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Distributing =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 13 LLC =

Sub 4 LLC =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

aa =

bb =

cc =

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jj =

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ll =

mm =

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oo =

Business A =

Business B =

Business C =

Financial Advisor =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

Date I =

Date J =

Date K =

Date L =

Date M =

Date N =

Year A =

Country X =

Country Y =

Dear

This letter responds to your April 7, 2000 request for rulings on certain federal income tax consequences of a partially completed transaction. Additional information was submitted in letters dated July 31, September 21, October 11, November 20, December 8, December 28, 2000, January 15, and January 23, 2001. The information submitted is summarized below.

Summary of Facts

Distributing is the common parent of a consolidated group, the stock of which is widely held and publicly traded. Distributing is primarily a holding company that conducts a number of businesses through its wholly owned and majority-owned subsidiaries (collectively, the "Distributing Group"). No five percent shareholder of Distributing actively participates in the management of the Distributing Group. All businesses conducted by Distributing use the accrual method of accounting. (All corporations described below are domestic corporations unless otherwise indicated).

Prior to Date A, Distributing wholly owned all of the stock of Controlled 1, approximately aa% of Controlled 2, approximately bb% of Sub 1, and approximately cc% of Sub 2 (Distributing purchased less than 10 percent of the Controlled 2 stock in taxable transactions within the last five years ("Tainted Stock")). Controlled 1 owned all of the stock of Sub 3. Sub 1 owned all of the outstanding stock of Sub 4, and Sub 5, a Country X corporation. Sub 4 owned all of the outstanding stock of Sub 6, and approximately dd% and ee% of Sub 7 and Sub 8, respectively. The remaining stock of Sub 7 and Sub 8 was held by the public. Sub 2 owned all of the outstanding stock of Sub 9 and Sub 10. The stock of Sub 11 was owned approximately ff% by Sub 9, ff% by Sub 10, and gg% by Sub 2. Sub 11 owned all of the outstanding stock of Sub 12 and Sub 13.

Distributing has various stock option plans under which options to purchase shares of Distributing and Controlled 2 common stock may be granted to key employees, directors, and other service providers. Controlled 2 also has various stock option plans under which options to purchase Controlled 2 shares may be granted to key employees, directors, and others of Controlled 2. These plans permit the grant of a variety of stock and stock-based awards. The option recipients and the terms of the options granted under these plans vary; however, nonqualified options are generally granted at fair market value, and incentive stock options must be granted at not less than the fair market value of the underlying stock on the date of grant ("Compensatory Option").

Distributing's Business A is primarily operated through Sub 2, its Business B is operated primarily through Controlled 1 and its affiliates, and its Business C is operated through Controlled 2 and its affiliates.

We have received financial information indicating that each of Businesses A, B,

and C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Management problems have resulted from Business A, Business B and Business C all being conducted within a single consolidated group. Additionally, Controlled 1 and Controlled 2 wish to raise additional capital. Distributing's Financial Advisor has concluded that a spin-off of Controlled 1 and Controlled 2 followed by an initial public offering of Controlled 1 and Controlled 2 stock would be the most efficient way to solve the management problems and raise capital. Furthermore, more money will be raised in the IPOs if Controlled 1 and Controlled 2 are independent companies.

Proposed Transaction

To solve the management problems and accomplish the separation, Distributing has proposed the following transaction, some of the steps of which have been completed:

- (i) On Date A and Date B, respectively, Sub 9 and Sub 10 merged with and into Sub 2 in complete liquidation (the "Sub 9 Liquidation" and the "Sub 10 Liquidation", respectively).
- (ii) On Date C, Sub 2 merged a newly created subsidiary ("Acquisition Sub") with and into Sub 11 with Sub 11 surviving. The public shareholders of Sub 11 received cash in exchange for the Sub 11 shares (the "Sub 11 Merger").
- (iii) On Date D, a tender offer was closed whereby Distributing transferred to the public shareholders of Sub 1 Distributing stock in exchange for Sub 1 shares (the "Sub 1 Tender Offer"). As a result of the Sub 1 Tender Offer, Distributing owned hh% of the outstanding Sub 1 stock.
- (iv) On Date D, a tender offer was closed whereby Distributing transferred to the public shareholders of Sub 2 Distributing stock in exchange for Sub 2 shares (the "Sub 2 Tender Offer"). As a result of the Sub 2 Tender Offer Distributing owned hh% of the outstanding stock of Sub 2.
- (v) On Date E, subsequent to the Sub 1 Tender Offer, Sub 1 merged with and into Distributing in exchange for Distributing stock ("Sub 1 Merger").
- (vi) On Date E, subsequent to the Sub 2 Tender Offer, Sub 2 merged with and into Distributing in exchange for Distributing stock (the "Sub 2 Liquidation").
- (vii) On Date F, Sub 11 merged into Distributing in complete liquidation (the "Sub 11 Liquidation").

- (viii) Distributing will form an LLC ("Sub 13 LLC") all of the interests of which will be owned by Distributing. The Sub 13 LLC will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3 of the Income Tax Regulations. Distributing will merge its wholly owned subsidiaries, Sub 12 and Sub 13, with and into the Sub 13 LLC (the "Sub 12 Liquidation" and the "Sub 13 Liquidation", respectively).
- (ix) Sub 3 will merge with and into Controlled 1 in complete liquidation (the "Sub 3 Liquidation").
- (x) On Date G, Distributing formed an LLC ("Sub 4 LLC") all of the interests of which were issued to Distributing. Sub 4 LLC will be treated as a disregarded entity for federal income tax purposes under § 301.7701-3. Distributing merged its wholly owned subsidiary Sub 4 with and into Sub 4 LLC (the "Sub 4 Liquidation").
- (xi) On Date G, Sub 4 LLC distributed all of the stock it held in the following corporations that are engaged in Business A to Distributing: (i) Sub 6; (ii) Sub 7; and (iii) Sub 8 (the "Sub 4 LLC Transfer").
- (xii) On Date H, Distributing contributed assets previously held by Sub 1 and related to Business B, including the stock of Sub 5 and its interest in Sub 4 LLC, to Controlled 1, and Controlled 1 assumed related liabilities (the "Contribution").
- (xiii) Distributing will distribute all of the stock it owns in Controlled 1 and Controlled 2 (at least 80 percent (by vote and value)) pro rata to its shareholders (the "Distributions"). Immediately prior to the Distributions, Controlled 1 will increase the number of outstanding shares of common stock to a number which will be determined at the date of issuance based upon then existing market conditions and valuations, and Controlled 2 will engage in a reverse stock split. Distributing Compensatory Options that are now held by Controlled 1 and Controlled 2 employees will be exchanged for Controlled 1 and Controlled 2 Compensatory Options, respectively, that are subject to restrictions and conditions substantially similar to those to which the Distributing Compensatory Options are subject.
- (xiv) Within one year of the completion of the Distributions, each of Controlled 1 and Controlled 2 will issue ii% of its stock to the public.

Representations

The taxpayer has made the following representations:

Liquidation Representations

Sub 9 Liquidation

- (a) Sub 2, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution was completed, was the owner of at least 80 percent of the single outstanding class of stock of Sub 9.
- (b) No shares of Sub 9 stock were redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 9.
- (c) Distributions from Sub 9 pursuant to the plan of complete liquidation were made within a single taxable year of Sub 9.
- (d) As soon as the first liquidating distribution was made, Sub 9 ceased to be a going concern and its activities were limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e) Sub 9 retained no assets following the final liquidating distribution.
- (f) Sub 9 did not acquire assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (g) No assets of Sub 9 were disposed of by Sub 9 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (h) The Sub 9 Liquidation was not preceded by, nor will be followed by, the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 9 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 9 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (i) Prior to the adoption of the liquidation plan, no assets of Sub 9 were distributed in kind, transferred, or sold to Sub 2, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (j) Sub 9 did not hold at the time of the liquidation any assets representing earned but unreported income.
- (k) The fair market value of the assets of Sub 9 exceeded its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to

the time the liquidating distribution was made.

- (l) On the date of the Sub 9 Liquidation, there will be no intercorporate debt existing between Sub 2 and Sub 9, and none has been canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (m) The fair market value of the property received by Sub 2 in satisfaction of the indebtedness of Sub 9 owed to Sub 2 equals Sub 2's basis in the indebtedness.

Sub 10 Liquidation

- (n) Sub 2, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution was completed, was the owner of at least 80 percent of the single outstanding class of stock of Sub 10.
- (o) No shares of Sub 10 stock were redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 10.
- (p) Distributions from Sub 10 pursuant to the plan of complete liquidation were made within a single taxable year of Sub 10.
- (q) As soon as the first liquidating distribution was made, Sub 10 ceased to be a going concern and its activities were limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (r) Sub 10 retained no assets following the final liquidating distribution.
- (s) Sub 10 did not acquire assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (t) No assets of Sub 10 have been disposed of by Sub 10 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (u) The Sub 10 Liquidation was not preceded by, nor will be followed by, the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 10 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 10 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).

- (v) Prior to the adoption of the liquidation plan, no assets of Sub 10 were distributed in kind, transferred, or sold to Sub 2, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (w) Sub 10 did not hold at the time of the liquidation any assets representing earned but unreported income.
- (x) The fair market value of the assets of Sub 10 exceeded its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution was made.
- (y) On the date of the Sub 10 Liquidation, no intercorporate debt existed between Sub 2 and Sub 10, and none was canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (z) The fair market value of the property received by Sub 2 in satisfaction of the indebtedness of Sub 10 owed to Sub 2 equals Sub 2's basis in the indebtedness.

Sub 2 Liquidation

- (2a) Distributing on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution was completed, was the owner of at least 80 percent of the single outstanding class of stock of Sub 2.
- (2b) No shares of Sub 2 were redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 2, except for the repurchase of jj shares.
- (2c) Distributions from Sub 2 to Distributing pursuant to the plan of complete liquidation were made within a single taxable year of Sub 2.
- (2d) As soon as the first liquidating distribution was made, Sub 2 ceased to be a going concern and its activities were limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (2e) Sub 2 retained no assets following the final liquidating distribution.
- (2f) Sub 2 did not acquire assets in any nontaxable transactions at any time, except for (i) acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation, (ii) the Date I acquisition of kk shares of Sub 14 in

exchange for Sub 15; and (iii) the Date J acquisition of 11 shares of Sub 16 in exchange for Sub 17 and Sub 18.

- (2g) Other than as described below, no assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation,
 - 1) Date K. Sub 2 contributed certain assets to Sub 20 for stock in a tax-free § 351 exchange.
 - 2) Date L. Sub 19 acquired Sub 21 from Sub 2 for stock and the assumption of debt.
- (2h) The Sub 2 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 2 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (2i) Prior to the adoption of the liquidation plan, no assets of Sub 2 were distributed in kind, transferred, or sold to Distributing, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (2j) Sub 2 did not hold at the time of the liquidation any assets representing earned but unreported income.
- (2k) The fair market value of the assets of Sub 2 exceeded its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution was made.
- (2l) On the date of the Sub 2 Liquidation, there was no intercorporate debt existing between Sub 2 and Distributing, and none had canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (2m) The fair market value of the property received by Distributing in satisfaction of the indebtedness of Sub 2 owed to Distributing equals Distributing's basis in the indebtedness.

Sub 11 Liquidation

- (2n) Distributing, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution was completed, was the owner of at least 80 percent of the single outstanding class of stock of Sub 11.
- (2o) No shares of Sub 11 stock were redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 11, except for the repurchase of mm shares.
- (2p) Distributions from Sub 11 pursuant to the plan of complete liquidation were made within a single taxable year of Sub 11.
- (2q) As soon as the first liquidating distribution was made, Sub 11 ceased to be a going concern and its activities were limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (2r) Sub 11 retained no assets following the final liquidating distribution.
- (2s) Sub 11 did not acquire assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (2t) No assets of Sub 11 have been, or will be, disposed of by either Sub 11 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (2u) The Sub 11 Liquidation was not preceded by, nor will be followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 11 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 11 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (2v) Prior to the adoption of the liquidation plan, no assets of Sub 11 were distributed in kind, transferred, or sold to Distributing, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (2w) Sub 11 did not hold at the time of the liquidation any assets representing earned but unreported income.

- (2x) The fair market value of the assets of Sub 11 exceeded its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution was made.
- (2y) On the date of the Sub 11 Liquidation, there was no intercorporate debt existing between Distributing and Sub 11, and none has been canceled, forgiven, or discounted, except for an intercompany account balance, transactions that occurred more than three years prior to the date of adoption of the liquidation plan and \$nn Sub 11 00 percent debentures owned by Distributing that matured on Date M.
- (2z) The fair market value of the property received by Distributing in satisfaction of the indebtedness of Sub 11 owed to Distributing equals Distributing's basis in the indebtedness.

Sub 12 Liquidation

- (3a) Distributing, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of stock of Sub 12.
- (3b) No shares of Sub 12 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 12.
- (3c) Distributions from Sub 12 to Sub 13 LLC pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 12.
- (3d) As soon as the first liquidating distribution has been made, Sub 12 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (3e) Sub 12 will retain no assets following the final liquidating distribution.
- (3f) Sub 12 will not have acquired assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (3g) No assets of Sub 12 have been, or will be, disposed of by either Sub 12, Sub 13 LLC or Distributing, except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (3h) The Sub 12 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets

of Sub 12 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 12 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).

- (3i) Prior to the adoption of the liquidation plan, no assets of Sub 12 will have been distributed in kind, transferred, or sold to Sub 13 LLC or Distributing except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (3j) Sub 12 does not hold, and will not hold at the time of the liquidation, any assets representing earned but unreported income.
- (3k) The fair market value of the assets of Sub 12 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution is made.
- (3l) On the date of the Sub 12 Liquidation, there will be no intercorporate debt existing between Distributing (or Sub 13 LLC) and Sub 12, and none has been canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (3m) The fair market value of the property received by Distributing in satisfaction of the indebtedness of Sub 12 owed to Distributing equals Distributing's basis in the indebtedness.

Sub 13 Liquidation

- (3n) Distributing, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of stock of Sub 13.
- (3o) No shares of Sub 13 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 13.
- (3p) Distributions from Sub 13 to Sub 13 LLC pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 13.
- (3q) As soon as the first liquidating distribution has been made, Sub 13 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.

- (3r) Sub 13 will retain no assets following the final liquidating distribution.
- (3s) Sub 13 will not have acquired assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (3t) No assets of Sub 13 have been, or will be, disposed of by either Sub 13, Sub 13 LLC or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (3u) The Sub 13 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 13 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 13 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (3v) Prior to the adoption of the liquidation plan, no assets of Sub 13 will have been distributed in kind, transferred, or sold to Sub 13 LLC or Distributing, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (3w) Sub 13 does not hold, and will not hold at the time of the liquidation, any assets representing earned but unreported income.
- (3x) The fair market value of the assets of Sub 13 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution is made.
- (3y) On the date of the Sub 13 Liquidation, there will be no intercorporate debt existing between Distributing (or Sub 13 LLC) and Sub 13, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (3z) The fair market value of the property received by Distributing in satisfaction of the indebtedness of Sub 13 owed to Distributing equals Distributing's basis in the indebtedness.

Sub 3 Liquidation

- (4a) Controlled 1, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at

least 80 percent of the single outstanding class of stock of Sub 3.

- (4b) No shares of Sub 3 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 3.
- (4c) Distributions from Sub 3 to Controlled 1 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 3.
- (4d) As soon as the first liquidating distribution has been made, Sub 3 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (4e) Sub 3 will retain no assets following the final liquidating distribution.
- (4f) Sub 3 will not have acquired assets in any nontaxable transactions at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
- (4g) No assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Controlled 1 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of complete liquidation.
- (4h) The Sub 3 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 3 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
- (4i) Prior to the adoption of the liquidation plan, no assets of Sub 3 will have been distributed in kind, transferred, or sold to Controlled 1, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (4j) Sub 3 does not hold, and will not hold at the time of the liquidation, any assets representing earned but unreported income.
- (4k) The fair market value of the assets of Sub 3 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution is made.
- (4l) On the date of the Sub 3 Liquidation, there will be no intercorporate debt existing

between Controlled 1 and Sub 3, and none has been canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.

- (4m) The fair market value of the property received by Controlled 1 in satisfaction of the indebtedness of Sub 3 owed to Controlled 1 equals Controlled 1's basis in the indebtedness.

Sub 4 Liquidation

- (4n) Distributing, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution was completed, was the owner of at least 80 percent of the single outstanding class of stock of Sub 4.
- (4o) No shares of Sub 4 stock were redeemed during the three years preceding the adoption of the plan of complete liquidation of Sub 4.
- (4p) Distributions from Sub 4 to Sub 4 LLC pursuant to the plan of complete liquidation were made within a single taxable year of Sub 4.
- (4q) As soon as the first liquidating distribution was made, Sub 4 ceased to be a going concern and its activities were limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (4r) Sub 4 retained no assets following the final liquidating distribution.
- (4s) Sub 4 did not acquire assets in any nontaxable transactions at any time, except for (i) acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation, (ii) the contributions of the stock of Sub 6, Sub 7, and Sub 8 in Year A, and (iii) the contribution of the stock of Sub 22 on Date N.
- (4t) No assets of Sub 4 were, or will be, disposed of by either Sub 4, Sub 4 LLC or Distributing, except for dispositions in the ordinary course of business, dispositions occurring more than three years prior to adoption of the plan of complete liquidation, or as described in steps (xi), (xii) and (xiii).
- (4u) The Sub 4 Liquidation was not preceded, nor will be followed, by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 4 if persons holding, directly or indirectly, more than 20 percent in value of the Sub 4 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation, except, as detailed above, certain assets of Sub 4 will be transferred to Controlled 1. For purposes of this representation, ownership will be determined by application of

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

- (4v) Prior to the adoption of the liquidation plan, no assets of Sub 4 were distributed in kind, transferred, or sold to Sub 4 LLC or Distributing, except for transactions occurring in the ordinary course of business and transactions occurring more than three years prior to adoption of the liquidation plan.
- (4w) Sub 4 did not hold at the time of the liquidation any assets representing earned but unreported income.
- (4x) The fair market value of the assets of Sub 4 exceeded its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution was made.
- (4y) On the date of the Sub 4 Liquidation, there was no intercorporate debt existing between Distributing (or Sub 4 LLC) and Sub 4, and none has been canceled, forgiven, or discounted, except for an intercompany account balance and transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (4z) The fair market value of the property received by Distributing in satisfaction of the indebtedness of Sub 4 owed to Distributing equals Distributing's basis in the indebtedness.

The following representations apply to the liquidations of Sub 2, Sub3, Sub 4, Sub 9, Sub 10, Sub 11, Sub 12 and Sub 13:

- (5a) No corporation which is receiving the assets of a liquidating corporation is exempt from tax under § 501 or any other provision of the Code.
- (5b) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the above liquidations have been fully disclosed.

Contribution and Distributions Representations

- (5c) Any indebtedness owed by Controlled 1 or Controlled 2 to Distributing or any other related party after the Distributions will not constitute stock or securities for Federal income tax purposes. Distributing will continue to guarantee Controlled 2 public debentures after the Distributions. This guarantee will not constitute stock or securities.
- (5d) No part of the consideration distributed by Distributing is being received by a shareholder as a creditor, employee, or in any capacity other than as a

shareholder of Distributing.

- (5e) The five years of financial information submitted on behalf of Sub 3, Sub 12, Sub 13, and Controlled 2 are representative of each corporation's present operations and, with regard to each corporation, there has not been any substantial operational changes since the date of the last financial statement submitted.
- (5f) Immediately after the Distributions, the gross assets of Distributing, Controlled 1, and Controlled 2 used in their respective active trades or businesses (as defined in § 355(b)(2)) will have a fair market value equal to at least 5 percent of the value of the total fair market value of the gross assets of Distributing, Controlled 1 and Controlled 2, respectively.
- (5g) Following the Distributions, Distributing, Controlled 1 and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.
- (5h) The Distributions are carried out for the following corporate business purposes: to solve management problems and raise additional capital. The Distributions are motivated, in whole or substantial part, by these corporate business purposes.
- (5i) There is no plan or intention by any shareholder who owns 5 percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing, Controlled 1 or, Controlled 2 after the transaction.
- (5j) There is no plan or intention by Distributing, Controlled 1, or Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.
- (5k) There is no plan or intention to liquidate either Distributing, Controlled 1, or Controlled 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business and except that Distributing, Controlled 1, and Controlled 2 may liquidate or merge wholly owned subsidiaries in order to simplify the corporate structure.
- (5l) The total adjusted basis and the fair market value of the assets contributed to Controlled 1 in the Contribution each equals or exceeds the sum of any liabilities assumed by Controlled 1.

- (5m) The liabilities assumed by Controlled 1 in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (5n) No intercorporate debt will exist between Distributing or any related party, on the one hand, and Controlled 1 or Controlled 2 or any related party, on the other hand, at the time of or after the Distributions except for the continued guarantee by Distributing of the Controlled 2 public debentures and continued guarantee by Distributing of the Controlled 2 redemption rights.
- (5o) Immediately before the Distributions, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany regulations. Further, there will be no excess loss account in respect of any stock of Distributing, Controlled 1, Controlled 2 or any direct or indirect subsidiary thereof, immediately before the Distributions.
- (5p) Payments made in connection with all continuing transactions between Distributing or any related party, on the one hand, and Controlled 1, Controlled 2 or any related party, on the other hand, will be for fair market value and based on terms and conditions arrived at by the parties bargaining at arm's-length.
- (5q) Payments made in connection with all continuing transactions between Controlled 1, or any related party, on the one hand, and Controlled 2, or any related party, on the other hand, will be for fair market value and based on terms and conditions arrived at by the parties bargaining at arm's-length.
- (5r) No two parties to the proposed transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (5s) For purposes of § 355(d), immediately after the Distributions, no person will hold disqualified stock (as defined in § 355(d)(3)) in either Distributing, Controlled 1, or Controlled 2 possessing 50 percent or more of the total combined voting power or value of the outstanding Distributing, Controlled 1, or Controlled 2 stock.
- (5t) The Distributions are not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock or at least 50 percent of the total value of shares of all classes of stock of either Distributing, Controlled 1 or Controlled 2. For purposes of this representation, stock acquired upon exercise of Compensatory Options in Distributing, Controlled 1, or Controlled 2 will not be treated as acquired as part of a plan (or series of related transactions) of which

the Distribution is a part.

- (5u) The Compensatory Options will contain customary terms and conditions, will be granted in connection with the performance of services for Distributing, Controlled 1, Controlled 2, or a person related to the grantor under § 355(d)(7)(A), will not be excessive by reference to the services performed, and immediately after the Distributions and within six months thereafter (i) will not be transferable within the meaning of § 1.83-3(d) and (ii) will not have a readily ascertainable fair market value as defined in § 1.83-7(b).

RULINGS

Based solely on the information submitted and representations made, it is held as follows:

With respect to the Sub 9 Liquidation we hold that:

- (1) The Sub 9 Liquidation qualifies as a distribution by Sub 9 to Sub 2 in complete liquidation of Sub 9 under § 332 and § 1.332-2(d).
- (2) No income, gain or loss was recognized by Sub 2 on receiving the assets and liabilities of Sub 9 in the Sub 9 Liquidation (§ 332(a)).
- (3) No income, gain or loss was recognized by Sub 9 on the Sub 9 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (4) The basis Sub 2 has in each asset received from Sub 9 as a result of the Sub 9 Liquidation equals the basis of that asset in the hands of Sub 9 immediately before the Sub 9 Liquidation (§ 334(b)(1)).
- (5) The holding period Sub 2 has in each asset received from Sub 9 as a result of the Sub 9 Liquidation includes the period during which that asset was held by Sub 9 (§ 1223(2)).
- (6) Sub 2 succeeds to and takes into account the items of Sub 9 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (7) Sub 2 succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 9 as of the date of the Sub 9 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 9 or Sub 2 will be used only to offset earnings and profits accumulated after the date of the Sub 9 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 9's earnings and profits are reflected in Sub 2's earnings and

profits, the Sub 9 earnings and profits to which Sub 2 succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 10 Liquidation we hold that:

- (8) The Sub 10 Liquidation qualifies as a distribution by Sub 10 to Sub 2 in complete liquidation of Sub 10 under § 332 and § 1.332-2(d).
- (9) No income, gain or loss was recognized by Sub 2 on receiving the assets and liabilities of Sub 10 in the Sub 10 Liquidation (§ 332(a)).
- (10) No income, gain or loss was recognized by Sub 10 on the Sub 10 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (11) The basis Sub 2 has in each asset received from Sub 10 as a result of the Sub 10 Liquidation equals the basis of that asset in the hands of Sub 10 immediately before the Sub 10 Liquidation (§ 334(b)(1)).
- (12) The holding period Sub 2 has in each asset received from Sub 10 as a result of the Sub 10 Liquidation includes the period during which that asset was held by Sub 10 (§ 1223(2)).
- (13) Sub 2 succeeds to and takes into account the items of Sub 10 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (14) Sub 2 succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 10 as of the date of the Sub 10 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 10 or Sub 2 will be used only to offset earnings and profits accumulated after the date of the Sub 10 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 10's earnings and profits are reflected in Sub 2's earnings and profits, the Sub 10 earnings and profits to which Sub 2 succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 2 Liquidation we hold that:

- (15) The Sub 2 Liquidation qualifies as a distribution by Sub 2 to Distributing in complete liquidation of Sub 2 under § 332 and § 1.332-2(d).
- (16) No income, gain or loss was recognized by Distributing on receiving the assets and liabilities of Sub 2 in the Sub 2 Liquidation (§ 332(a)).
- (17) No income, gain or loss was recognized by Sub 2 on the Sub 2 Liquidation

(§§ 336(d)(3), 337(a) and 337(b)).

- (18) The basis Distributing has in each asset received from Sub 2 as a result of the Sub 2 Liquidation equals the basis of that asset in the hands of Sub 2 immediately before the Sub 2 Liquidation (§ 334(b)(1)).
- (19) The holding period Distributing has in each asset received from Sub 2 as a result of the Sub 2 Liquidation includes the period during which that asset was held by Sub 2 (§ 1223(2)).
- (20) Distributing succeeds to and takes into account the items of Sub 2 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (21) Distributing succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of the Sub 2 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 2 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 2 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 2's earnings and profits are reflected in Distributing's earnings and profits, the Sub 2 earnings and profits to which Distributing succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 11 Liquidation we hold that:

- (22) The Sub 11 Liquidation qualifies as a distribution by Sub 11 to Distributing in complete liquidation of Sub 11 under § 332 and § 1.332-2(d).
- (23) No income, gain or loss was recognized by Distributing on receiving the assets and liabilities of Sub 11 in the Sub 11 Liquidation (§ 332(a)).
- (24) No income, gain or loss was recognized by Sub 11 on the Sub 11 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (25) The basis Distributing has in each asset received from Sub 11 as a result of the Sub 11 Liquidation equals the basis of that asset in the hands of Sub 11 immediately before the Sub 11 Liquidation (§ 334(b)(1)).
- (26) The holding period Distributing has in each asset received from Sub 11 as a result of the Sub 11 Liquidation includes the period during which that asset was held by Sub 11 (§ 1223(2)).
- (27) Distributing succeeds to and takes into account the items of Sub 11 described in

§ 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384, and the regulations thereunder (§ 381(a); § 1.381(a)-1).

- (28) Distributing succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 11 as of the date of the Sub 11 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 11 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 11 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 11's earnings and profits are reflected in Distributing's earnings and profits, the Sub 11 earnings and profits to which Distributing succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 12 Liquidation we hold that:

- (29) For Federal income tax purposes, the merger of Sub 12 into Sub 13 LLC, *i.e.*, the Sub 12 Liquidation, will be treated as a distribution by Sub 12 to Distributing in complete liquidation of Sub 12, qualifying as a complete liquidation under § 332 and § 1.332-2(d).
- (30) No income, gain or loss was recognized by Distributing on receiving the assets and liabilities of Sub 12 in the Sub 12 Liquidation (§ 332(a)).
- (31) No income, gain or loss was recognized by Sub 12 on the Sub 12 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (32) The basis Distributing has in each asset received from Sub 12 as a result of the Sub 12 Liquidation equals the basis of that asset in the hands of Sub 12 immediately before the Sub 12 Liquidation (§ 334(b)(1)).
- (33) The holding period Distributing has in each asset received from Sub 12 as a result of the Sub 12 Liquidation includes the period during which that asset was held by Sub 12 (§ 1223(2)).
- (34) Distributing succeeds to and takes into account the items of Sub 12 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (35) Distributing succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 12 as of the date of the Sub 12 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 12 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 12 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 12's earnings and profits are reflected in Distributing's earnings and profits, the Sub 12 earnings and profits to which Distributing

succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 13 Liquidation we hold that:

- (36) For Federal income tax purposes, the merger of Sub 13 into Sub 13 LLC, *i.e.*, the Sub 13 Liquidation, will be treated as a distribution by Sub 13 to Distributing in complete liquidation of Sub 13, qualifying as a complete liquidation under § 332 and § 1.332-2(d).
- (37) No income, gain or loss was recognized by Distributing on receiving the assets and liabilities of Sub 13 in the Sub 13 Liquidation (§ 332(a)).
- (38) No income, gain or loss was recognized by Sub 13 on the Sub 13 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (39) The basis Distributing has in each asset received from Sub 13 as a result of the Sub 13 Liquidation equals the basis of that asset in the hands of Sub 13 immediately before the Sub 13 Liquidation (§ 334(b)(1)).
- (40) The holding period Distributing has in each asset received from Sub 13 as a result of the Sub 13 Liquidation includes the period during which that asset was held by Sub 13 (§ 1223(2)).
- (41) Distributing succeeds to and takes into account the items of Sub 13 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384, and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (42) Distributing succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 13 as of the date of the Sub 13 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 13 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 13 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 13's earnings and profits are reflected in Distributing's earnings and profits, the Sub 13 earnings and profits to which Distributing succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 3 Liquidation we hold that:

- (43) The Sub 3 liquidation qualifies as a distribution by Sub 3 to Controlled 1 in complete liquidation of Sub 3 under § 332 and § 1.332-2(d).
- (44) No income, gain or loss was recognized by Controlled 1 on receiving the assets and liabilities of Sub 3 in the Sub 3 Liquidation (§ 332(a)).

- (45) No income, gain or loss was recognized by Sub 3 on the distribution of its assets and liabilities to Controlled 1 (§§ 336(d)(3), 337(a) and 337(b)).
- (46) The basis Controlled 1 has in each asset received from Sub 3 as a result of the Sub 3 Liquidation equals the basis of that asset in the hands of Sub 3 immediately before the Sub 3 Liquidation (§ 334(b)(1)).
- (47) The holding period Controlled 1 has in each asset received from Sub 3 as a result of the Sub 3 Liquidation includes the period during which that asset was held by Sub 3 (§ 1223(2)).
- (48) Controlled 1 succeeds to and takes into account the items of Sub 3 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384, and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (49) Controlled 1 succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 3 as of the date of the Sub 3 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 3 or Controlled 1 will be used only to offset earnings and profits accumulated after the date of the Sub 3 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 3's earnings and profits are reflected in Controlled 1's earnings and profits, the Sub 3 earnings and profits to which Controlled 1 succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Sub 4 Liquidation we hold that:

- (50) For Federal income tax purposes, the merger of Sub 4 into Sub 4 LLC, *i.e.*, the Sub 4 Liquidation, will be treated as a distribution by Sub 4 to Distributing in complete liquidation of Sub 4, qualifying as a complete liquidation under § 332 and § 1.332-2(d).
- (51) No income, gain or loss was recognized by Distributing on receiving the assets and liabilities of Sub 4 in the Sub 4 Liquidation (§ 332(a)).
- (52) No income, gain or loss was recognized by Sub 4 on the Sub 4 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (53) The basis Distributing has in each asset received from Sub 4 as a result of the Sub 4 Liquidation equals the basis of that asset in the hands of Sub 4 immediately before the Sub 4 Liquidation (§ 334(b)(1)).
- (54) The holding period Distributing has in each asset received from Sub 4 as a result of the Sub 4 Liquidation includes the period during which that asset was held by Sub 4 (§ 1223(2)).

- (55) Distributing succeeds to and takes into account the items of Sub 4 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384, and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (56) Distributing succeeds to and takes into account the earnings and profits, or deficit in earnings and profits, of Sub 4 as of the date of the Sub 4 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 4 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 4 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 4's earnings and profits are reflected in Distributing's earnings and profits, the Sub 4 earnings and profits to which Distributing succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

With respect to the Contribution and Distributions we hold that:

- (57) The Contribution by Distributing to Controlled 1, followed by the distribution of the Controlled 1 stock to Distributing's shareholders will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 1 will each be a "party to the reorganization" within the meaning of § 368(b).
- (58) No gain or loss will be recognized by Distributing in the Contribution (§§ 361(a) and 357(a)).
- (59) No gain or loss will be recognized by Controlled 1 on the deemed issuance of stock in connection with Contribution (§ 1032(a)).
- (60) The basis of each asset received by Controlled 1 in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (61) The holding period of each asset received by Controlled 1 in the Contribution will include the holding period of that asset in the hands of Distributing (§ 1223(2)).
- (62) Distributing will recognize no gain or loss on its distribution of the Controlled 1 stock to the Distributing shareholders (§ 361(c)(1)).
- (63) The Distributing shareholders will recognize no gain or loss, and no amount will be includible in their income, upon the receipt of the Controlled 1 stock (§ 355(a)(1)).
- (64) The holding period of the Controlled 1 common stock received by the Distributing shareholders will include the holding period of the Distributing common stock on which the distribution will be made, provided such stock is held as a capital asset

on the date of the distribution (§ 1223(1)).

- (65) No gain or loss will be recognized to Distributing upon the distribution of its Controlled 2 stock, as described above, but only to the extent that such stock is not Tainted Stock (§ 355(c)). Because the Tainted Stock does not constitute "qualified property" within the meaning of § 355(c), gain, but not loss, shall be recognized to Distributing as if it sold the Tainted Stock to its shareholders at its fair market on the date of distribution (§ 355(c)(2)).
- (66) The Distributing shareholders will recognize no gain or loss, and no amount will be includible in their income, upon the receipt of the Controlled 2 stock which does not represent Tainted Stock (§ 355(a)(1)). To the extent that Distributing shareholders receive Tainted Stock, that distribution will be treated as a distribution of property to which the rules of § 301 (other than §§ 301(b) and 301(d)) apply (§§ 355(a)(3)(B), 356(b) and § 1.356-2(a)).
- (67) As to each Controlled 2 shareholder, the part of the Tainted Stock distribution treated under § 301 as a dividend within the meaning of § 316 will be includible in the gross income of that Controlled 2 shareholder (§ 301(c)(1)). Pursuant to § 301(c)(2), the part of the Tainted Stock distribution not treated as a dividend will be applied against and reduce the adjusted basis of each shareholder's Distributing common stock. The part of the Tainted Stock distribution that is not a dividend, to the extent that it exceeds the adjusted basis of Distributing common stock held by such shareholders, will be treated as gain from the sale or exchange of property (§ 301(c)(3)). The basis of the Tainted Stock in the hands of the Controlled 2 shareholders after the distribution will, in each instance, be the fair market value of such stock on the date of distribution (§ 358(a)(2)).
- (68) The aggregate basis of the Distributing, Controlled 1 and Controlled 2 stock (except for Tainted Stock) in the hands of each Distributing shareholder after the Controlled 1 and Controlled 2 Distributions will equal the aggregate adjusted basis of the Distributing stock held immediately before the distribution, but after any reduction under § 301(c)(2), allocated in proportion to the fair market value of all three corporations under § 1.358-2(a)(2) (§§ 358(a)(1), (b) and (c)).
- (69) The holding period of the Controlled 2 common stock (except for Tainted Stock) received by the Distributing shareholders will include the holding period of the Distributing common stock on which the distribution will be made, provided such stock is held as a capital asset on the date of the distribution (§ 1223(1)). The holding period of the Tainted Stock will commence as of the day after the date of distribution.

- (70) Proper allocation of earnings and profits between Distributing, Controlled 1 and Controlled 2 will be made under §§ 1.312-10 and 1.1502-33.
- (71) The issuance or exercise of a Compensatory Option is not an acquisition pursuant to a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

We express no opinion about the tax treatment of the Sub 1 or Sub 11 Merger. Additionally, we express no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

The rulings contained in this letter are based upon information 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. It is subject to verification on examination.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling will be modified or revoked if adopted temporary or final regulations are inconsistent with any conclusions in the ruling. See § 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 46-47. However, when the criteria in § 12.05 of Rev. Proc. 2001-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Each affected taxpayer must attach a copy of this letter to the taxpayer's federal income tax return for the tax year in which the transaction covered by this ruling letter is consummated.

We have sent copies of this letter to the authorized representatives designated on the power of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)

By Ken Cohen

Senior Technician Reviewer, Branch 3