

Internal Revenue Service

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PLR-112210-11

Date:

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LEGEND

Parent =

Distributing A =

Distributing B =

Controlled =

Controlled 1 =

Controlled 2 =

HoldCo =

PLR-112210-11

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

NewCo LLC =

Exchange =

Industry =

Services =

Business A =

Business B =

State A =

State B =

State C =

State D =

X =

Date 1 =

Dear :

This letter ruling responds to Parent's March 23, 2011 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of the Proposed Transaction (described below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon 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 Proposed Transaction: (i) satisfy the business purpose requirements of Treas. Reg. § 1.355-2(b); (ii) are being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) 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 the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Parent is a publicly traded holding company and the common parent of an affiliated group of corporations (the Parent Group) that join in the filing of a consolidated return for federal income tax purposes. Parent's common stock is widely held and traded on the Exchange.

Distributing A is a wholly-owned subsidiary of Parent and is an internal holding company for all of the businesses conducted by the Parent Group. This two-tiered holding company structure serves various corporate business purposes, including achieving certain financing objectives.

In addition to stock and other equity interests of entities not relevant here, Distributing A wholly owns all of the stock of Distributing B, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6.

Distributing B wholly owns all of the stock of Controlled 1 and Controlled 2.

Sub 1 wholly owns all of the stock of Sub 7.

Sub 6 wholly owns all of the stock of Sub 8, Sub 9, and Sub 10.

In anticipation of the Proposed Transaction, Distributing A formed Controlled and HoldCo. All of the stock of each of Controlled and HoldCo is owned by Distributing A. Upon completion of the Proposed Transaction, Controlled and HoldCo will, with respect to Business B, replicate the two-tiered holding company structure currently utilized by Parent and the Parent Group.

Distributing A has also formed NewCo LLC, a limited liability company all of the interests in which are held by Distributing A. NewCo LLC is disregarded as an entity separate from its owner, Distributing A.

The Parent Group is engaged in Industry, providing a broad range of products and services predominantly in State A, State B, State C, and immediately surrounding states. The primary services offered by the Parent Group are Services. The Parent Group operates in Industry through two business units, Business A and Business B.

Parent, through members of its separate affiliated group (as defined in section 355(b)(3)) (the "Parent SAG") are engaged in Business A and Business B. Following the Proposed Transaction (as described below), the Parent SAG will engage in Business A and Controlled, through members of its separate affiliated group (as defined in section 355(b)(3)) (the "Controlled SAG") will engage in Business B.

Financial information has been submitted indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing A has entered into a credit agreement with unrelated lenders under which it has available certain credit facilities (the Distributing A Credit Facility). Distributing A has borrowed under these facilities. Prior to, or concurrent with, the Proposed Transaction (described below), Controlled will enter into a credit agreement similar to that of Distributing A and will borrow under the available credit facilities to fund the Cash Distribution (described in step (xiii) below).

PROPOSED TRANSACTION

For what are represented to be valid business reasons the following transaction has been proposed and/or completed in order to accomplish the separation of Business A and Business B.

- (i) Parent will engage in a reverse stock split (the "Reverse Stock Split") in which shares of its outstanding common stock will be exchanged for a lesser number of shares of common stock. Parent represents that the Reverse Stock Split will qualify as a reorganization within the meaning of section 368(a)(1)(E).
- (ii) Each of Sub 1, Sub 2, and Sub 3 will merge with and into Sub 4, with Sub 4 surviving (collectively, the "First-Tier Mergers"). Parent represents that each of the First-Tier Mergers will qualify as a reorganization within the meaning of section 368(a)(1)(A).
- (iii) Sub 7, now a wholly owned subsidiary of Sub 4, will merge with and into Sub 4, with Sub 4 surviving (the "Sub 7 Liquidation"). Parent represents that the Sub 7 Liquidation will qualify as a complete liquidation under section 332.

- (iv) To align ownership of certain immaterial administrative assets with the use and physical location of the assets: (a) Distributing A will contribute certain office equipment, furniture, and fixtures to Distributing B (the “First Asset Relocation”); (b) Distributing B will contribute these same assets and additional similar assets to Controlled 2 (the “Second Asset Relocation”); (c) Distributing A will contribute certain vehicles to Sub 4 (the “Third Asset Relocation”); and (d) Sub 6 will contribute certain computers, office equipment, and office furniture to Sub 10 (the “Fourth Asset Relocation,” and collectively, with the First, Second, and Third Asset Relocations, the “Asset Relocations”).
- (v) Distributing B will distribute all of the stock of Controlled 1 to Distributing A (the “First Internal Distribution”).
- (vi) Distributing B will distribute all of the stock of Controlled 2 to Distributing A (the “Second Internal Distribution”).
- (vii) Under the laws of State A and State D, Sub 6 will merge with and into NewCo LLC, an entity disregarded from its sole owner, Distributing A (the “Sub 6 Merger”). In the Sub 6 Merger, the following events occur simultaneously at the effective time of the Sub 6 Merger: (i) NewCo LLC will acquire all of the assets and will assume all of the liabilities of Sub 6; and (ii) Sub 6 will cease to exist.
- (viii) Distributing A will contribute to Controlled all of the stock of Controlled 1, Controlled 2, Sub 4, Sub 5, Sub 8, Sub 9, Sub 10, and HoldCo (the “First Contribution”).
- (ix) Controlled will contribute to HoldCo all of the stock of Controlled 1, Controlled 2, Sub 4, Sub 5, Sub 8, Sub 9, and Sub 10 (the “Second Contribution”).
- (x) Distributing A will settle (with cash) each outstanding note payable it has to subsidiaries engaged in Business B, and each subsidiary engaged in Business B will settle (with cash) each outstanding note payable it has to Distributing A.
- (xi) Sub 10 will merge with and into Sub 4, with Sub 4 surviving (the “Sub 10 Merger”). Parent represents that the Sub 10 Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A).
- (xii) Distributing A will distribute all of the stock of Controlled to Parent, (the “Third Internal Distribution”).

- (xiii) In connection with the First Contribution and Third Internal Distribution (steps viii and xii, respectively), Controlled will distribute approximately \$X to Distributing A and Distributing A will use these funds to repay its obligations to its creditors under the Distributing A Credit Facility (the “Cash Distribution”).
- (xiv) Controlled will engage in a forward stock split (the “Forward Stock Split”) in which shares of its outstanding common stock will be exchanged for a greater number of shares of common stock, equal to the number of shares of Parent common stock issued and outstanding immediately prior to the External Distribution. Parent represents that the Forward Stock Split will qualify as a reorganization within the meaning of section 368(a)(1)(E).
- (xv) Parent will distribute, pro rata and pursuant to an exchange ratio, all of the stock of Controlled to its shareholders with respect to the shares of Parent outstanding at the time of such distribution (the “External Distribution”). In lieu of distributing fractional shares of Controlled stock, if any, Parent’s distribution agent will aggregate all fractional shares and sell the whole shares, and the ratable share of the proceeds from the sale will be distributed to Parent’s shareholders.

Parent has outstanding plans providing for certain compensatory stock options, stock appreciation rights, restricted stock awards, restricted stock units, and incentive awards (collectively, the “Equity-Based Interests”) on Parent stock. It is anticipated that the Equity-Based Interests on Parent stock that relate to participants that will be employed by, or will be directors of, Controlled (or a Controlled subsidiary) immediately after the External Distribution will be converted into Equity-Based Interests on Controlled stock in connection with the External Distribution (the “Conversions”). All Equity-Based Interests on Parent stock and Controlled stock outstanding immediately after the External Distribution will be adjusted to reflect the relative values of Parent and Controlled after the External Distribution.

In conjunction with the Proposed Transaction, Parent (and its subsidiaries) and Controlled (and its subsidiaries) will enter into agreements relating to the separation of the businesses and certain continuing transactions between the companies, including a Transition Services Agreement for a period not to exceed two years, a Tax Matters Agreement, an Employee Matters Agreement that will govern the transition of employees and related employee benefit plan matters, and possibly, other commercial service agreements that will be negotiated through an arm’s length process (collectively, the “Ancillary Agreements”).

REPRESENTATIONS

The First Internal Distribution

Parent makes the following representations in connection with the First Internal Distribution described above in step (v).

- (1a) The indebtedness, if any, owed by Controlled 1 to Distributing B after the distribution of the stock of Controlled 1 will not constitute stock or securities.
- (1b) No part of the consideration to be distributed by Distributing B will be received by a Distributing B shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing B.
- (1c) The five years of financial information submitted on behalf of Business A directly conducted by Distributing B is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (1d) The five years of financial information submitted on behalf of Business B directly conducted by Controlled 1 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (1e) Distributing B neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (1f) Controlled 1 neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii), of Business B.
- (1g) Following the First Internal Distribution, Distributing B and Controlled 1 each will continue the active conduct of its respective business, independently and with its separate employees.

- (1h) The First Internal Distribution will be carried out for the corporate business purpose of facilitating the separation of Business A from Business B. The First Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (1i) The First Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing B or Controlled 1 or both.
- (1j) For purposes of section 355(d), immediately after the First Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing B stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing B 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 Internal Distribution.
- (1k) For purposes of section 355(d), immediately after the First Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 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 First Internal Distribution, or (ii) attributable to distributions on Distributing B stock that were 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 Internal Distribution.
- (1l) No intercorporate debt will exist between Distributing B and Controlled 1 at the time of, or subsequent to, the First Internal Distribution.
- (1m) Immediately before the First Internal 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 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing B's excess loss account with respect to the Controlled 1 stock, if any, will be included in income immediately before the First Internal Distribution.

- (1n) Payments made in connection with all continuing transactions, if any, between Distributing B and Controlled 1, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (1o) No two parties to the First Internal Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (1p) The First Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing B or Controlled 1 (including any predecessor or successor of any such corporation).
- (1q) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing B nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

The Second Internal Distribution

Parent makes the following representations in connection with the Second Internal Distribution described above in step (vi).

- (2a) The indebtedness, if any, owed by Controlled 2 to Distributing B after the distribution of the stock of Controlled 2 will not constitute stock or securities.
- (2b) No part of the consideration to be distributed by Distributing B will be received by a Distributing B shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing B.
- (2c) The five years of financial information submitted on behalf of Business A directly conducted by Distributing B is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (2d) The five years of financial information submitted on behalf of Business B directly conducted by Controlled 2 is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

- (2e) Distributing B neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (2f) Controlled 2 neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (2g) Following the Second Internal Distribution, Distributing B and Controlled 2 each will continue the active conduct of its respective business, independently and with its separate employees.
- (2h) The Second Internal Distribution will be carried out for the corporate business purpose of facilitating the separation of Business A from Business B. The Second Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (2i) The Second Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing B or Controlled 2 or both.
- (2j) For purposes of section 355(d), immediately after the Second Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing B stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing B 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 Internal Distribution.
- (2k) For purposes of section 355(d), immediately after the Second Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 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 Second Internal Distribution, or (ii) attributable to distributions on Distributing B stock that were 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 Internal Distribution.

- (2l) No intercorporate debt will exist between Distributing B and Controlled 2 at the time of, or subsequent to, the Second Internal Distribution.
- (2m) Immediately before the Second Internal 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 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing B's excess loss account with respect to the Controlled 2 stock, if any, will be included in income immediately before the distribution.
- (2n) Payments made in connection with all continuing transactions, if any, between Distributing B and Controlled 2, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (2o) No two parties to the Second Internal Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (2p) The Second Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing B or Controlled 2 (including any predecessor or successor of any such corporation).
- (2q) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing B nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

The Sub 6 Merger

Parent makes the following representations in connection with the Sub 6 Merger described above in step (vii).

- (3a) NewCo LLC is (and will be at the time of the Sub 6 Merger) a single member limited liability company that is disregarded as an entity separate from Distributing A (within the meaning of Treas. Reg. § 1.368-2(b)(1)(i)(A)).

- (3b) The Sub 6 Merger will be effected pursuant to the laws of State A and State D, and will qualify as a statutory merger under applicable state law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of Sub 6 (except to the extent satisfied or discharged in the transaction) will become assets and liabilities of NewCo LLC; and (ii) Sub 6 will cease its separate legal existence.
- (3c) No equity interests of NewCo LLC will be issued in the Sub 6 Merger.
- (3d) The total fair market value of the assets of Sub 6 transferred to Distributing A (through NewCo LLC) in the Sub 6 Merger less the amount of any liabilities that Distributing A (or NewCo LLC) assumes in connection therewith will be approximately equal to the fair market value of the Sub 6 stock surrendered in the constructive exchange.
- (3e) The stock of Sub 6 will be constructively exchanged solely for stock of Distributing A.
- (3f) The fair market value of the stock of Distributing A constructively received by Distributing A in the Sub 6 Merger will be approximately equal to the fair market value of the stock of Sub 6 constructively surrendered in the exchange.
- (3g) At least 40 percent of the proprietary interest in Sub 6 will be constructively exchanged for Distributing A stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)) by reason of an exchange of Sub 6 stock held by Distributing A for a direct interest in the Sub 6 enterprise.
- (3f) No Distributing A stock will be actually issued in the Sub 6 Merger. Thus, neither Distributing A nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Distributing A has any plan or intention to reacquire any Distributing A stock.
- (3g) Distributing A and NewCo LLC have no plan or intention to sell, transfer, or otherwise dispose of any of the assets of Sub 6 acquired in the Sub 6 Merger, except for dispositions made in the First Contribution, the Second Contribution, the Third Internal Distribution, or in the ordinary course of business, or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
- (3h) The liabilities of Sub 6 assumed (within the meaning of section 357(d)) by Distributing A (through its interest in NewCo LLC) and the liabilities to

which the transferred assets are subject were incurred by Sub 6 in the ordinary course of its business and are associated with the assets transferred.

- (3i) Following the Sub 6 Merger, Distributing A (through its interest in NewCo LLC) will continue the historic business of Sub 6 or will use a significant portion of Sub 6's historic business assets in a business, either directly or through one or more members of Distributing A's qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)) .
- (3j) The parties to the Sub 6 Merger each will pay their respective expenses, if any, incurred in connection with the Sub 6 Merger.
- (3k) No intercorporate indebtedness exists, or will exist, between Sub 6 and Distributing A or between Sub 6 and NewCo LLC that was issued, acquired, or will be settled at a discount.
- (3l) Neither Sub 6 nor Distributing A is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (3m) Sub 6 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (3n) Immediately before the Sub 6 Merger, the total fair market value of the assets of Sub 6 transferred to Distributing A (through its interest in NewCo LLC) will exceed the sum of: (i) the amount of liabilities assumed (as determined under section 357(d)) by Distributing A (through its interest in NewCo LLC) in connection with the Sub 6 Merger; (ii) the amount of liabilities owed to Distributing A or NewCo LLC by Sub 6 that is discharged or extinguished in connection with the Sub 6 Merger; and (iii) 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 Sub 6 in connection with the Sub 6 Merger.
- (3o) The total fair market value of the assets of Distributing A will exceed the amount of its liabilities immediately after the Sub 6 Merger.

The First Contribution, Third Internal Distribution, and Cash Distribution

Parent makes the following representations in connection with the First Contribution, the Third Internal Distribution, and the Cash Distribution described above in steps (viii), (xii), and (xiii).

- (4a) The indebtedness, if any, owed by Controlled to Distributing A after the distribution of the stock of Controlled will not constitute stock or securities.
- (4b) No part of the consideration to be distributed by Distributing A will be received by a Distributing A shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing A.
- (4c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing A and Controlled will treat all members of their respective separate affiliated groups as defined in section 355(b)(3)(B) (hereinafter, "SAGs") as one corporation.
- (4d) The five years of financial information submitted on behalf of Business A as conducted by the Distributing A SAG is representative of Business A's present operation, and with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4e) The five years of financial information submitted on behalf of Business B, as conducted by the Distributing A SAG prior to the First Contribution and to be conducted by the Controlled SAG after the First Contribution, is representative of Business B's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4f) The Distributing A SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Third Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (4g) The Distributing A SAG neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the Third Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii), of Business B.
- (4h) Except as provided for in the Ancillary Agreements, following the Third Internal Distribution, the Distributing A SAG and the Controlled SAG each will continue the active conduct of its business, independently and with its separate employees.
- (4i) The Third Internal Distribution will be carried out for the corporate business purpose of facilitating the separation of Business A from

Business B. The Third Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.

- (4j) The Third Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing A or Controlled or both.
- (4k) For purposes of section 355(d), immediately after the Third Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing A stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing A 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 Third Internal Distribution.
- (4l) For purposes of section 355(d), immediately after the Third Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 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 Third Internal Distribution, or (ii) attributable to distributions on Distributing A stock that were 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 Third Internal Distribution.
- (4m) The total adjusted basis and the total fair market value of the assets transferred to Controlled in the First Contribution will equal or exceed the sum of: (i) the total amount of any liabilities assumed (within the meaning of section 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 section 361(b)) received by Distributing A and transferred to its creditors and/or shareholders in connection with the Third Internal Distribution.
- (4n) The aggregate fair market value of the assets transferred to Controlled in the First Contribution will equal or exceed the aggregate adjusted basis of these assets.
- (4o) The total fair market value of the assets transferred to Controlled in the First Contribution will exceed the sum of: (i) the total amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in

the First Contribution; (ii) the total amount of any liabilities owed to Controlled by Distributing A that is discharged or extinguished in the connection with the First Contribution; and (iii) the total amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing A from Controlled in connection with the First Contribution.

- (4p) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the First Contribution.
- (4q) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled in the First 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.
- (4r) Distributing A neither accumulated its receivables nor made extraordinary payments of its payables in anticipation of the Third Internal Distribution.
- (4s) Except for payables arising under the Ancillary Agreements or otherwise arising in the ordinary course of business, no intercorporate debt will exist between Distributing A (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Third Internal Distribution.
- (4t) Immediately before the Third Internal 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 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing A's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution.
- (4u) Payments made in connection with all continuing transactions, if any, between Distributing A (and its subsidiaries) and Controlled (and its subsidiaries), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (4v) No two parties to the Third Internal Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (4w) The Third Internal Distribution is not part of a plan or series of related transaction (within the meaning of Treas. Reg. § 1.355-7) pursuant to

which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing A or Controlled (including any predecessor or successor of any such corporation).

- (4x) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing A nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (4y) Distributing A and Controlled each will pay their respective expenses, if any, incurred in connection with the First Contribution and Third Internal Distribution.
- (4z) The amount of Distributing A debt retired with cash received from Controlled in the Cash Distribution will not exceed the weighted quarterly average of the Distributing A debt owed to unrelated third parties for the twelve-month period ending on the close of business on Date 1, the last full business day before the date on which Distributing A's Board of Directors directed management to pursue actively the distribution of Business B.

The Second Contribution

Parent makes the following representations in connection with the Second Contribution described above in step (ix).

- (5a) No HoldCo stock or securities will be issued (or deemed issued) for services rendered to or for the benefit of HoldCo in connection with the Second Contribution, and no HoldCo stock or securities will be issued (or deemed issued) for indebtedness of HoldCo that is not evidenced by a security or for interest on indebtedness of HoldCo which accrued on or after the beginning of the holding period of Controlled for the debt.
- (5b) The Second Contribution is not the result of the solicitation by a promoter, broker, or investment house.
- (5c) Controlled will not retain any rights in the property transferred to HoldCo.
- (5d) The adjusted basis and the fair market value of the assets to be transferred by Controlled to HoldCo will equal or exceed the sum of the liabilities, if any, to be assumed (as determined under section 357(d)) by Controlled plus the liabilities, if any, to which the transferred assets are subject.

- (5e) Immediately before the Second Contribution, the total fair market of the assets to be transferred to HoldCo by Controlled will exceed the sum of: (i) the total amount of any liabilities assumed (within the meaning of section 357(d)) by HoldCo in the Second Contribution; (ii) the total amount of any liabilities owed to HoldCo by Controlled that is discharged or extinguished in connection with the Second Contribution; and (iii) the total amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 351(a) without the recognition of gain) received by Controlled from HoldCo in connection with the Second Contribution.
- (5f) Immediately after the Second Contribution, the fair market value of the assets of HoldCo will exceed the amount of its liabilities.
- (5g) The liabilities of Controlled, if any, to be assumed by HoldCo, plus the liabilities, if any, to which the transferred assets are subject, were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (5h) There is no indebtedness between Controlled and HoldCo and there will be no indebtedness created in favor of Controlled as a result of the Second Contribution.
- (5i) The Second Contribution will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (5j) All transfers pursuant to the Second Contribution will occur on approximately the same date.
- (5k) Controlled has no plan or intention to sell, transfer, or otherwise dispose of the HoldCo stock constructively acquired in the Second Contribution.
- (5l) There is no plan or intention on the part of HoldCo to redeem or otherwise reacquire any stock or indebtedness constructively issued in the Second Contribution.
- (5m) Taking into account any issuance of additional shares of HoldCo stock; any issuance of HoldCo stock for services; the exercise of any HoldCo stock rights, warrants, or subscriptions; a public offering of HoldCo stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of HoldCo to be constructively received in the exchange, Controlled will be in “control” of HoldCo within the meaning of section 368(c) of the Code.

- (5n) Controlled will constructively receive HoldCo stock approximately equal to the fair market value of the property transferred to HoldCo.
- (5o) HoldCo will remain in existence and retain and use the property transferred to it in a trade or business.
- (5p) There is no plan or intention by HoldCo to dispose of the transferred property other than in the ordinary course of business operations.
- (5q) Each of Controlled and HoldCo will pay its own expenses, if any, incurred in connection with the Second Contribution.
- (5r) HoldCo will not be an investment company within the meaning of section 351(e)(1) of the Code and Treas. Reg. § 1.351-1(c)(1)(ii).
- (5s) Controlled is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock received (or deemed received) in the exchange will not be used to satisfy the indebtedness of such debtor.
- (5t) HoldCo will not be a “personal service corporation” within the meaning of section 269A of the Code.

The External Distribution

Parent makes the following representations in connection with the External Distribution described above in step (xv).

- (6a) The indebtedness, if any, owed by Controlled to Parent after the distribution of the stock of Controlled will not constitute stock or securities.
- (6b) Except for the distribution of Equity-Based Interests on Controlled stock, no part of the consideration to be distributed by Parent will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Parent. In no event will the distribution of these Equity-Based Interests on Controlled stock represent more than 20% of the Controlled stock in the External Distribution.
- (6c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Parent and Controlled will treat all members of their respective separate affiliated groups as defined in section 355(b)(3)(B) (hereinafter, “SAGs”) as one corporation.

- (6d) The five years of financial information submitted on behalf of Business A as conducted by the Parent SAG is representative of Business A's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (6e) The five years of financial information submitted on behalf of Business B, as conducted by the Parent SAG prior to the External Distribution and to be conducted by the Controlled SAG after the External Distribution, is representative of Business B's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (6f) The Parent SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (6g) The Parent SAG neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions, as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii), of Business B.
- (6h) Except as provided for in the Ancillary Agreements, following the External Distribution, the Parent SAG and the Controlled SAG each will continue the active conduct of its business, independently and with its separate employees.
- (6i) The External Distribution will be carried out for the following corporate business purposes: (i) to permit Parent and Controlled to separately pursue the business strategies and regulatory strategies that best suit its long-term interests; (ii) to address the growing competitive pressures between Business A and Business B; (iii) to allow for more efficient development and financing of expansion plans for each of Business A and Business B; and (iv) to permit each of Parent and Controlled to provide effective management incentives tied to the relevant business's performance. The distribution of the Controlled stock pursuant to the External Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (6j) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Parent or Controlled or both.
- (6k) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Parent stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Parent 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 External Distribution.
- (6l) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 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 External Distribution, or (ii) attributable to distributions on Parent stock that were 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 External Distribution.
- (6m) Except for payables arising under the Ancillary Agreements or otherwise arising in the ordinary course of business, no intercorporate debt or trade payables will exist between Parent (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the External Distribution.
- (6n) Immediately before the External 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 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Parent's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution.
- (6o) Payments made in connection with all continuing transactions, if any, between Parent (and its subsidiaries) and Controlled (and its subsidiaries), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (6p) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (6q) The External Distribution is not part of a plan or series of related transaction (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4) in Parent or Controlled (including any predecessor or successor of any such corporation).
- (6r) Immediately after the transaction (as defined in section 355(g)(4)), neither Parent nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (6s) The payment of cash in lieu of fractional shares, if any, of Controlled stock will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash consideration that will be paid in connection with the External Distribution in lieu of fractional shares of Controlled stock is not intended to exceed one percent of the total consideration that will be distributed to holders of Parent stock in the Distribution. Any fractional share interests will be aggregated, and it is intended that no Parent shareholder will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled stock.

RULINGS

The First Internal Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the First Internal Distribution:

- (1) No gain or loss will be recognized by Distributing B on its distribution of Controlled 1 stock to Distributing A in the First Internal Distribution. Section 355(c).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing A on its receipt of Controlled 1 stock in the First Internal Distribution. Section 355(a)(1).
- (3) The aggregate basis of the Distributing B stock and the Controlled 1 stock in the hands of Distributing A immediately after the First Internal Distribution will be the same as the aggregate basis of the Distributing B stock held by

- Distributing A immediately before the First Internal Distribution. Section 358(a) and Treas. Reg. § 1.358-1(a). Such basis will be allocated between the Distributing B stock and the Controlled 1 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b)(2) and (c).
- (4) The holding period of the Controlled 1 stock received by Distributing A will include the holding period of the Distributing B stock with respect to which the First Internal Distribution is made, provided that such Distributing B stock is held as a capital asset on the date of the First Internal Distribution. Section 1223(1).
- (5) Earnings and profits will be allocated between Distributing B and Controlled 1 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(f)(2).

The Second Internal Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Second Internal Distribution:

- (6) No gain or loss will be recognized by Distributing B on its distribution of Controlled 2 stock to Distributing A in the Second Internal Distribution. Section 355(c).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing A on its receipt of Controlled 2 stock in the Second Internal Distribution. Section 355(a)(1).
- (8) The aggregate basis of the Distributing B stock and the Controlled 2 stock in the hands of Distributing A immediately after the Second Internal Distribution will be the same as the aggregate basis of the Distributing B stock held by Distributing A immediately before the Second Internal Distribution. Section 358(a) and Treas. Reg. § 1.358-1(a). Such basis will be allocated between the Distributing B stock and the Controlled 2 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b)(2) and (c).
- (9) The holding period of the Controlled 2 stock received by Distributing A will include the holding period of the Distributing B stock with respect to which the Second Internal Distribution is made, provided that such Distributing B stock is held as a capital asset on the date of the Second Internal Distribution. Section 1223(1).

- (10) Earnings and profits will be allocated between Distributing B and Controlled 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(f)(2).
- (11) With respect to the assets that are transferred in the First Asset Relocation and then transferred again in the Second Asset Relocation, these transfers will be disregarded for federal income tax purposes and treated as if Distributing A contributed the assets directly to Controlled 2 immediately after the Second Internal Distribution.

The Sub 6 Merger

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Sub 6 Merger:

- (12) Provided that the Sub 6 Merger qualifies as a statutory merger under applicable state law, the Sub 6 Merger will qualify as a reorganization within the meaning of section 368(a)(1)(A). Treas. Reg. § 1.368-2(b)(1)(ii). The Sub 6 Merger will be treated for federal income tax purposes as if Sub 6 merged directly into Distributing A. Distributing A and Sub 6 each will be “a party to a reorganization” within the meaning of section 368(b).
- (13) No gain or loss will be recognized by Sub 6 on the transfer of its assets to Distributing A in exchange for the deemed issuance of Distributing A stock and the assumption by Distributing A of the liabilities of Sub 6. Sections 361(a) and 357(a).
- (14) No gain or loss will be recognized by Distributing A on its receipt of assets from Sub 6 in exchange for the deemed issuance of Distributing A stock in the Sub 6 Merger. Section 1032(a).
- (15) The basis of each Sub 6 asset received by Distributing A in the Sub 6 Merger will be the same as the basis of such asset in the hands of Sub 6 immediately before the Sub 6 Merger. Section 362(b).
- (16) The holding period of each Sub 6 asset received by Distributing A in the Sub 6 Merger will include the period during which such asset was held by Sub 6. Section 1223(2).
- (17) No gain or loss will be recognized by Sub 6 on the deemed distribution of Distributing A stock. Section 361(c).
- (18) No gain or loss will be recognized by Distributing A on the deemed receipt of Distributing A stock in exchange for its Sub 6 stock. Section 354(a).

- (19) The taxable year of Sub 6 will end on the close of the date of the Sub 6 Merger. Section 381(b) and Treas. Reg. § 1.381(b)-1(a). Distributing A will succeed to and take into account, as of the close of the date of the Sub 6 Merger, the items of Sub 6 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).
- (20) Except to the extent Distributing A's earnings and profits already reflect Sub 6's earnings and profits, Distributing A will succeed to and take into account, the earnings and profits or deficit in earnings and profits of Sub 6, as of the date of the Sub 6 Merger. Section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33. Any deficit in the earnings and profits of Distributing A and Sub 6 will be used only to offset earnings and profits accumulated after the date of the Sub 6 Merger. Section 381(c)(2)(B).

The First Contribution, Third Internal Distribution, and Cash Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the First Contribution, the Third Internal Distribution, and the Cash Distribution:

- (21) The First Contribution, together with the Third Internal Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing A and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).
- (22) To the extent that the cash received by Distributing A in the Cash Distribution does not exceed the aggregate adjusted basis of the property transferred to Controlled in the First Contribution (reduced by any liabilities assumed by Controlled), no gain or loss will be recognized by Distributing A in connection with the First Contribution. Sections 361(a) and (b), and 357(a).
- (23) No gain or loss will be recognized by Controlled on its receipt of assets from Distributing A in exchange for the deemed issuance of Controlled stock in the First Contribution. Section 1032(a).
- (24) The basis of each Distributing A asset received by Controlled in the First Contribution will be the same as the basis of such asset in the hands of Distributing A immediately before the First Contribution. Section 362(b).
- (25) The holding period of each Distributing A asset received by Controlled in the First Contribution will include the period during which such asset was held by Distributing A. Section 1223(2).

- (26) No gain or loss will be recognized by Distributing A on its distribution of Controlled stock to Parent in the Third Internal Distribution. Section 361(c).
- (27) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on its receipt of Controlled stock in the Third Internal Distribution. Section 355(a).
- (28) The aggregate basis of the Controlled stock and the Distributing A stock in the hands of Parent immediately after the Third Internal Distribution will be the same as the aggregate basis of the Distributing A stock held by Parent immediately prior to the Third Internal Distribution. Section 358(a) and Treas. Reg. § 1.358-1(a). Such basis will be allocated between the stock of Controlled and Distributing A in proportion to the fair market value of each immediately following the Third Internal Distribution and the Cash Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b)(2) and (c).
- (29) The holding period of the Controlled stock received by Parent will include the holding period of the Distributing A stock with respect to which the Third Internal Distribution is made, provided that such Distributing A stock is held as a capital asset on the date of the Third Internal Distribution. Section 1223(1).
- (30) Earnings and profits will be allocated between Distributing A and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(f)(2).

The Second Contribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Second Contribution:

- (31) No gain or loss will be recognized by Controlled on the transfer of assets to HoldCo in exchange for the deemed issuance of HoldCo stock and the assumption by HoldCo of the liabilities of Controlled. Sections 351(a) and 357(a).
- (32) The basis of the HoldCo stock deemed received by Controlled in the Second Contribution will be the same as the basis of the assets transferred by Controlled to HoldCo in the Second Contribution. Section 358(a).
- (33) The holding period of the HoldCo stock deemed received by Controlled in the Second Contribution will include the holding period of the Controlled assets transferred in exchange therefor, provided that the assets were held by

Controlled as capital assets on the date of the Second Contribution. Section 1223(1).

- (34) No gain or loss will be recognized by HoldCo on its receipt of assets of Controlled in exchange for the deemed issuance of Controlled stock in the Second Contribution. Section 1032(a).
- (35) The basis of each Controlled asset received by HoldCo in the Second Contribution will be the same as the basis of such asset in the hands of Controlled immediately before the Second Contribution. Section 362(a).
- (36) The holding period of each Controlled asset received by HoldCo in the Second Contribution will include the period during which such asset was held by Controlled. Section 1223(2).

The External Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the External Distribution:

- (37) No gain or loss will be recognized by Parent on its distribution of Controlled stock to its shareholders in the External Distribution. Section 355(c).
- (38) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Parent upon their receipt solely of Controlled stock in the External Distribution. Section 355(a)(1).
- (39) Shareholders of Parent, if any, who receive cash in lieu of a fractional share of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received (as determined below in ruling (40)) and the amount of cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the External Distribution. Section 1221 and 1222.
- (40) The aggregate basis of the Parent stock and the Controlled stock in the hands of each Parent shareholder immediately after the External Distribution will be the same as the aggregate basis of the Parent stock in the hands of such Parent shareholder immediately before the External Distribution. Section 358(a) and Treas. Reg. § 1.358-1(a). Such basis will be allocated between the Parent stock and the Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b)(2) and (c). If a Parent shareholder that purchased or acquired shares of Parent stock on different dates or at different prices is not able to identify

which particular share of Controlled stock is received with respect to a particular share of Parent stock, the shareholder may designate which share of Controlled stock is received with respect to a particular share of Parent stock, provided the terms of the designation are consistent with the terms of the External Distribution. Treas. Reg. § 1.358-2(a)(2)(vii).

- (41) The holding period of the Controlled stock received by a Parent shareholder (including any fractional share interest to which the shareholder may be entitled) will include the holding period of the Parent stock with respect to which the External Distribution is made, provided that such Parent stock is held as a capital asset in the hands of the Parent shareholder on the date of the External Distribution. Section 1223(1).
- (42) Earnings and profits will be allocated between Parent and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether any of the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any of the Distributions are being used principally as a device for the distribution of the earnings and profits of the respective Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any of the Distributions is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) The federal income tax treatment of the Proposed Transaction described above in steps (i), (ii), (iii), (iv), (x), (xi) and (xiv);
- (v) The federal income tax treatment of any payments made in connection with the Ancillary Agreements; and
- (vi) The federal income tax treatment of the Conversions of the Equity-Based Interests.

PROCEDURAL MATTERS

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,

Frances L. Kelly
Acting Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)