the stock of the Recipient. For purposes of this representation, ownership is determined by applying the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
- (h) Prior to adoption of the plan of liquidation (merger), no assets of Corp1 will have been distributed in kind, transferred, or sold to Controlled1, except for (i) transactions occurring in the ordinary course of business and (ii) transactions occurring more than three years before adoption of the plan of liquidation (merger).
- (i) Corp1 will report all earned income represented by assets that will be distributed to Controlled1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (j) The fair market value of the assets of Corp1 will exceed the liabilities of Corp1 both at the date of the adoption of the plan of liquidation (merger) and immediately before the Second Sub Merger.
- (k) Other than the Corp1 Debt and the Intercompany Debt, there is no intercorporate debt existing between Controlled1 and Corp1, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the Corp1 plan of liquidation (merger).
- (l) Controlled1 is not an organization exempt from federal income tax under section 501 or any other provision of the Code.

- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Second Sub Merger have been fully disclosed.

In connection with the Third Sub Merger described in step (i)(c) above, the following representations have been made:

- (a) Controlled1, on the date of the adoption of the plan of liquidation (merger), and at all times until the Third Sub Merger occurs, will be the owner of at least 80% of the single outstanding class of stock of Corp13.
- (b) No shares of Corp13 stock will have been redeemed during the three years preceding the adoption of the plan of liquidation (merger).
- (c) All distributions from Corp13 to Controlled1 pursuant to the plan of complete liquidation (merger) will be made within a single taxable year of Corp13.
- (d) Corp13 will cease to exist for federal income tax purposes at the effective time of the Third Sub Merger.
- (e) Corp13 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years before the date of adoption of the plan of liquidation (merger), (ii) the Sub10 Transactions, and (iii) the Sub11 Transactions.
- (f) No assets of Corp13 have been, or will be, disposed of by either Corp13 or Controlled1, except for (i) dispositions in the ordinary course of business and (ii) dispositions occurring more than three years before adoption of the plan of liquidation (merger).
- (g) The Third Sub Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Corp13, if persons holding, directly or indirectly, more than 20% in value of the stock of Corp13 immediately before the Third Sub Merger also hold, directly or indirectly, more than 20% in value of the stock of the Recipient. For purposes of this representation, ownership is determined by applying the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
- (h) Prior to adoption of the plan of liquidation (merger), no assets of Corp13 will have been distributed in kind, transferred, or sold to Controlled1, except for (i) transactions occurring in the ordinary course of business and (ii) transactions occurring more than three years before adoption of the plan of liquidation.

- (i) Corp13 will report all earned income represented by assets that will be distributed to Controlled1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (j) The fair market value of the assets of Corp13 will exceed the liabilities of Corp13 both at the date of the adoption of the plan of liquidation (merger) and immediately before the Third Sub Merger.
- (k) There is no intercorporate debt existing between Controlled1 and Corp13, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the Corp13 plan of liquidation (merger).
- (l) Controlled1 is not an organization exempt from federal income tax under section 501 or any other provision of the Code.
- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Third Sub Merger have been fully disclosed.

In connection with the Merger described above in step (ii), the following representations have been made:

- (a) The Merger is being effected pursuant to the laws of State A. As a result of the operation of such laws, all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Sub1 will become the assets and liabilities of Controlled1.
- (b) During the five-year period ending on the date of the proposed transaction: (i) neither Controlled1 (acquiring), nor any person related to Controlled1 (as defined in Treas. Reg. § 1.368-1(e)(3)), will have acquired stock of Sub1 (target) with consideration other than Controlled1 stock; (ii) neither Sub1, nor any person related to Sub1 (as defined in Treas. Reg. § 1.368-1(e) determined without regard to Treas. Reg. § 1.368-1(e)(3)(i)(A)), will have acquired stock of Sub1 with consideration other than Controlled1 stock or stock of Sub1; and (iii) no distribution will have been made with respect to stock of Sub1 other than ordinary, normal, regular, dividend distributions made pursuant to historic dividend paying practice of Sub1 either directly or through any transaction, agreement or arrangement with any other person.
- (c) Controlled1 (acquiring) has no plan or intention to sell or otherwise dispose of any of the assets of Sub1 (target) acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C).

- (d) The liabilities of Sub1 (target) assumed by Controlled1 (acquiring) and the liabilities to which the transferred assets of Sub1 are subject (as determined under section 357(d)) were incurred by Sub1 in the ordinary course of its business.
- (e) Following the Merger, Controlled1 (acquiring) will continue the historic business of Sub1 (target) or use a significant portion of Sub1's historic business assets in a business.
- (f) Controlled1 (acquiring) and Sub1 (target) will pay their respective expenses, if any, incurred in connection with the Merger.
- (g) There is no intercorporate indebtedness existing between Sub1 (target) and Controlled1 (acquiring) that was issued, acquired, or will be settled at a discount.
- (h) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (i) The total fair market value of the assets transferred to Controlled1 by Sub1 will exceed the sum of (a) the amount of liabilities assumed (as determined under section 357(d)) by Controlled1 in connection with the exchange, (b) the amount of liabilities owed to Controlled1 by Sub1 that are discharged or extinguished in connection with the exchange, and (c) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by Sub1 in connection with the exchange. The fair market value of the assets of Controlled1 will exceed the amount of its liabilities immediately after the exchange.
- (j) Neither Controlled1 nor Sub1 are under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (k) Gain or loss with respect to the property transferred was subject to tax under subtitle A of the Internal Revenue Code in the hands of the transferor immediately before the transfer.
- (l) Controlled1, on the date of the adoption of the plan of liquidation (merger), and at all times until the Merger occurs, will be the owner of at least 80% of the single outstanding class of stock of Sub1.
- (m) No shares of Sub1 stock will have been redeemed during the three years preceding the adoption of the plan of liquidation (merger).
- (n) All distributions from Sub1 to Controlled1 pursuant to the plan of complete liquidation (merger) will be made with a single taxable year of Sub1.

- (o) Sub1 will cease to exist for federal income tax purposes at the effective time of the Merger.
- (p) Sub1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation (merger).
- (q) No assets of Sub1 have been, or will be, disposed of by either Sub1 or Controlled1, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before adoption of the plan of liquidation (merger), and (iii) the Contribution.
- (r) The Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub1, if persons holding, directly or indirectly, more than 20% in value of the stock of Sub1 immediately before the Merger also hold, directly or indirectly, more than 20% in value of the stock of the Recipient. For purposes of this representation, ownership will be determined immediately after the Second Distribution and by applying the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
- (s) Prior to adoption of the plan of liquidation (merger), no assets of Sub1 will have been distributed in kind, transferred, or sold to Controlled1, except for (i) transactions occurring in the ordinary course of business and (ii) transactions occurring more than three years before adoption of the plan of liquidation.
- (t) Sub1 will report all earned income represented by assets that will be distributed to Controlled1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (u) The fair market value of the assets of Sub1 will exceed the liabilities of Sub1 both at the date of the adoption of the plan of liquidation (merger) and immediately before the Merger.
- (v) Other than \$y of indebtedness held by Sub1 and due from Controlled1, there is no intercorporate debt existing between Controlled1 and Sub1, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years before the date of adoption of the Sub1 plan of liquidation (merger).
- (w) Controlled1 is not an organization exempt from federal income tax under section 501 or any other provision of the Code.
- (x) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Merger have been fully disclosed.

In connection with the Contribution and the First Distribution (steps (iii), (iv) and (ix)), the following representations have been made:

- (a) The indebtedness owed by Controlled2 (the controlled corporation) to Controlled1 (the distributing corporation) after the distribution of the stock of Controlled2 will not constitute stock or securities.
- (b) No part of the Controlled2 stock (the controlled corporation) distributed by Controlled1 (the distributing corporation) to its shareholder will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Controlled1.
- (c) The five years of financial information submitted on behalf of Controlled1 (the distributing corporation) and Controlled2 (the controlled corporation) is representative of each corporation's present operation, and with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Controlled2 (the controlled corporation) and Controlled1 (the distributing corporation) will each continue the active conduct of its business, independently and with its separate employees.
- (e) The distribution of the stock, or stock and securities, of Controlled2 is carried out for the corporate business purposes of allowing each of Controlled1 and Distributing to focus exclusively on its respective business, improving investor and customer awareness of Distributing, reducing Distributing's risk profile and providing Controlled1 with growth opportunities, and facilitating the investment in Controlled1 by the Investor. The distribution of the stock, or stock and securities, of Controlled2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (f) The transaction is not used principally as a device for the distribution of the earnings and profits of Controlled1 (the distributing corporation) or Controlled2 (the controlled corporation) or both.
- (g) The total adjusted bases of the assets transferred to Controlled2 (the controlled corporation) by Controlled1 (the distributing corporation) equals or exceeds the sum of the liabilities assumed (within the meaning of section 357(d)) by the controlled corporation. No money or other property will be transferred from the controlled corporation to the distributing corporation and then from the distributing corporation to its creditors.
- (h) The fair market value of the assets of Controlled1 and Controlled2, respectively, will exceed the amount of their liabilities immediately after the exchange.



- (i) The liabilities assumed in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) Each of the following acquisitions of stock of Controlled1 (the distributing corporation) (including any predecessor or successor of such corporation) is or may be part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the distribution of Controlled2 (the controlled corporation) stock: the First Issuance and the Second Issuance. Taking all of these acquisitions into account, stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Controlled1 (including any predecessor or successor of such corporation) will not be acquired by any person or persons.
- (k) To the extent that any of the transfers pursuant to the First Distribution constitutes an early disposition of property with respect to which any investment credit has been (or will be) claimed under section 46, the income tax liability for the taxable year in which the investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect the early disposition of the property.
- (l) Controlled1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the First Distribution.
- (m) Except for trade payables, advances arising in the ordinary course of business, and notes which do not constitute securities, no intercorporate debt will exist between Controlled1 (the distributing corporation) and Controlled2 (the controlled corporation) at the time of, or subsequent to, the distribution of Controlled2 stock.
- (n) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See Treas. Reg. § 1.1502-13 and Treas. Reg. § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). At the time of the First Distribution (taking into account the transactions described in steps (i), (iii), and (iv)), Controlled1 will not have an excess loss account in the stock of Controlled2.
- (o) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled1 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 First Distribution.

- (p) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled2 stock, that was either: (i) 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 or (ii) attributable to distributions on Controlled1 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 First Distribution.
- (q) Payments made in connection with all continuing transactions, if any, between Controlled1 (the distributing corporation) and Controlled2 (the controlled corporation) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (r) Neither Controlled1 nor Controlled2 are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

In connection with the Second Contribution and the Second Distribution described above in steps (xi) and (xiii), the following representations have been made:

- (a) The indebtedness owed by Controlled1 (the controlled corporation) to Distributing (the distributing corporation) after the distribution of the stock of Controlled1 will not constitute stock or securities.
- (b) No part of the Controlled1 stock distributed by Distributing to its shareholders will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing and Controlled1 is representative of each corporation's present operation, and with regard to each such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Controlled1 and Distributing will each continue the active conduct of its business, independently and with its separate employees.
- (e) The distribution of the stock, or stock and securities, of Controlled1 is carried out for the corporate business purposes of allowing each of Controlled1 and Distributing to focus exclusively on its respective business, improving investor and customer awareness of Distributing, reducing Distributing's risk profile and

providing Controlled1 with growth opportunities, and facilitating the investment in Controlled1 by the Investor. The distribution of the stock, or stock and securities, of Controlled1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (f) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled1 or both.
- (g) The payment of cash in lieu of fractional shares of Controlled1 is solely for the purpose of avoiding the expense and inconvenience to Controlled1 of issuing fractional shares and does not represent separately bargained for consideration. The total cash consideration to be paid to the shareholders of Distributing in lieu of fractional shares will not exceed one percent of the total consideration that will be distributed in the Transaction. The fractional share interests will be aggregated, and no shareholder of Distributing will receive cash in an amount equal or greater than the value of one full share of Controlled1 stock.
- (h) The total adjusted bases of the assets transferred to Controlled1 by Distributing equals or exceeds the sum of the liabilities assumed (within the meaning of section 357(d)) by the controlled corporation. No money or other property will be transferred from the controlled corporation to the distributing corporation and then from the distributing corporation to its creditors.
- (i) The fair market value of the assets of Distributing and Controlled1, respectively, will exceed the amount of their liabilities immediately after the exchange.
- (j) The liabilities assumed in the Transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) Each of the following acquisitions of stock of Controlled1 (including any predecessor or successor of such corporation) is or may be part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the distribution of Controlled1 stock: the First Issuance and the Second Issuance. Taking all of these acquisitions into account, stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Controlled1 (including any predecessor or successor of such corporation) will not be acquired by any person or persons.
- (l) To the extent that any of the transfers pursuant to the Second Distribution constitutes an early disposition of property with respect to which any investment credit has been (or will be) claimed under section 46, the income tax liability for the taxable year in which the investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before amendment by Public Law

101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect the early disposition of the property.

- (m) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Second Distribution.
- (n) Except for trade payables, advances arising in the ordinary course of business, and notes which do not constitute securities, no intercorporate debt will exist between Distributing and Controlled<sup>1</sup> at the time of, or subsequent to, the distribution of Controlled<sup>1</sup> stock.
- (o) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See Treas. Reg. § 1.1502-13 and Treas. Reg. § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19 will be included in income immediately before the Second Distribution.
- (p) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% 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 Second Distribution.
- (q) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled<sup>1</sup> stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled<sup>1</sup> stock, that was either: (i) 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 or (ii) attributable to distributions on 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 Second Distribution.
- (r) Except for certain pre-distribution services provided by Distributing under the Transition Services Agreement and Employee Benefits Agreement (the “Pre-Distribution Services”), payments made in connection with the Transition Services Agreement, Intellectual Property Agreement, and Employee Benefits Agreement, if any, between Distributing and Controlled<sup>1</sup> will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s

length. The Pre-Distribution Services include: (i) developing cash management services, (ii) setting up insurance coverage, (iii) obtaining a mobile phone service, (iv) developing finance and human resources programming, (v) providing X System enhancements, (vi) obtaining software consents, (vii) establishing a pension plan and allowing certain Controlled1 employees to participate in Distributing's pension plan for up to two years, (viii) establishing a welfare benefits plan and providing certain Controlled1 employees welfare benefits (if Controlled1 has not established a welfare plan by the time of the Distribution Date) and (ix) allowing certain Controlled1 employees to participate in Distributing's retiree medical plan (Distributing will not be reimbursed for any costs in connection with providing retiree medical benefits to former employees of Controlled1). Distributing will provide the Pre-Distribution Services at no cost prior to the Distribution Date, and to the extent such services are provided following the Distribution Date, at cost. Except as otherwise noted, the Pre-Distribution Services will be completed prior to the Distribution Date or within the 12 month period following the Distribution Date.

- (s) Neither Distributing nor Controlled1 are investment companies as defined in Section 368(a)(2)(F)(iii) and (iv).

## RULINGS

Based solely on the information submitted and the representations set forth above, with respect to the Sub Mergers described above in step (i)(a) we hold as follows:

- (1) Each of the Sub Mergers will qualify as a complete liquidation of each of the Liquidating Entities under section 332 (section 332(b)).
- (2) No gain or loss will be recognized by Corp1 upon the Sub Mergers (section 332(a)).
- (3) No gain or loss will be recognized by any of the Liquidating Entities upon the Sub Mergers (sections 336(d)(3), 337(a), and 337(b)).
- (4) The basis of Corp1 in each asset received from the Liquidating Entities in the Sub Mergers will equal the basis of that asset in the hands of the respective Liquidating Entity immediately before the Sub Mergers (section 334(b)(1)).
- (5) The holding period Corp1 will have in each asset received from the Liquidating Entities in the Sub Mergers will include the period during which that asset was held by the respective Liquidating Entity (section 1223(2)).
- (6) Corp1 will succeed to and take into account the items of the Liquidating Entities described in section 381(c), subject to the conditions and limitations specified in

sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).

- (7) Except to the extent the earnings and profits of the Liquidating Entities are reflected in the earnings and profits of Corp1, Corp1 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of the Liquidating Entities as of the date of the Sub Mergers (section 381(c)(2)(A), Treas. Reg. § 1.381(c)(2)-1, and Treas. Reg. § 1.1502-33(a)(2)). Any deficit in the earnings and profits of the Liquidating Entities or Corp1 will be used only to offset earnings and profits accumulated after the date of the Sub Mergers (section 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, with respect to the Second Sub Merger described above in step (i)(b) we hold as follows:

- (1) The Second Sub Merger will qualify as a complete liquidation of Corp1 under section 332 (section 332(b)).
- (2) No gain or loss will be recognized by Controlled1 upon the Second Sub Merger (section 332(a)).
- (3) No gain or loss will be recognized by Corp1 upon the Second Sub Merger (sections 336(d)(3), 337(a), and 337(b)).
- (4) The basis of Controlled1 in each asset received from Corp1 in the Second Sub Merger will equal the basis of that asset in the hands of Corp1 immediately before the Second Sub Merger (section 334(b)(1)).
- (5) The holding period Controlled1 will have in each asset received from Corp1 in the Second Sub Merger will include the period during which that asset was held by Corp1 (section 1223(2)).
- (6) Controlled1 will succeed to and take into account the items of Corp1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
- (7) Except to the extent the earnings and profits of Corp1 are reflected in the earnings and profits of Controlled1, Controlled1 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Corp1 as of the date of the Second Sub Merger (section 381(c)(2)(A), Treas. Reg. § 1.381(c)(2)-1, and Treas. Reg. § 1.1502-33(a)(2)). Any deficit in the earnings and profits of Corp1 or Controlled1 will be used only to offset earnings and profits accumulated after the date of the Second Sub Merger (section 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, with respect to the Third Sub Merger described above in step (i)(c) we hold as follows:

- (1) The Third Sub Merger will qualify as a complete liquidation of Corp13 under section 332 (section 332(b)).
- (2) No gain or loss will be recognized by Controlled1 upon the Third Sub Merger (section 332(a)).
- (3) No gain or loss will be recognized by Corp13 upon the Third Sub Merger (sections 336(d)(3), 337(a), and 337(b)).
- (4) The basis of Controlled1 in each asset received from Corp13 in the Third Sub Merger will equal the basis of that asset in the hands of Corp13 immediately before the Third Sub Merger (section 334(b)(1)).
- (5) The holding period Controlled1 will have in each asset received from Corp13 in the Third Sub Merger will include the period during which that asset was held by Corp13 (section 1223(2)).
- (6) Controlled 1 will succeed to and take into account the items of Corp13 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
- (7) Except to the extent the earnings and profits of Corp13 are reflected in the earnings and profits of Controlled1, Controlled1 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Corp13 as of the date of the Third Sub Merger (section 381(c)(2)(A), Treas. Reg. § 1.381(c)(2)-1, and Treas. Reg. § 1.1502-33(a)(2)). Any deficit in the earnings and profits of Corp13 or Controlled1 will be used only to offset earnings and profits accumulated after the date of the Third Sub Merger (section 381(c)(2)(B)).

Based solely on the information submitted and the representations set forth above, with respect to the Merger described above in step (ii) we hold as follows:

- (1) No gain or loss will be recognized by Sub1 in the Merger.
- (2) No gain or loss will be recognized by Controlled1 in the Merger.
- (3) The basis of each asset received by Controlled1 in the Merger will equal the basis of that asset in the hands of Sub1 immediately before the Merger.

- (4) The holding period of each asset received by Controlled1 in the Merger will include the period during which Sub1 held that asset.

Based solely on the information submitted and the representations set forth above, with respect to the Contribution and First Distribution described above in steps (iii), (iv) and (ix) we hold as follows:

- (1) The Contribution and the assumption by Controlled2 of Controlled1's liabilities in connection with the First Distribution, followed by the distribution of the Controlled2 common stock will, collectively, qualify as a "reorganization" within the meaning of section 368(a)(1)(D). Controlled1 and Controlled2 each will be a "party to the reorganization" within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Controlled1 with respect to the Contribution and assumptions described in ruling (1) (sections 357 and 361(a)).
- (3) No gain or loss will be recognized by Controlled2 with respect to the Contribution described in ruling (1) (section 1032(a)).
- (4) Controlled2's basis in each applicable asset contributed by Controlled1 to Controlled2, as described in ruling (1), will equal the basis of that asset in the hands of Controlled1 immediately before the Contribution (section 362(b)).
- (5) Controlled2's holding period for each applicable asset contributed by Controlled1 to Controlled2, as described in ruling (1), will include the period during which Controlled1 held that asset (section 1223(2)).
- (6) No gain or loss will be recognized by Controlled1 with respect to the distribution of the Controlled2 common stock to shareholders of Controlled1 common stock (sections 355(c) and 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing upon the receipt of the Controlled2 common stock in the First Distribution (section 355(a)(1)).
- (8) The aggregate basis of the Controlled1 common stock and the Controlled2 common stock in the hands of Distributing immediately after the First Distribution will be the same as the aggregate basis of the Controlled1 common stock held by Distributing immediately before the distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(a)(1), (b), and (c)).
- (9) The holding period of the Controlled2 common stock received by Distributing in the First Distribution will include the holding period of the Controlled1 common stock with respect to which the distribution was made, provided that the



Controlled1 common stock was held as a capital asset on the date of the First Distribution (section 1223(1)).

- (10) Earnings and profits will be allocated between Controlled1 and Controlled2 in accordance with section 312(h), Treas. Reg. § 1.312-10(a), and Treas. Reg. § 1.1502-33(f)(2).

Based solely on the information submitted and the representations set forth above, with respect to the Second Contribution and Second Distribution described above in steps (xi) and (xiii) we hold as follows:

- (1) The Second Contribution followed by the Second Distribution will, collectively, qualify as a “reorganization” within the meaning of section 368(a)(1)(D). Distributing and Controlled1 each will be a “party to the reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing with respect to the Second Contribution described in ruling (1) (sections 357 and 361(a)).
- (3) No gain or loss will be recognized by Controlled1 with respect to the Second Contribution described in ruling (1) (section 1032(a)).
- (4) Controlled1's basis in each applicable asset contributed by Distributing to Controlled1, as described in ruling (1), will equal the basis of that asset in the hands of Distributing immediately before the Second Contribution (section 362(b)).
- (5) Controlled1's holding period for each applicable asset contributed by Distributing to Controlled1, as described in ruling (1), will include the period during which Distributing held that asset (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing with respect to the distribution of the Controlled1 common stock to shareholders of Distributing common stock (sections 355(c) and 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing common stock upon the receipt of the Controlled1 common stock in the Second Distribution (section 355(a)(1)).
- (8) The aggregate basis of the Distributing common stock and the Controlled1 common stock in the hands of the shareholders of Distributing common stock immediately after the Second Distribution will be the same as the aggregate basis of the Distributing common stock held by the shareholders of Distributing common stock immediately before the distribution, allocated in proportion to the

fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(a)(1), (b), and (c)).

- (9) The holding period of the Controlled1 common stock received by the shareholders of Distributing common stock in the Second Distribution will include the holding period of the Distributing common stock with respect to which the distribution was made, provided that the Distributing common stock was held as a capital asset on the date of the Second Distribution (section 1223(1)).
- (10) As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled1 will be made under section 312(h), Treas. Reg. § 1.1502-33(e)(3), and Treas. Reg. § 1.312-10(a).
- (11) Payments made by and between Distributing and Controlled1 under the Tax Indemnity Agreement regarding liabilities that (i) relate to periods ending on or before the Distributions, and (ii) do not become fixed and ascertainable until after the Distributions, will be treated as occurring immediately before the Distributions.
- (12) The payment of cash, if any, in lieu of fractional shares of Controlled1 stock, will be treated for federal income tax purposes as if the fractional shares had been distributed to the shareholder as part of the distribution and then had been disposed of by such shareholder for the amount of such cash in a sale or exchange. The gain (or loss), if any, will be treated as a capital gain (or loss), provided such stock was held as a capital asset by the selling shareholder of Distributing (section 1001).

No opinion is expressed about the tax treatment of the proposed transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the transaction is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and, (iii) whether the distributions and an acquisition or acquisitions (other than the First Issuance and Second Issuance) are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii). In addition, except for ruling (11) with respect to the Second Contribution and Second Distribution, no opinion is expressed about the federal tax treatment of compensation paid in connection with any continuing transactions as described in the last paragraph of the Summary of Facts section.

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

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Transactions for the taxable year in which the Transactions are completed.

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

Sincerely,

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Victor L. Penico  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(Corporate)

cc: