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Date:

October 26, 2001

Legend

Distributing =

Controlled =

Old Distributing =

Old Controlled #1 =

Old Controlled #2 =

Sub #1 =

Sub #2 =

Sub #3 =

Sub #4 =

Sub #5 =

Sub #6 =

Sub #7 =

Sub #8 =

PLR-121799-01

Sub # 9 =

Sub #10 =

Sub #11 =

Sub #12 =

Sub #13 =

Sub #14 =

Holdings =

Newco #1 =

Newco #2 =

LLC #1 =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Business G =

Business H =

Business I =

Business J =

Business K =

PLR-121799-01

State X =

a =

b =

c =

d =

e =

f =

g =

h =

Agency =

Investor =

New Distributing Name =

New Controlled Name =

This is in response to your authorized representative's letter dated April 12, 2001, requesting rulings under §§ 355 and 368 of the Internal Revenue Code (the "Code") with respect to a proposed series of transactions, and also requesting a ruling supplementing our letter ruling dated June 21, 2000 (the "Prior Ruling Letter"). Additional information was received in letters dated August 1, 2001, September 7, 2001, September 20, 2001, September 28, 2001, October 9, 2001, and October 15, 2001. The material information submitted is summarized below.

Distributing is a publicly traded holding company and the common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis. Distributing directly owns all of the outstanding common stock of Old Distributing, all of the outstanding stock of Sub #1, and all of the membership interests in LLC #1, a limited liability company that is disregarded as a separate entity for federal tax purposes pursuant to Treas. Reg. § 301.7701-3. Old Distributing has outstanding publicly traded non-voting preference stock, none of which is owned by Distributing. Sub #1 is a holding company that directly owns all of the outstanding stock of Sub #2, Sub #9, and Sub #11. Sub #1 also directly owns approximately h% of the common stock of Holdings, a publicly traded company. Sub #2 is a holding company that directly owns all of the outstanding stock of Sub #3, Sub #4, Sub #5, and Sub #13. Sub #3 is a holding company that directly owns all of the outstanding stock of Sub #6

PLR-121799-01

and Old Controlled #1. LLC #1 owns all the stock of Old Controlled #2 and Sub #10. Sub #5 directly owns all of the stock of Sub #7 (a foreign corporation), Sub #8, and Sub #14. Sub #11 owns all of the stock of Sub #12.

Old Controlled #1 is engaged in Business A. Old Controlled #2 is engaged in Business B. Old Distributing is engaged in Business C. Sub #4 is engaged, through subsidiaries, in Business E. Sub #5 is also engaged in Business E, directly and through subsidiaries. Sub #6 is engaged in Business K. Sub #8 is engaged, through its wholly-owned subsidiaries, in Business F, which is one aspect of Business E. Sub #9 is engaged in Business G. Sub #11, directly and through subsidiaries including Sub #12, is engaged in Business H. Sub #13 is engaged in Business I. Sub #10 is engaged in Business J. Business A, Business B, Business E (including Business F), Business J, and Business K are collectively referred to as Business D.

Financial information has been received indicating that Business A, Business B, Business C, Business E (including Business F), Business G, and Business H have each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

In the series of transactions that was the subject of the Prior Ruling Letter, Old Distributing contributed the assets of Business A to Old Controlled #1 in exchange for all the outstanding stock of Old Controlled #1, Old Controlled #1 notes, and the assumption of certain liabilities. Old Distributing then distributed the Old Controlled #1 stock to Distributing, which contributed the Old Controlled #1 stock to Sub #1 in constructive exchange for Sub #1 stock. Sub #1 then contributed the stock of Old Controlled #1 and Sub #6 to Sub #2 in constructive exchange for additional Sub #2 stock. Sub #2 then contributed the stock of Old Controlled #1 and Sub #6 to Sub #3. Old Distributing also contributed the assets of Business B to Old Controlled #2 in exchange for all of the stock of Old Controlled #2 and the assumption of certain liabilities. Old Distributing then distributed the Old Controlled #2 stock to Distributing, which contributed all of the Old Controlled #2 stock to LLC #1.

The purpose of the transactions described in the last paragraph was in part: (1) to comply with an order by Agency (the State X agency that had regulated Business A, Business B, and Business C, but would no longer regulate Business A and Business B), to separate Business A and Business B, on the one hand, from Business C on the other; (2) to allow Old Distributing to continue to conduct Business C free from the management and systemic problems that would be likely to arise from the continued conduct of regulated and non-regulated businesses within Old Distributing or within Old Distributing and subsidiaries of Old Distributing; (3) to allow Sub #1 and its subsidiaries (the "Sub #1 Group") to conduct Business A along with the related, non-regulated, businesses already conducted within the Sub #1 Group; and (4) to allow Business B with its unique regulatory and risk profile to be conducted separately from the businesses conducted by the Sub #1 Group.

PLR-121799-01

Distributing now proposes to form a series of joint ventures with Investor to own and operate Distributing's Business D businesses (the "Distribution."). Distributing proposes to contribute its interests in the joint ventures to Controlled, and then to distribute all of its stock of Controlled to its shareholders. The Distribution will separate Distributing's Business D businesses from its other businesses, which include the regulated Business C, and thus allow Controlled to take advantage of opportunities for growth that Distributing believes now exist in the Business D businesses.

Distributing therefore proposes the following series of transactions:

- (1) Pursuant to a plan of liquidation, Sub #1 will (a) distribute all of its Holdings stock to Distributing (the "Holdings Distribution"); and (b) immediately following the Holdings Distribution, will merge with and into Distributing, with Distributing surviving (the "Sub #1 Merger," and together with the Holdings Distribution, the "Sub #1 Liquidation"). Distributing has represented that the Sub #1 Liquidation will qualify as a complete liquidation within the meaning of Code § 332.
- (2) Sub #2 will merge with and into Distributing, with Distributing surviving (the "Sub #2 Merger"). All liquidating distributions in the Sub #2 Merger will take place on the date of the effective time of the Sub #2 Merger. Distributing has represented that the Sub #2 Merger will qualify as a complete liquidation within the meaning Code § 332.
- (3) (a) Sub #4 will organize a new limited liability companies (the "Sub #4 Merger LLCs"), each of which will be disregarded as a separate entity for federal tax purposes pursuant to Treas. Reg. § 301.7701-3. (Hereinafter, a limited liability company that is disregarded as a separate entity for federal tax purposes is referred to as a "disregarded LLC.")

(b) Each of a designated subsidiaries (the "Sub #4 Merger Subs") of Sub #4 will merge into one of the Sub #4 Merger LLCs, with in each case the Sub #4 Merger LLC surviving. Sub #4 will distribute all of the membership interests in each Sub #4 Merger LLC, and all of the stock of each Sub #4 subsidiary engaged in Business E that is not merged into a limited liability company to Distributing. (Collectively, the Sub #4 subsidiaries whose stock Sub #4 will distribute are referred to as the "Sub #4 Remaining Subs"),

(c) Distributing will contribute to Sub #5 all of the membership interests in the Sub #4 Merger LLCs and all of the stock of the Sub #4 Remaining Subs in constructive exchange for additional shares of Sub #5 stock.
- (4) Sub #5 will distribute to Distributing all of the stock of Sub #7 and Sub #14.

PLR-121799-01

- (5) (a) Sub #5 will organize b new disregarded LLCs (the “Sub #5 Merger LLCs”). Each of b designated subsidiaries of Sub #5 (the “Sub #5 Merger Subs”) will merge with and into one of the Sub #5 Merger LLCs, with in each case the Sub #5 Merger LLC surviving.
- (b) Sub #8 will organize c new disregarded LLCs (the “Sub #8 Merger LLCs”). Each of c designated subsidiaries of Sub #8 (the “Sub #8 Merger Subs”) will merge with and into one of the Sub #8 Merger LLCs with in each case the Sub #8 Merger LLC surviving.
- (c) Sub #5 will organize a new disregarded LLC (“Sub #8 LLC”). Sub #8 will merge with and into Sub #8 LLC, with Sub #8 LLC surviving.
- (d) Sub #5 will contribute all of its assets, including all of its interests in the Sub #5 Merger LLCs, Sub #8 LLC (which will hold all of the interests in the Sub #8 Merger LLCs), the Sub #4 Merger LLCs, the Sub #4 Remaining Subs, and each Sub #5 subsidiary that has not merged into a disregarded LLC to a new disregarded LLC (“Sub #5 LLC”).
- (6) (a) Sub #3 has organized Newco #1 as a wholly-owned subsidiary.
- (b) Newco #1 has organized a new disregarded LLC (“Old Controlled #1 LLC”). Old Controlled #1 will merge with and into Old Controlled #1 LLC with Old Controlled #1 LLC surviving (the “Old Controlled #1 Merger”).
- (7) (a) Sub #3 will contribute to Newco #1 100% of the stock of Sub #6 in constructive exchange for additional shares of Newco #1 stock (the “Sub #6 Dropdown”).
- (b) Sub #6 will convert (the “Sub #6 Conversion”) to a disregarded LLC (“Sub #6 LLC”).
- (8) (a) LLC #1 has organized Newco #2 as a wholly-owned subsidiary.
- (b) Newco #2 has organized a disregarded LLC (“LLC #2”). A Distributing affiliate will assign to LLC #2 the rights and obligations under an agreement to acquire interests in two Business B facilities in a taxable acquisition.
- (c) Newco #2 has organized a new disregarded LLC (“Old Controlled #2 LLC”). Old Controlled #2 will merge with and into Old Controlled #2 LLC, with Old Controlled #2 LLC surviving (the “Old Controlled #2 Merger”).
- (9) Sub #10 will contribute all of its assets to a newly organized disregarded LLC (“Sub #10 LLC”).

PLR-121799-01

- (10) Distributing will incur debt from third-party lenders.
- (11) (a) Distributing has organized Controlled as a wholly-owned subsidiary. The authorized stock of Controlled will consist of at least d shares of class A common stock, representing not less than e% of the voting power of Controlled, and f shares of class B common stock, representing not more than g% of the voting power of Controlled.
 - (b) Distributing will contribute to Controlled (i) all of the stock of Sub #3 and Sub #5 and (ii) all of the membership interests in LLC #1, in exchange for shares of Controlled class A common stock representing not less than e% of the voting power of Controlled and the assumption of certain liabilities by Controlled, as described in step 12(a) below.
- (12) (a) Controlled, Sub #3, Sub #5, Sub #10, Newco #1, and Newco #2 will assume the debt of Distributing described in step 10 above.
 - (b) The debt assumed by Controlled in step 12(a) above will be assumed by Sub #3 and Sub #5.
 - (c) Newco #1 will assume the debt assumed by Sub #3.
 - (d) Sub #5 LLC will assume the debt assumed by Sub #5; Sub #10 LLC will assume the debt assumed by Sub #10; Old Controlled #1 LLC will assume the debt assumed by Newco #1; and Old Controlled #2 LLC will assume the debt assumed by Newco #2.
 - (e) At the time of the Distribution, Distributing will be released from its obligations and liabilities with respect to the borrowing described in Step 10.
- (13) (a) A direct or indirect subsidiary of Investor (the "Investor Affiliate") will contribute cash to each of Sub #5 LLC, Sub #6 LLC, Old Controlled #1 LLC, Old Controlled #2 LLC, Sub #10 LLC, and LLC #2 (collectively, the "Controlled LLCs") in exchange for a membership interest in each of such Controlled LLCs not to exceed g%. (In the case of Sub #6 LLC, Investor may contribute certain intangibles as well as or instead of cash, in any case in exchange for a membership interest not to exceed g%.) The existing, Distributing-affiliated member of each Controlled LLC will retain a membership interest in such Controlled LLC of not less than e%. At the time that the Investor Affiliate becomes a member of each Controlled LLC, such Controlled LLC will be classified as a partnership for federal income tax purposes pursuant to Treas. Reg. § 301-7701-3(f)(2).
 - (b) Controlled will issue f shares of class B common stock to the Investor Affiliate in exchange for a contribution by the Investor affiliate. The voting

PLR-121799-01

power of the f shares of class B common stock will equal the uniform membership interest percentage held by the Investor Affiliate in each Controlled LLC. Accordingly, the aggregate voting power of all shares of Controlled class A common stock will equal the difference between 100% and the voting power of the f shares of Controlled class B stock (which difference will in no event be less than e%).

- (14) (a) Sub #11 has organized a new disregarded LLC ("Sub #12 LLC"). Sub #12 will merge with and into Sub #12 LLC with Sub #12 LLC surviving.
- (b) Sub #9 has organized two new disregarded LLCs ("Sub #11 LLC" and "Sub #9 LLC").
- (c) Sub #11 will merge with and into Sub #11 LLC, with Sub #11 LLC surviving.
- (d) Sub #9 will contribute to Sub #9 LLC all of the assets, and Sub #9 LLC will assume all of the associated liabilities, of Business G.
- (15) Old Distributing will amend its articles of incorporation to grant one vote per share to each of its series of non-voting preference stock (the "Recapitalization").
- (16) Distributing will contribute to Sub #9 or to Old Distributing, or to both, some or all of its stock in Sub #4, Sub #7, Sub #13, Sub #14, and Holdings, to the extent necessary to qualify Distributing as a holding company under Code § 355(b)(2)(A).
- (16) (a) Pursuant to the Distribution, Distributing will distribute pro rata to its shareholders all of its Controlled class A common stock.
- (b) Distributing will change its name to New Distributing Name.
- (c) Controlled will change its name to New Controlled Name.

Distributing has made the following representations with regard to the Old Controlled #1 Merger:

- (a) The fair market value of the shares of Newco #1 stock deemed received by Sub #3 will approximately equal the fair market value of the Old Controlled #1 stock surrendered in constructive exchange therefor.
- (b) There is no plan or intention by Sub #3 to sell, exchange, or otherwise dispose of any of the shares of Newco #1 stock deemed received in the Old Controlled #1 Merger.

PLR-121799-01

- (c) Immediately following the consummation of the Old Controlled #1 Merger (and immediately prior to the Sub #6 Dropdown and Sub #6 Conversion), Sub #3 will own all of the outstanding Newco # 1 stock and will own such stock solely by reason of its ownership of Old Controlled #1 stock immediately prior to the Old Controlled #1 Merger.
- (d) Except for the additional shares of stock that Newco #1 will be treated as constructively issuing pursuant to the Sub #6 Dropdown and the Sub #6 Conversion, Newco #1 has no plan or intention to issue additional shares of its stock following the Old Controlled #1 Merger.
- (e) Immediately following the consummation of the Old Controlled #1 Merger (and immediately prior to the Sub #6 Dropdown and the Sub #6 Conversion), Newco #1 will be treated for federal income tax purposes as possessing the same assets and liabilities as those possessed by Old Controlled #1 immediately prior to the Old Controlled #1 Merger.
- (f) At the time of the Old Controlled #1 Merger, Old Controlled #1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Old Controlled #1.
- (g) Newco #1 has no plan or intention to reacquire any of its stock deemed issued in the Old Controlled #1 Merger.
- (h) Newco #1 has no plan or intention to sell, exchange, or otherwise dispose of any of the assets of Old Controlled #1 deemed acquired in the Old Controlled #1 Merger, except for dispositions made in the ordinary course of business and except for the deemed transfer of the assets of Old Controlled #1 to a partnership (for federal income tax purposes) upon the investment in Old Controlled #1 LLC by the Investor Affiliate.
- (i) The liabilities of Old Controlled #1 deemed assumed (as determined under Code § 357(d)) by Newco #1 were incurred by Old Controlled #1 in the ordinary course of its business and are associated with the assets transferred.
- (j) Following the Old Controlled #1 Merger, Newco #1 (through its interest in Old Controlled #1 LLC) will continue the historic business of Old Controlled #1 or use a significant portion of Old Controlled #1's historic business assets in a business.

PLR-121799-01

- (k) Newco #1, Old Controlled #1, and Sub #3 will pay their respective expenses, if any, incurred in connection with the Old Controlled #1 Merger.
- (l) Old Controlled #1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Code § 368(a)(3)(A).

Distributing has made the following representations with respect to the Sub #6 Dropdown and Sub #6 Conversion:

- (a) The fair market value of the shares of Newco #1 stock deemed received by Sub #3 will approximately equal the fair market value of the Sub #6 stock surrendered in constructive exchange therefor.
- (b) There is no plan or intention by Sub #3 to sell, exchange, or otherwise dispose of any of the shares of Newco #1 stock deemed received in the Sub #6 Dropdown and Sub #6 Conversion.
- (c) Newco #1 will be deemed to have acquired at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by Sub #6 immediately before the Sub #6 Dropdown and Sub #6 Conversion. For purposes of this representation, all amounts used by Sub #6 to pay dissenters, reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub #6 immediately before the Sub #6 Dropdown and Sub #6 Conversion will be included as assets of Sub #6 immediately before the Sub #6 Dropdown and Sub #6 Conversion.
- (d) After the Sub #6 Dropdown and Sub #6 Conversion, Sub #3 will be in control of Newco #1 within the meaning of Code § 368(a)(2)(H)(i).
- (e) Newco #1 has no plan or intention to reacquire any of its stock deemed issued in the Sub #6 Dropdown and Sub #6 Conversion.
- (f) Newco #1 has no plan or intention to sell, exchange, or otherwise dispose of any of the assets of Sub #6 deemed acquired in the Sub #6 Dropdown and Sub #6 Conversion, except for dispositions made in the ordinary course of business and except for the deemed transfer of the assets of Sub #6 to a partnership (for federal income tax purposes) upon the investment in Sub #6 LLC by the Investor Affiliate.
- (g) The total adjusted basis and the fair market value of the assets of Sub #6 deemed transferred to Newco #1 will, in each case, equal

PLR-121799-01

or exceed the sum of the liabilities deemed assumed (as determined under Code § 357(d)) by Newco #1.

- (h) The liabilities of Sub #6 deemed assumed (as determined under Code § 357(d)) by Newco #1 were incurred by Sub #6 in the ordinary course of its business and are associated with the assets transferred.
- (i) Following the Sub #6 Dropdown and Sub #6 Conversion, Newco #1 (through its interest in Sub #6 LLC) will continue the historic business of Sub #6 or use a significant portion of Sub #6's historic assets in a business.
- (j) At the time of the Sub #6 Dropdown and Sub #6 Conversion, Newco #1 will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco #1 that, if exercised or converted, would affect Sub #3's acquisition or retention of control of Newco #1, as defined in Code § 368(a)(2)(H)(i).
- (k) Newco #1, Sub #6, and Sub #3 will pay their respective expenses, if any, incurred in connection with the Sub #6 Dropdown and Sub #6 Conversion.
- (l) There is no intercorporate indebtedness existing between Newco #1 and Sub #6 that was issued or acquired, or that will be settled, at a discount.
- (m) No two parties to the Sub #6 Dropdown and Sub #6 Conversion are investment companies as defined in Code § 368(a)(2)(F)(iii) and (iv).
- (n) Sub #6 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Code § 368(a)(3)(A).

Distributing has made the following representations with respect to the Old Controlled #2 Merger:

- (a) The fair market value of the shares of Newco #2 deemed received by Distributing will approximately equal the fair market value of Old Controlled #2 stock surrendered in constructive exchange therefor.
- (b) There is no plan or intention by Distributing or LLC #1 to sell, exchange, or otherwise dispose of any of the shares of Newco #2 stock deemed received in the Old Controlled #2 Merger, except

PLR-121799-01

pursuant to the transfer by Distributing of its LLC #1 interests to Controlled immediately prior to the Distribution.

- (c) Newco #2 will be deemed to have acquired at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by Old Controlled #2 immediately before the Old Controlled #2 Merger. For purposes of this representation, all amounts used by Old Controlled #2 to pay dissenters, reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Old Controlled #2 immediately before the Old Controlled #2 Merger will be included as assets of Old Controlled #2 immediately before the Old Controlled #2 Merger.
- (d) After the Old Controlled #2 Merger, Distributing will be in control of Newco #2 within the meaning of Code § 368(a)(2)(H)(i).
- (e) Newco #2 has no plan or intention to reacquire any of its stock deemed issued in the Old Controlled #2 Merger.
- (f) Newco #2 has no plan or intention to sell, exchange, or otherwise dispose of any of the assets of Old Controlled #2 deemed acquired in the Old Controlled #2 Merger, except for dispositions made in the ordinary course of business and except for the deemed transfer of the assets of Old Controlled #2 to a partnership (for federal income tax purposes) upon the investment in Old Controlled #2 LLC by the Investor Affiliate.
- (g) The total adjusted basis and the fair market value of the assets of Old Controlled #2 deemed transferred to Newco #2 will, in each case, equal or exceed the liabilities deemed assumed (as determined under Code § 357(d)) by Newco #2.
- (h) The liabilities of Old Controlled #2 deemed assumed (as determined under Code § 357(d)) by Newco #2 were incurred by Old Controlled #2 in the ordinary course of its business and are associated with the assets transferred.
- (i) Following the Old Controlled #2 Merger, Newco #2 (through its interest in Old Controlled #2 LLC) will continue the historic business of Old Controlled #2 or use a significant portion of Old Controlled #2's historic business assets in a business.
- (j) At the time of the Old Controlled #2 Merger, Newco #2 will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire

PLR-121799-01

stock in Newco #2 that, if exercised or converted, would affect Distributing's acquisition or retention of control of Newco #2, as defined in Code § 368(a)(2)(H)(i).

- (k) Newco #2, Old Controlled #2, and Distributing will pay their respective expenses, if any, incurred in connection with the Old Controlled #2 Merger.
- (l) There is no intercorporate indebtedness existing between Newco #2 and Old Controlled #2 that was issued or acquired, or that will be settled, at a discount.
- (m) No two parties to the Old Controlled #2 Merger are investment companies as defined in Code § 368(a)(2)(F)(iii) and (iv).
- (n) Old Controlled #2 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Code § 368(a)(3)(A).

Distributing has made the following representations with respect to the Distribution:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) Immediately after the Distribution, at least 90% of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in Code § 355(b)(2).
- (c) The financial information submitted on behalf of Old Distributing and Business C is representative of Old Distributing's present operation and, with regard to Old Distributing and Business C, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The financial information submitted on behalf of Sub #9 and Business G and Sub #11 and Sub #12 and Business H is representative of the present operation of such corporations, and with regard to such corporations and such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Immediately after the Distribution, at least 90% of the fair market value of the gross assets of Controlled will consist of the stock and

PLR-121799-01

securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in Code § 355(b)(2).

- (f) The financial information submitted on behalf of Old Controlled #1 and Business A is representative of Old Controlled #1's present operation and, with regard to Old Controlled #1 and such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) The financial information submitted on behalf of Sub #4, Sub #5, Sub #8 and Business E and Business F is representative of the corporations' present operations and, with regard to such corporations and such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) The financial information submitted on behalf of Old Controlled #2 and Business B is representative of Old Controlled #2's present operations, and with respect to Old Controlled #2 and such business, there have been no substantial changes since the date of the last financial statements submitted.
- (i) The merger of each Sub #5 Merger Sub into its corresponding Sub #5 Merger LLC, each Sub #8 Merger Sub into its corresponding Sub #8 Merger LLC, and Sub #8 into Sub #8 LLC, will each qualify as a complete liquidation under Code § 332 and each Sub #5 Merger LLC, each Sub #8 Merger LLC, and Sub #8 LLC will be a disregarded LLC.
- (j) The Recapitalization will qualify as a reorganization within the meaning of Code § 368(a)(1)(E).
- (k) Following the transaction, Distributing (indirectly through Old Distributing and Sub #9) and Controlled (indirectly through Newco #1, Newco #2, and Sub #5) will each continue the active conduct of a business, independently and with its (or such other corporation's, or the applicable Controlled LLC's, as the case may be) separate employees.
- (l) The Distribution is being carried out for the following corporate business purpose: to permit Controlled and Distributing to better focus on their respective businesses and market opportunities. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

PLR-121799-01

- (m) Distributing management, to its best knowledge, is not aware of any plan or intention on the part of any particular shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Distribution.
- (n) There is no plan or intention by Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.
- (o) Except as otherwise described above, there is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the proposed transactions, except in the ordinary course of business.
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of Code § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total combined voting power of all classes of stock of either Distributing or Controlled entitled to vote or stock possessing 50% or more of the total value of all classes of stock of either Distributing or Controlled.
- (q) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under Code § 357(d)) by Controlled. The liabilities assumed (as determined under Code § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.
- (r) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (s) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (t) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account to the extent 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, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).

PLR-121799-01

Distributing will not have an excess loss account with respect to the Controlled stock.

- (u) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) No two parties to the Distribution are investment companies as defined in Code § 368(a)(2)(F)(iii) and (iv).

Based solely on the information submitted and the representations made, we have concluded with respect to the Old Controlled #1 Merger that:

- (1) The Old Controlled #1 Merger will be treated for federal income tax purposes as if (i) Old Controlled #1 had transferred its assets directly to Newco #1 in exchange for shares of Newco #1 stock and the assumption by Newco #1 of the liabilities of Old Controlled #1, and then (ii) Old Controlled #1 had dissolved, transferring the Newco #1 stock it had received in step (i) to Sub #3.
- (2) The deemed transfer by Old Controlled #1 to Newco #1 of its assets solely in constructive exchange for shares of Newco #1 stock and the deemed assumption by Newco #1 of the liabilities of Old Controlled #1, followed by the deemed distribution of Newco #1 stock to Sub #3, will qualify as a reorganization within the meaning of Code § 368(a)(1)(F). Newco #1 and Old Controlled #1 will each be a party to a reorganization within the meaning of Code § 368(b).
- (3) No gain or loss will be recognized to Old Controlled #1 upon the deemed transfer of its assets to Newco #1 in constructive exchange for shares of Newco #1 stock and the deemed assumption by Newco #1 of the liabilities of Old Controlled #1. Code §§ 361(a) and 357(a).
- (4) No gain or loss will be recognized by Old Controlled #1 upon its deemed dissolution and the deemed transfer of the shares of Newco #1 to Sub #3. Code § 361(c)(1).
- (5) No gain or loss will be recognized by Newco #1 upon the deemed receipt of the assets of Old Controlled #1 in constructive exchange for the shares of Newco #1 and the deemed assumption of the liabilities of Old Controlled #1. Code § 1032(a).
- (6) The basis of Old Controlled #1's assets deemed to be in the hands of Newco #1 will be the same as the basis of those assets in the hands of

PLR-121799-01

Old Controlled #1 immediately before the deemed transfer. Code § 362(b).

- (7) Newco #1's holding period for the Old Controlled #1 assets will include the period during which such assets were held by Old Controlled #1. Code § 1223(2).
- (8) No gain or loss will be recognized by Sub #3 upon the constructive receipt of shares of Newco #1 stock in exchange for the Old Controlled #1 stock surrendered in constructive exchange therefor. Code § 354(a)(1).
- (9) The basis of the shares of Newco #1 stock constructively received by Sub #3 will be the same as the basis of the Old Controlled #1 stock surrendered in constructive exchange therefor. Code § 358(a)(1).
- (10) The holding period of the Newco #1 stock constructively received by Sub #3 in constructive exchange for the stock of Old Controlled #1 will include the period that Sub #3 held the Old Controlled #1 stock surrendered in constructive exchange therefor, provided that Sub #3 held such stock as a capital asset on the date of the constructive exchange. Code § 1223(1).

Based solely on the information submitted and the representations made, we have concluded with respect to the Sub #6 Dropdown and Sub #6 Conversion that:

- (1) The Sub #6 Dropdown and Sub #6 Conversion will be treated for federal income tax purposes as if (i) Sub #6 had transferred its assets directly to Newco #1 in exchange for shares of Newco #1 stock and the assumption by Newco #1 of the liabilities of Sub #6, and then (ii) Sub #6 had dissolved, transferring the Newco #1 stock it received in step (i) to Sub #3.
- (2) The deemed transfer by Sub #6 to Newco #1 of its assets solely in constructive exchange for Newco #1 stock and the deemed assumption by Newco #1 of the liabilities of Sub #6, followed by the deemed distribution of Newco #1 stock to Sub #3 will qualify as a reorganization within the meaning of Code § 368(a)(1)(D). Newco #1 and Sub #6 will each be a party to a reorganization within the meaning of Code § 368(b).
- (3) No gain or loss will be recognized by Sub #6 upon the deemed transfer of its assets to Newco #1 in constructive exchange for shares of Newco #1 stock and the deemed assumption by Newco #1 of the liabilities of Sub #6. Code § 361(a) and 357(a).
- (4) No gain or loss will be recognized by Sub #6 upon its deemed dissolution and the deemed transfer of the shares of Newco #1 stock to Sub #3. Code § 361(c)(1).

PLR-121799-01

- (5) No gain or loss will be recognized by Newco #1 upon the deemed receipt of the assets of Sub #6 in constructive exchange for shares of Newco #1 stock and the deemed assumption of the liabilities of Sub #6. Code § 1032(a).
- (6) The basis of Sub #6's assets deemed to be in the hands of Newco #1 will be the same as the basis of those assets in the hands of Sub #6 immediately before the deemed transfer. Code § 362(b).
- (7) Newco #1's holding period for the Sub #6 assets will include the period during which such assets were held by Sub #6. Code § 1223(2).
- (8) No gain or loss will be recognized by Sub #3 upon the constructive receipt of shares of Newco #1 stock in exchange for the Sub #6 stock surrendered in constructive exchange therefor. Code § 354(a)(1).
- (9) The basis of the shares of Newco #1 stock constructively received by Sub #3 will be the same as the basis of the Sub #6 stock surrendered in constructive exchange therefor. Code § 358(a)(1).
- (10) The holding period of the Newco #1 stock constructively received by Sub #3 in constructive exchange for the stock of Sub #6 will include the period that Sub #3 held the Sub #6 stock surrendered in constructive exchange therefor, provided that Sub #3 held such stock as a capital asset on the date of the constructive exchange. Code § 1223(1).

Based solely on the information submitted and the representations made, we have concluded with respect to the Old Controlled #2 Merger that:

- (1) The Old Controlled #2 merger will be treated for federal income tax purposes as if (i) Old Controlled #2 had transferred its assets directly to Newco #2 in exchange for shares of Newco #2 stock and the assumption by Newco #2 of the liabilities of Old Controlled #2, and then (ii) Old Controlled #2 had dissolved, transferring the Newco #2 stock it had received in step (i) to Distributing.
- (2) The deemed transfer by Old Controlled #2 to Newco #2 of its assets solely in constructive exchange for shares of Newco #2 stock and the deemed assumption by Newco #2 of the liabilities of Old Controlled #2, followed by the deemed distribution of Newco #2 stock to Distributing will qualify as a reorganization within the meaning of Code § 368(a)(1)(D). Newco #2 and Old Controlled #2 will each be a party to the reorganization within the meaning of Code § 368(b).
- (3) No gain or loss will be recognized by Old Controlled #2 upon the deemed transfer of its assets to Newco #2 in constructive exchange for shares of

PLR-121799-01

Newco #2 stock and the deemed assumption by Newco #2 of the liabilities of Old Controlled #2. Code §§ 361(a) and 357(a).

- (4) No gain or loss will be recognized by Old Controlled #2 upon its deemed dissolution and the deemed transfer of the shares of Newco #2 stock to Distributing. Code § 361(c)(1).
- (5) No gain or loss will be recognized by Newco #2 upon the receipt of the assets of Old Controlled #2 in constructive exchange for Newco #2 stock and the deemed assumption of the liabilities of Old Controlled #2. Code § 1032(a).
- (6) The basis of Old Controlled #2's assets deemed to be in the hands of Newco #2 will be the same as the basis of those assets in the hands of Old Controlled #2 immediately before the deemed transfer. Code § 362(b).
- (7) Newco #2's holding period for the Old Controlled #2 assets will include the period during which such assets were held by Old Controlled #2. Code § 1223(2).
- (8) No gain or loss will be recognized by Distributing upon the constructive receipt of shares of Newco #2 stock in exchange for the Old Controlled #2 stock surrendered in constructive exchange therefor. Code § 354(a)(1).
- (9) The basis of the shares of Newco #2 constructively received by Distributing will be the same as the basis of the Distributing stock surrendered in constructive exchange therefor. Code § 358 (a)(1).
- (10) The holding period of the Newco #2 stock constructively received by Distributing in constructive exchange for the stock of Old Controlled #2 will include the period that Distributing held the Old Controlled #2 stock surrendered in constructive exchange therefor, provided that Distributing held such stock as a capital asset on the date of the constructive exchange. Code § 1223(1).

Based solely on the information submitted and the representations made, we have concluded with respect to the Distribution that:

- (1) The transfer by Distributing to Controlled of all of the stock of each of Sub #3 and Sub #5 and the membership interest in Old Controlled #2 LLC in exchange for shares of class A common stock of Controlled and the assumption of certain liabilities by Controlled, followed by the pro rata distribution to Distributing's shareholders of all of Distributing's shares of Controlled class A common stock, will qualify as a reorganization within

PLR-121799-01

the meaning of Code § 368(a)(1)(D). Distributing and Controlled will each be a party to a reorganization within the meaning of Code § 368(b).

- (2) Distributing will not recognize any gain or loss upon the transfer of such assets to Controlled in exchange for shares of class A common stock of Controlled and the assumption of certain liabilities by Controlled. Code §§ 361(a) and 357(a).
- (3) Controlled will not recognize any gain or loss upon the receipt of such assets from Distributing in exchange for shares of class A common stock of Controlled and the assumption of certain liabilities by Controlled. Code § 1032(a).
- (4) The basis of the assets received by Controlled from Distributing will be the same as the basis of such assets in the hands of Distributing immediately prior to the transfer. Code § 362(b).
- (5) The holding period of each asset received by Controlled from Distributing will include the period during which Distributing held such asset. Code § 1223(2).
- (6) Distributing will not recognize any gain or loss upon the distribution to Distributing's shareholder of Controlled class A common stock pursuant to the Distribution. Code § 361(c)(1).
- (7) Distributing's shareholders will not recognize any income, gain, or loss upon receipt of Distributing's shares of Controlled class A common stock pursuant to the Distribution. Code § 355(a)(1).
- (8) The aggregate basis of each Distributing shareholder in the Distributing stock held by such shareholder immediately before the Distribution and the class A common stock of Controlled received from Distributing pursuant to the Distribution will be the same as the aggregate basis of the Distributing stock in the hands of such shareholder immediately before the Distribution, allocated in proportion to the relative fair market value of each in accordance with Treas. Reg. § 358-2(a)(2). Code § 358(a)(1), (b), and (c).
- (9) The holding period of each Distributing shareholder for the Controlled class A common stock will include the period during which such shareholder held the shares of Distributing stock in respect of which such shareholder received the Controlled stock, provided that such shareholder held the Distributing stock as a capital asset on the date of the Distribution. Code § 1223(1).

PLR-121799-01

- (10) As provided in Code § 312(h), the earnings and profits of Distributing will be allocated between Distributing and Controlled under Treas. Reg. § 1.312-10(a) and 1.1502-33.

Based solely on the information submitted and the representations made, we have concluded with respect to the payments made under the Plan of Reorganization and the Tax Indemnification agreement that:

Any payments under the Tax Sharing Agreement or the Plan of Reorganization made by Distributing to Controlled or by Controlled to Distributing that (i) relate to a period ending on or before the date of the Distribution and (ii) will not become fixed and determinable until after the Distribution will be treated as occurring immediately before the Distribution.

Based solely on the information submitted and the representations made, we have concluded with respect to the rulings granted in the Prior Ruling Letter that:

None of the transactions described in this ruling letter, considered individually or together with any other such transactions, will adversely affect any of the rulings granted in the Prior Ruling Letter, and each of those rulings will remain in full force and effect.

No opinion is expressed as to the tax treatment of the transactions under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above ruling. More specifically, no opinion is expressed as to: (1) whether the Recapitalization will qualify as a reorganization within the meaning of Code § 368(a)(1)(E); (2) whether the Sub #1 Liquidation will qualify as a complete liquidation within the meaning of Code § 332; or (3) whether the Sub #2 Merger will qualify as a complete liquidation within the meaning Code § 332.

In accordance with a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

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

Sincerely yours,
Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)