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### LEGEND

Distributing 5 =

Distributing 4 =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Shareholder =

Business A =

Business B =

Business B Assets =

Post-Exchange =

Indemnity Payments

a =

b =

c =

Dear :

This letter responds to your January 31, 2008 letter requesting rulings on certain federal income tax consequences of a Proposed Transaction (defined below). The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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 Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 (each as defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are 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) 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 § 355(e) and § 1.355-7).

### **SUMMARY OF FACTS**

Distributing 5 is a publicly traded domestic corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Shareholder, a domestic corporation, owns a shares, or approximately b percent, of the single class of Distributing 5's common stock outstanding.

Distributing 5 directly owns all of the outstanding stock of Distributing 4. Distributing 4 directly owns all of the outstanding stock of Distributing 3. Distributing 3 directly owns all of the outstanding stock of Distributing 2. Distributing 2 directly owns all of the outstanding stock of Distributing 1. Each of the above entities is a domestic corporation and a member of the Distributing 5 consolidated group (the "Group").

Distributing 1 directly conducts Business A. Distributing 1 also conducts Business B directly and through a c percent (33-1/3 percent or greater) interest in a partnership for U.S. federal tax purposes (the "Partnership"). The financial information submitted by the taxpayer indicates 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.

The effect of the Proposed Transaction will be either to reduce substantially or to terminate completely Shareholder's equity interest in Distributing 5. The Proposed Transaction will serve the following corporate business purposes: (1) to enable the more efficient and effective conduct of Business B, which is expected to increase the

value of Business B; and (2) to enable Distributing 5 to use a non-core business to redeem a significant block of its outstanding stock and thus to redeploy for other corporate purposes the cash it otherwise would have used to repurchase stock (the "Corporate Business Purposes").

### **PROPOSED TRANSACTION**

To achieve the Corporate Business Purposes, Distributing 5 and Shareholder propose the following steps (collectively, the "Proposed Transaction"):

- (i) Distributing 1 will form a new domestic corporation ("Controlled") and contribute thereto the Business B Assets, which include Distributing 1's interest in the Partnership, in exchange for all of the Controlled stock ("Contribution 1").
- (ii) Distributing 1 will distribute all of its Controlled stock to Distributing 2 ("Distribution 1").
- (iii) Distributing 2 will distribute all of its Controlled stock to Distributing 3 ("Distribution 2").
- (iv) Distributing 3 will distribute all of its Controlled stock to Distributing 4 ("Distribution 3").
- (v) Distributing 4 will distribute all of its Controlled stock to Distributing 5 ("Distribution 4").
- (vi) Distributing 5 will contribute to Controlled an amount of cash sufficient to equalize the value of the Controlled stock and the value of the Distributing 5 stock to be redeemed ("Contribution 2").
- (vii) Distributing 5 will distribute all of its Controlled stock to Shareholder in exchange for shares of Distributing 5 common stock with an aggregate fair market value equal to the value of the Controlled stock ("Distribution 5").

In connection with the Proposed Transaction, Distributing 5, Shareholder, Controlled, and their respective subsidiaries will enter into several agreements relating to the separation of Business B and certain continuing transactions between the companies. In particular, the parties will enter into a series of agreements (the "Agreements") regarding the contribution of assets to Controlled pursuant to Contribution 1 and Contribution 2 and the exchange by Shareholder of Distributing 5 stock for the stock of Controlled pursuant to Distribution 5. It is possible, but not expected, that payments (the "Adjustment Payments") will be made among Distributing

5, Shareholder, Controlled, and their respective subsidiaries pursuant to certain indemnification and tax sharing provisions expected to be included in the Agreements.

## **REPRESENTATIONS**

### Contribution 1 and Distribution 1

The following representations are made regarding Contribution 1 and Distribution 1:

(a1) No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(b1) The five years of financial information submitted on behalf of Business A conducted by the Distributing 1 separate affiliated group (within the meaning of § 355(b)(3)(B)) (i.e., the “Distributing 1 SAG”) is representative of the present business operations of Business A conducted by the Distributing 1 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(c1) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d1) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, the Distributing 1 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following Distribution 1.

(e1) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, Distributing 1 and the Partnership have been the principal owners of the goodwill and significant assets of Business B. Controlled and the Partnership will be the principal owners of the goodwill and significant assets of Business B following Distribution 1.

(f1) Following the Proposed Transaction, the Distributing 1 SAG will continue the active conduct of Business A, independently and with its separate employees.

(g1) Following the Proposed Transaction, Controlled will continue the active conduct of Business B, independently and with its separate employees and employees of affiliates.

(h1) Distribution 1 is being carried out for the corporate business purpose of facilitating Distribution 5 and is motivated, in whole or substantial part, by this corporate business purpose.

(i1) Distribution 1 is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.

(j1) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 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 Distribution 1.

(k1) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 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 § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Distributing 1 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 Distribution 1.

(l1) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing 1 in Contribution 1 each will equal or exceed the sum of any liabilities assumed (within the meaning of § 357(d)) by Controlled.

(m1) The total fair market value of the assets transferred to Controlled in Contribution 1 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 1 in the exchange. The fair market value of the assets of Controlled will exceed the amount of Controlled's liabilities immediately after Contribution 1.

(n1) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in Contribution 1 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(o1) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or after, Distribution 1.

(p1) Immediately before Distribution 1, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(q1) At the time of Distribution 1, no member of the Group will have an excess loss account in the Controlled stock or in the stock of any Controlled subsidiary.

(r1) Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(s1) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(t1) Distribution 1 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 1 or Controlled (including any predecessor or successor of Distributing 1 or Controlled).

(u1) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)). In making the foregoing representation, neither the right to receive any Post-Exchange Indemnity Payments nor the receipt of any such payments will be treated as an "investment asset" (within the meaning of § 355(g)(2)(B)) held by Controlled immediately after the transaction.

(v1) Each of the parties to Distribution 1 will pay its own expenses, if any, incurred in connection with Distribution 1.

## Distribution 2

The following representations are made regarding Distribution 2:

(a2) No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(b2) Distributing 1 is, and immediately after Distribution 2 will be, a member of Distributing 2's separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing 2 SAG").

(c2) The five years of financial information submitted on behalf of Business A conducted by the Distributing 2 SAG is representative of the present business operations of Business A conducted by the Distributing 2 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d2) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e2) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, the Distributing 2 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following Distribution 2.

(f2) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, Distributing 1 or Controlled and the Partnership have been the principal owners of the goodwill and significant assets of Business B. Controlled and the Partnership will be the principal owners of the goodwill and significant assets of Business B following Distribution 2.

(g2) Following the Proposed Transaction, the Distributing 2 SAG will continue the active conduct of Business A, independently and with its separate employees.

(h2) Following the Proposed Transaction, Controlled will continue the active conduct of Business B, independently and with its separate employees and employees of affiliates.



(i2) Distribution 2 is being carried out for the corporate business purpose of facilitating Distribution 5 and is motivated, in whole or substantial part, by this corporate business purpose.

(j2) Distribution 2 is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.

(k2) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 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 Distribution 2.

(l2) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 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 § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Distributing 2 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 Distribution 2.

(m2) No intercorporate debt will exist between Distributing 2 and Controlled at the time of, or after, Distribution 2.

(n2) Immediately before Distribution 2, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(o2) At the time of Distribution 2, no member of the Group will have an excess loss account in the Controlled stock or in the stock of any Controlled subsidiary.

(p2) Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q2) Distribution 2 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 2 or Controlled (including any predecessor or successor of Distributing 2 or Controlled).

(r2) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)). In making the foregoing representation, neither the right to receive any Post-Exchange Indemnity Payments nor the receipt of any such payments will be treated as an “investment asset” (within the meaning of § 355(g)(2)(B)) held by Controlled immediately after the transaction.

(s2) Each of the parties to Distribution 2 will pay its own expenses, if any, incurred in connection with Distribution 2.

### Distribution 3

The following representations are made regarding Distribution 3:

(a3) No part of the consideration to be distributed by Distributing 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(b3) Distributing 1 is, and immediately after Distribution 3 will be, a member of Distributing 3's separate affiliated group (within the meaning of § 355(b)(3)(B)) (the “Distributing 3 SAG”).

(c3) The five years of financial information submitted on behalf of Business A conducted by the Distributing 3 SAG is representative of the present business operations of Business A conducted by the Distributing 3 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d3) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e3) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 3, the Distributing 3 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following Distribution 3.

(f3) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 3, Distributing 1 or Controlled and the Partnership have been the principal owners of the goodwill and significant assets of Business B. Controlled and the Partnership will be the principal owners of the goodwill and significant assets of Business B following Distribution 3.

(g3) Following the Proposed Transaction, the Distributing 3 SAG will continue the active conduct of Business A, independently and with its separate employees.

(h3) Following the Proposed Transaction, Controlled will continue the active conduct of Business B, independently and with its separate employees and employees of affiliates.

(i3) Distribution 3 is being carried out for the corporate business purpose of facilitating Distribution 5 and is motivated, in whole or substantial part, by this corporate business purpose.

(j3) Distribution 3 is not being used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled or both.

(k3) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 3 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 Distribution 3.

(l3) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 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 § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3 or (ii) attributable to distributions on Distributing 3 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 Distribution 3.

(m3) No intercorporate debt will exist between Distributing 3 and Controlled at the time of, or after, Distribution 3.

(n3) Immediately before Distribution 3, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(o3) At the time of Distribution 3, no member of the Group will have an excess loss account in the Controlled stock or in the stock of any Controlled subsidiary.

(p3) Payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q3) Distribution 3 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 3 or Controlled (including any predecessor or successor of Distributing 3 or Controlled).

(r3) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing 3 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)). In making the foregoing representation, neither the right to receive any Post-Exchange Indemnity Payments nor the receipt of any such payments will be treated as an "investment asset" (within the meaning of § 355(g)(2)(B)) held by Controlled immediately after the transaction.

(s3) Each of the parties to Distribution 3 will pay its own expenses, if any, incurred in connection with Distribution 3.

#### Distribution 4

The following representations are made regarding Distribution 4:

(a4) No part of the consideration to be distributed by Distributing 4 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

(b4) Distributing 1 is, and immediately after Distribution 4 will be, a member of Distributing 4's separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing 4 SAG").

(c4) The five years of financial information submitted on behalf of Business A conducted by the Distributing 4 SAG is representative of the present business

operations of Business A conducted by the Distributing 4 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d4) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e4) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 4, the Distributing 4 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following Distribution 4.

(f4) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 4, Distributing 1 or Controlled and the Partnership have been the principal owners of the goodwill and significant assets of Business B. Controlled and the Partnership will be the principal owners of the goodwill and significant assets of Business B following Distribution 4.

(g4) Following the Proposed Transaction, the Distributing 4 SAG will continue the active conduct of Business A, independently and with its separate employees.

(h4) Following the Proposed Transaction, Controlled will continue the active conduct of Business B, independently and with its separate employees and employees of affiliates.

(i4) Distribution 4 is being carried out for the corporate business purpose of facilitating Distribution 5 and is motivated, in whole or substantial part, by this corporate business purpose.

(j4) Distribution 4 is not being used principally as a device for the distribution of the earnings and profits of Distributing 4 or Controlled or both.

(k4) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 4 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 Distribution 4.

(l4) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying § 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 § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4 or (ii) attributable to distributions on Distributing 4 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 Distribution 4.

(m4) No intercorporate debt will exist between Distributing 4 and Controlled at the time of, or after, Distribution 4.

(n4) Immediately before Distribution 4, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(o4) At the time of Distribution 4, no member of the Group will have an excess loss account in the Controlled stock or in the stock of any Controlled subsidiary.

(p4) Payments made in connection with all continuing transactions, if any, between Distributing 4 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q4) Distribution 4 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 4 or Controlled (including any predecessor or successor of Distributing 4 or Controlled).

(r4) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing 4 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)). In making the foregoing representation, neither the right to receive any Post-Exchange Indemnity Payments nor the receipt of any such payments will be treated as an "investment asset" (within the meaning of § 355(g)(2)(B)) held by Controlled immediately after the transaction.

(s4) Each of the parties to Distribution 4 will pay its own expenses, if any, incurred in connection with Distribution 4.

Contribution 2 and Distribution 5

The following representations are made regarding Contribution 2 and Distribution 5:

(a5) No part of the consideration to be distributed by Distributing 5 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 5.

(b5) The fair market value of the Controlled stock to be received by Shareholder will be approximately equal to the fair market value of the Distributing 5 stock surrendered by Shareholder in the exchange.

(c5) Distributing 1 is, and immediately after Distribution 5 will be, a member of Distributing 5's separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing 5 SAG").

(d5) The five years of financial information submitted on behalf of Business A conducted by the Distributing 5 SAG is representative of the present business operations of Business A conducted by the Distributing 5 SAG, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e5) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(f5) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 5 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 5, the Distributing 5 SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following Distribution 5.

(g5) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 5 in a transaction in which gain or loss was recognized (or treated as recognized under proposed §1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 5, Distributing 1 or Controlled and the Partnership have been the principal owners of the

goodwill and significant assets of Business B. Controlled and the Partnership will be the principal owners of the goodwill and significant assets of Business B following Distribution 5.

(h5) Following the Proposed Transaction, the Distributing 5 SAG will continue the active conduct of Business A, independently and with its separate employees.

(i5) Following the Proposed Transaction, Controlled will continue the active conduct of Business B, independently and with its separate employees and employees of affiliates.

(j5) Distribution 5 is being carried out for the Corporate Business Purposes and is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(k5) Distribution 5 is not being used principally as a device for the distribution of the earnings and profits of Distributing 5 or Controlled or both.

(l5) For purposes of § 355(d), immediately after Distribution 5, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 5 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 5 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 Distribution 5.

(m5) For purposes of § 355(d), immediately after Distribution 5, no person (determined after applying § 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 § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 5 or (ii) attributable to distributions on Distributing 5 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 Distribution 5.

(n5) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing 5 in Contribution 2 each will equal or exceed the sum of any liabilities assumed (within the meaning of § 357(d)) by Controlled.

(o5) The total fair market value of the assets transferred to Controlled in Contribution 2 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 5 that are discharged or extinguished in connection



with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 5 in the exchange. The fair market value of the assets of Controlled will exceed the amount of Controlled's liabilities immediately after Contribution 2.

(p5) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in Contribution 2 will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(q5) No intercorporate debt will exist between Distributing 5 and Controlled at the time of, or after, Distribution 5.

(r5) Immediately before Distribution 5, 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 5's excess loss account, if any, with respect to its shares of Controlled stock will be included in income immediately before Distribution 5 (see § 1.1502-19).

(s5) Payments made in connection with all continuing transactions, if any, between Distributing 5 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(t5) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(u5) Distribution 5 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 5 or Controlled (including any predecessor or successor of Distributing 5 or Controlled).

(v5) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing 5 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)). In making the foregoing representation, neither the right to receive any Post-Exchange Indemnity Payments nor the receipt of any such payments will be treated as an "investment asset" (within the meaning of § 355(g)(2)(B)) held by Controlled immediately after the transaction.

(w5) Each of the parties to Distribution 5 will pay its own expenses, if any, incurred in connection with Distribution 5.

**RULINGS****Contribution 1 and Distribution 1**

Based solely on the information and representations submitted, we rule as follows on Contribution 1 and Distribution 1:

- (1) Contribution 1, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing 1 on Contribution 1 (§§ 357(a) and 361(a)).
- (3) No gain or loss will be recognized by Controlled on Contribution 1 (§ 1032(a)).
- (4) The basis of each asset received by Controlled in Contribution 1 will equal the basis of that asset in the hands of Distributing 1 immediately before Contribution 1 (§ 362(b)).
- (5) The holding period of each asset received by Controlled in Contribution 1 will include the period during which Distributing 1 held the asset (§ 1223(2)).
- (6) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 2 as a result of Distribution 1 (§ 355(a)(1)).
- (7) No gain or loss will be recognized by Distributing 1 as a result of Distribution 1 (§ 361(c)(1)).
- (8) The aggregate basis of the Distributing 1 shares and the Controlled shares in the hands of Distributing 2 after Distribution 1 will be the same as the basis of the Distributing 1 shares in the hands of Distributing 2 immediately before Distribution 1 (§§ 358(a) and 1.358-1(a)). Such basis will be allocated between the Distributing 1 shares and the Controlled shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
- (9) The holding period of the Controlled shares received by Distributing 2 in Distribution 1 will include the holding period of the Distributing 1 shares with respect to which Distribution 1 will be made, provided that such Distributing 1 shares are held as capital assets on the date of Distribution 1 (§ 1223(1)).

- (10) As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled will be made under §§ 1.312-10(a) and 1.1502-33(e)(3).

### Distribution 2

Based solely on the information and representations submitted, we rule as follows on Distribution 2:

- (11) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 3 as a result of Distribution 2 (§ 355(a)(1)).
- (12) No gain or loss will be recognized by Distributing 2 as a result of Distribution 2 (§ 355(c)).
- (13) The aggregate basis of the Distributing 2 shares and the Controlled shares in the hands of Distributing 3 after Distribution 2 will be the same as the basis of the Distributing 2 shares in the hands of Distributing 3 immediately before Distribution 2 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Distributing 2 shares and the Controlled shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
- (14) The holding period of the Controlled shares received by Distributing 3 in Distribution 2 will include the holding period of the Distributing 2 shares with respect to which Distribution 2 will be made, provided that such Distributing 2 shares are held as capital assets on the date of Distribution 2 (§ 1223(1)).
- (15) As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled will be made under § 1.312-10(b) and § 1.1502-33(e)(3).

### Distribution 3

Based solely on the information and representations submitted, we rule as follows on Distribution 3:

- (16) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 4 as a result of Distribution 3 (§ 355(a)(1)).
- (17) No gain or loss will be recognized by Distributing 3 as a result of Distribution 3 (§ 355(c)).

- (18) The aggregate basis of the Distributing 3 shares and the Controlled shares in the hands of Distributing 4 after Distribution 3 will be the same as the basis of the Distributing 3 shares in the hands of Distributing 4 immediately before Distribution 3 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Distributing 3 shares and the Controlled shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
- (19) The holding period of the Controlled shares received by Distributing 4 in Distribution 3 will include the holding period of the Distributing 3 shares with respect to which Distribution 3 will be made, provided that such Distributing 3 shares are held as capital assets on the date of Distribution 3 (§ 1223(1)).
- (20) As provided in § 312(h), proper allocation of earnings and profits between Distributing 3 and Controlled will be made under § 1.312-10(b) and § 1.1502-33(e)(3).

#### Distribution 4

Based solely on the information and representations submitted, we rule as follows on Distribution 4:

- (21) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 5 as a result of Distribution 4 (§ 355(a)(1)).
- (22) No gain or loss will be recognized by Distributing 4 as a result of Distribution 4 (§ 355(c)).
- (23) The aggregate basis of the Distributing 4 shares and the Controlled shares in the hands of Distributing 5 after Distribution 4 will be the same as the basis of the Distributing 4 shares in the hands of Distributing 5 immediately before Distribution 4 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Distributing 4 shares and the Controlled shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
- (24) The holding period of the Controlled shares received by Distributing 5 in Distribution 4 will include the holding period of the Distributing 4 shares with respect to which Distribution 4 will be made, provided that such Distributing 4 shares are held as capital assets on the date of Distribution 4 (§ 1223(1)).

- (25) As provided in § 312(h), proper allocation of earnings and profits between Distributing 4 and Controlled will be made under § 1.312-10(b) and § 1.1502-33(e)(3).

Contribution 2 and Distribution 5

Based solely on the information and representations submitted, we rule as follows on Contribution 2 and Distribution 5:

- (26) Contribution 2, followed by Distribution 5, will be a reorganization under § 368(a)(1)(D). Distributing 5 and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).
- (27) No gain or loss will be recognized by Distributing 5 on Contribution 2 (§§ 357(a) and 361(a)).
- (28) No gain or loss will be recognized by Controlled on Contribution 2 (§ 1032(a)).
- (29) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Shareholder as a result of Distribution 5 (§ 355(a)(1)).
- (30) No gain or loss will be recognized by Distributing 5 as a result of Distribution 5 (§ 361(c)(1)).
- (31) The aggregate basis of the Controlled shares in the hands of Shareholder after Distribution 5 will equal the aggregate basis of the Distributing 5 stock surrendered by Shareholder in exchange therefor (§ 358(a)).
- (32) The holding period of the Controlled shares received by Shareholder in Distribution 5 will include the holding period of the Distributing 5 shares for which the stock of Controlled is exchanged, provided that such Distributing 5 shares are held as capital assets on the date of Distribution 5 (§ 1223(1)).
- (33) As provided in § 312(h), proper allocation of earnings and profits between Distributing 5 and Controlled will be made under § 1.312-10(a) and § 1.1502-33(e)(3).
- (34) Except for purposes of § 355(g), any Adjustment Payments made by Distributing 5 or any of Distributing 5's affiliates to Controlled or any of Controlled's affiliates, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before Distribution 5 or for a taxable period beginning on or before and ending after Distribution 5 and (ii) will not have become fixed and ascertainable until after Distribution 5, will be treated as if occurring immediately before Distribution

5 (see Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

### **CAVEATS**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or on 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, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both; and
- (iii) Whether Distribution 1, Distribution 2, Distribution 3, Distribution 4, and Distribution 5 and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

### **PROCEDURAL MATTERS**

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

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Associate Chief Counsel (Corporate)

cc: