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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1

PLR-135046-05

Date:

December 01, 2005

In Re:

LEGEND:

Distributing =

Controlled =

Sub A-1 =

Sub A-2 =

Sub A-3 =

Entity A-4 =

Sub B-1 =

Sub B-2 =

Sub B-3 =

Sub B-4 =

Sub C-1 =

PLR-135046-05

2

Sub C-2 =

Sub C-3 =

Company 1 =

Company 2 =

Entity A-5 =

Business A =

Business B =

Business C =

Business D =

k =

l =

m =

N =

o =

p =

r =

s =

t =

V =

W-1 =

W-2 =

W-3 =

Investor X =

Investor Y =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter replies to your letter of June 24, 2005, submitted on behalf of Distributing, requesting rulings as to certain federal income tax consequences of a proposed transaction. The following is a summary of the information in your letter and subsequent correspondence.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is 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 § 355(e)(2)(A)(ii) and § 1.355-7).

Summary of Facts

Distributing is the common parent corporation of a consolidated group of corporations engaged in Businesses A, B, and C. Distributing directly owns all of the stock of Sub A-1, Sub B-1, Sub B-2, and Sub C-1. Sub A-1 owns all of the stock of Sub A-2. Sub A-2 owns all the stock of Sub A-3 and all the membership interests in Entity A-4, which is treated for federal income tax purposes as an entity disregarded from its owner, Sub A-2. Sub A-2 and Entity A-4 actively conduct Business A. Sub B-2 owns all of the stock of Sub B-3, which in turn owns all of the stock of Sub B-4. Sub C-1 owns all of the stock of Sub C-2, which in turn owns all of the stock of Sub C-3. Sub C-3 actively conducts Business D, which is a part of Business C.

Controlled has recently been incorporated for purposes of the proposed transaction. Controlled has one class of common stock.

Distributing has decided to separate Business C from Businesses A and B by distributing Controlled and its subsidiaries engaged in Business C to its shareholders, pro rata. At the same time, Distributing plans to have an initial public offering of about s percent of the stock of Sub B-3, and it may pay a “special dividend” to Distributing shareholders or repurchase Distributing stock. Distributing also plans to realign foreign entities engaged in Businesses A, B, and C with the domestic parts of those businesses engaged in by Distributing, Sub B-3, and Controlled (the “International Restructuring”). No rulings are requested regarding the International Restructuring.

The following steps are proposed or have been recently consummated. Steps (xi) through (xviii) may occur prior to or on a parallel track with steps (iv) through (x):

(i) Sub B-4 distributed to Sub B-3 a long-term promissory note in the amount of approximately k dollars (the B-4 Note).

(ii) Sub B-3 distributed the B-4 Note to Sub B-2.

(iii) Sub B-2 distributed the B-4 Note to Distributing.

(iv) Sub A-3 will be merged upstream into Sub A-2 with Sub A-2 surviving.

(v) Sub A-2 will be merged upstream into Sub A-1 with Sub A-1 surviving.

(vi) Distributing will create Entity A-5, a limited liability company that will be an entity disregarded from its sole owner, Distributing. Then, Sub A-1 will be merged into Entity A-5 with Entity A-5 surviving.

(vii) Entity A-5 will contribute assets used in Business B (the “B Assets”) to Sub B-2 in exchange for common stock of Sub B-2.

(viii) Distributing will contribute all the stock of Sub B-1 to Sub B-2 in exchange for common stock of Sub B-2.

(ix) Sub B-2 will contribute the B Assets and the stock of Sub B-1 to Sub B-3 in exchange for stock of Sub B-3.

(x) Sub B-3 will contribute the B Assets and the stock of Sub B-1 to Sub B-4 in exchange for common stock of Sub B-4.

(xi) Distributing has formed Controlled as a wholly owned subsidiary.

(xii) Controlled has formed or will form Company 1 as a wholly owned subsidiary.

(xiii) Sub C-3 will merge with Company 1 with Company 1 surviving. Sub C-2 will receive common stock of Company 1 with an aggregate fair market value approximately equal to the net fair market value of Sub C-3.

(xiv) Distributing will contribute approximately l dollars to Sub C-1 by canceling indebtedness owed to Distributing by Sub C-1.

(xv) Distributing and Investor X will form Company 2. Initially Distributing will receive the initial common stock of Company 2 in exchange for a contribution of approximately m dollars and Investor X will receive all the voting preferred stock of Company 2 with a liquidation preference of approximately o dollars in exchange for a contribution of approximately p dollars (the "Company 2 Voting Preferred Stock").

(xvi) Contemporaneously with or immediately after step (xv), Distributing will transfer all the outstanding stock of Sub C-1 to Company 2 in exchange for common stock of Company 2 and nonvoting preferred stock of Company 2 with a liquidation preference of approximately r dollars (the "C-1 Exchange"). Distributing will immediately sell the nonvoting preferred stock of Company 2 to a third-party investor(s) (Investor Y) pursuant to a pre-existing binding commitment entered into before Distributing's transfer of Sub C-1 stock to Company 2 (the "Prearranged Sale"). Investor Y will not transfer any property to Company 2 in connection with any of the proposed transactions. Distributing expects to recognize a substantial tax loss in connection with this transaction (the "Sub C-1 Loss").

(xvii) Distributing will contribute all of the common stock of Company 2 to Controlled in exchange for common stock of Controlled (the "Company 2 Contribution").

(xviii) Controlled will contribute all of the common stock of Company 2 to Company 1 in exchange for Company 1 common stock.

(xix) Except for Controlled stock that will be received by Distributing's rabbi trusts, including a rabbi trust established for the benefit of N (the "N Rabbi Trust"), that hold Distributing common stock, Distributing will distribute all outstanding Controlled stock (more than 80 percent) pro rata to the holders of Distributing common stock at a ratio of one share of Controlled common stock to each eight shares of Distributing common stock (the "Distribution"). Distributing will not distribute fractional shares of Controlled stock; instead a distribution agent will aggregate fractional shares of Controlled stock, sell them on the open market, and distribute the net proceeds of the sale to beneficial owners of Distributing stock who otherwise would have received the Controlled fractional shares. Holders of restricted Distributing stock will receive unrestricted Controlled stock.

(xx) Sub B-3 will sell approximately s percent of its stock in an initial public offering (the "Business B IPO"). Sub B-3 will contribute the net IPO proceeds to Sub B-4, and Sub B-4 and its subsidiaries will use these proceeds to repay any indebtedness owed to Distributing, other than the B-4 Note (the "Old B-4 Debt"). If there is any outstanding balance remaining on any of the Old B-4 Debt after this repayment, this remaining balance will be cancelled. The B-4 Note will remain outstanding after the Business B IPO.

(xxi) It is expected that Sub C-1 will borrow approximately t dollars from third party lenders around the time of the Distribution. The net proceeds of this borrowing, plus the net proceeds from the issuance of the Company 2 Voting Preferred Stock (which will be contributed to Sub C-1 by Company 2), will be used by Sub C-1 to repay debt owed to Distributing, to support certain letter of credit arrangements with respect to Sub C-1's ongoing business, and for general corporate purposes, including working capital, potential acquisitions and stock repurchases.

(xxii) Distributing may pay a special dividend to holders of Distributing common stock, repurchase Distributing shares, or do both. It is expected that Distributing will borrow from third party lenders at such times and in such amounts as Distributing determines to be appropriate in order to fund any share repurchases or special dividends.

Representations

The following representations have been submitted in connection with the proposed transaction:

(a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled common stock received by holders of restricted Distributing common stock granted pursuant to a stock incentive plan of Distributing.

(c) Distributing will dispose of the Controlled common stock received in the Distribution by Distributing's rabbi trusts (other than the N Rabbi Trust) that were established for the payment of benefits under Distributing's executive pension and deferred compensation plans and that hold shares of Distributing common stock (the "Rabbi Trusts" and such Controlled common stock, the "Retained Rabbi Trust Controlled Stock"). This disposition will occur as soon as a disposition is warranted consistent with the business purpose for the retention of the Retained Rabbi Trust Controlled Stock by Distributing through its rabbi trusts (the "Retention"), but in any event, not more than five years after the Distribution.

(d) In connection with a representation agreement with individual N (the "Representation Agreement"), the N Rabbi Trust was established for the benefit of N. The N Rabbi Trust will receive in the Distribution Controlled stock with respect to the N Rabbi Trust's shares of Distributing stock; this Distributing and Controlled stock will vest on Date 2 (the "Date 2 Distributing Stock" and "Date 2 Controlled Stock"). N will also directly receive Controlled stock with respect to Distributing stock that vested on Date 1 (the "Date 1 Distributing Stock" and "Date 1 Controlled Stock"). N may sell the Date 2 Distributing Stock and Date 2 Controlled Stock to Distributing on Date 3 at a fixed price, and may sell the Date 1 Distributing Stock and Date 1 Controlled Stock to Distributing on Date 2 for a fixed price. Under the Representation Agreement, the Date 2 Distributing Stock and Date 2 Controlled Stock will be retained by the N Rabbi Trust until Date 2 (this Controlled stock, the "Retained N Rabbi Trust Controlled Stock" and the retention of this stock, the "N Retention") at which time it will vest if certain conditions in the Representation Agreement are satisfied. To the extent that (1) the Retained N Rabbi Trust Controlled Stock does not vest on Date 2, or (2) Distributing receives either the Date 1 Controlled Stock or the Date 2 Controlled Stock pursuant to N's exercise of N's right to sell the stock to Distributing at a fixed price (such stock described in clause (2), if any, the "Acquired N Rabbi Trust Controlled Stock" and such acquisition described in clause (2), if any, the "N Acquisition"), Distributing will dispose of the Retained N Rabbi Trust Controlled Stock or the Acquired N Rabbi Trust Controlled Stock as soon as a disposition is warranted consistent with the business purpose for the N Retention or the N Acquisition, but in any event, not later than five years after the Distribution.

(e) The Controlled stock retained by the Rabbi Trusts and the N Rabbi Trust will be voted in proportion to the votes cast by other shareholders of Controlled.

(f) Each of Distributing's rabbi trusts, including the N Rabbi Trust, has been properly treated as a grantor trust pursuant to § 671 at all times since its formation.

(g) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock and securities of a controlled corporation (Company 1) that is engaged in the active conduct of a trade or business as defined in section 355(b)(2).

(h) The 5 years of financial information submitted on behalf of Distributing is representative of the present operations of Business A conducted by Sub A-2 and Entity A-4, and with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(i) The 5 years of financial information submitted on behalf of Company 1 is representative of the present operations of Business D (a part of Business C), and with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(j) Following the Distribution, Distributing and Controlled, directly or through their respective controlled subsidiaries, will continue the active conduct of their respective businesses, independently and with their separate employees.

(k) The Distribution is carried out for the following corporate business purposes: (i) to enhance the success of both Distributing and Controlled by enabling them to resolve management and systemic problems that arise by the operation of their businesses within a single affiliated group, (ii) to improve the competitiveness of Controlled's Business C by resolving inherent conflicts and the appearance of conflicts with V; (iii) to simplify and reduce Distributing's and Controlled's regulatory compliance burdens and risks by separating Business C from Distributing; (iv) to enhance the ability of each of Distributing and Controlled to issue equity efficiently and effectively for acquisitions and financings, and (v) to enhance the efficiency and effectiveness of Distributing's and Controlled's equity-based compensation. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(l) There is no plan or intention by any five percent shareholder of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any specific other shareholder of Distributing (other than index funds which will presumably readjust their portfolios consistent with the relevant indices) to sell, exchange, transfer by gift, or otherwise dispose of its stock in either Distributing or Controlled after the Distribution.

(m) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution, other than Distributing's acquisition of the Acquired N Rabbi Trust Controlled Stock (together with any similar acquisition of Date 1 Distributing Stock or Date 2 Distributing Stock) or through stock purchases meeting the requirements of section 4.05(b)(1) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(n) There is no plan or intention to liquidate either Distributing or Controlled, to merge Distributing or Controlled with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business. However, Distributing or Controlled or existing or newly formed subsidiaries of Distributing or Controlled may seek to acquire related businesses after the Distribution, and some of those acquisitions may be structured as mergers.

(o) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(p) Except for the payment of any special dividends, Distributing and Controlled neither accumulated their receivables nor made extraordinary payment of their payables in anticipation of the Distribution.

(q) Except for Distributing's capitalization of indebtedness owing to Distributing by Sub C-1 as described in transaction step (xiv), no indebtedness between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the Distribution.

(r) Except for any outstanding indebtedness owed to Distributing by Sub C-1 that will be repaid as described in transaction step (xxi), no intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Distribution.

(s) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 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, § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to Controlled stock will be included in income immediately before the Distribution to the extent required by applicable Treasury Regulations (see § 1.1502-19).

(t) Except for certain payments that will be made in connection with the tax sharing agreement and certain transitional agreements, payments made in connection with continuing transactions, if any, between Distributing (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.

(u) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(v) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(w) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of 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 §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(x) The Distribution is not part of a plan or series of related transactions (within the meaning of § 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 § 355(d)(4)) in Distributing or Controlled (including a predecessor or successor of any such corporation).

(y) After the Distribution, no director, officer, or key employee of Distributing or any of its subsidiaries will be a director, officer or key employee of Controlled or any of its subsidiaries other than individuals W-1, W-2, and W-3, who will serve as officers and directors of Distributing and as directors of Controlled (and potentially Company 2).

(z) At the time of the Company 2 Contribution, the outstanding common stock of Company 2 will have a positive net fair market value.

(aa) No liabilities were directly assumed by Controlled in the Company 2 Contribution.

(bb) The Distribution would be pursued by Distributing regardless of whether the Sub C-1 Loss would be recognized by virtue of the Distribution and the related transactions.

(cc) Distributing would be entitled to recognize the Sub C-1 Loss upon a taxable sale of the Sub C-1 stock to an unrelated third party.

(dd) Distributing and Company 2 will cease to be members of the same controlled group as defined in § 267(f)(1) upon the consummation of the Distribution.

(ee) The distribution of Business C to shareholders of Distributing is not being engaged in or structured with a principal purpose to avoid the provisions of § 267(f) (including, for example, by avoiding treatment as an intercompany sale or by distorting the timing of losses or deductions) within the meaning of § 1.267(f)-1(h).

(ff) The C-1 Exchange is not an acquisition described in § 269(a)(1) or (a)(2), the principal purpose of which is evasion or avoidance of federal income tax within the meaning of § 269(a).

(gg) The payment of cash in lieu of fractional shares of Controlled common stock by the distribution agent 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 that will be paid in connection with the Distribution in lieu of fractional shares of Controlled common stock will not exceed one percent of the total consideration that will be distributed in the Distribution. It is intended that no Distributing 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 common stock.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

(1) Distributing will recognize the Sub C-1 Loss on the C-1 Exchange, provided it is followed by the Prearranged Sale (§ 1001(a) and Rev. Rul. 79-70, 1979-1 C.B. 144).

(2) Immediately before the Distribution, Distributing will take into account the loss recognized on the C-1 Exchange (§ 267(f)(2)(B) and § 1.267(f)-1(c)).

(3) The Company 2 Contribution, together with the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” under § 368(b).

(4) Distributing will recognize no gain or loss on the Company 2 Contribution (§ 361(a)).

(5) Controlled will recognize no gain or loss on the Company 2 Contribution (§ 1032(a)).

(6) Controlled's basis in the stock of Company 2 received in the Company 2 Contribution will equal the basis of such stock in the hands of Distributing (§ 362(b)).

(7) Controlled's holding period in the stock of Company 2 received in the Company 2 Contribution will include the holding period of that asset in the hands of Distributing (§ 1223(2)).

(8) Distributing will recognize no gain or loss on the Distribution (§ 361(c)).

(9) The shareholders of Distributing will recognize no gain or loss (and no amount will otherwise be included in the income of such shareholders) on their receipt of Controlled stock in the Distribution, except for holders of restricted stock of Distributing who have not made a valid election under § 83(b) (§ 355(a)).

(10) The aggregate basis of the Distributing and Controlled stock in the hands of a shareholder of Distributing after the Distribution (including fractional shares aggregated and sold by the distribution agent) will equal the shareholder's basis in the Distributing stock held immediately before the Distribution, allocated between the Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a)(1), (b), and (c)).

(11) The holding period of the Controlled stock received by a shareholder of Distributing will include the holding period of the Distributing stock on which the Distribution is made, provided that the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(12) Distributing and Controlled will allocate earnings and profits, if any, in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

(13) None of the Retention, the N Retention, or the N Acquisition (if any) is in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax (§ 355(a)(1)(D)(ii)).

(14) A shareholder who receives cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional shares received, as determined above in ruling (10), and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as capital assets on the date of the Distribution (§§ 1221 and 1222).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

In addition, no opinion is expressed regarding (iv) the tax treatment of the receipt of unrestricted Controlled stock by holders of restricted Distributing stock who have not made valid elections under § 83(b); (v) the potential application of § 482 to any payments made in connection with continuing transactions between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) that are not made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length; and (vi) the tax treatment of the International Restructuring.

Procedural Statements

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

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

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

Sincerely,

Lisa A. Fuller
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: