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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B03
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Date:
September 06, 2012

Legend:

Target =

Sub 19 =

Sub 20 =

bb =

cc =

dd =

ee =

ff =

State G =

Potential Dispositions =

Dear _____ :

This letter responds to your representative's letter dated May 4, 2012, requesting that we supplement a private letter ruling dated April 12, 2012 (PLR-149071-11) (the "Original Ruling"). Additional information was submitted in letters dated May 21, 2012, June 28, 2012, July 20, 2012, July 30, 2012, August 3, 2012, August 22, 2012, and August 28, 2012 (collectively with the letter dated May 4, 2012, the "Supplemental Submissions"). The material information submitted for consideration is summarized below. Capitalized or underlined terms not defined in this letter have the meanings assigned to them in the Original Ruling.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUPPLEMENTAL FACTS

Step (lxxviii) of the transactions described in the Original Ruling states that, immediately following Distribution 17, the Controlled 11 group will acquire all of the issued and outstanding stock of Target (the "Acquisition"). To effectuate the Acquisition, the following transactions have been completed or are proposed:

- (i) Controlled 11 formed Sub 19.
- (ii) Sub 19 formed Sub 20.
- (iii) Sub 20 will merge with and into Target under State G law, with Target surviving as a wholly owned subsidiary of Sub 19 (i.e., the Acquisition). In the Acquisition, Target shareholders will receive solely Controlled 11 voting stock, equal to approximately aa percent of the sole class of Controlled 11 stock outstanding immediately after the Acquisition. The Controlled 11 shareholders as of immediately before the Acquisition, i.e., the Distributing 9 shareholders who receive Controlled 11 shares in Distribution 17, will own the remaining approximately bb percent of the Controlled 11 stock immediately following the Acquisition.

The exchange ratio in the Acquisition, under which Target shareholders will receive approximately aa percent of the Controlled 11 voting stock, will not be adjusted for changes in the economic performance of Controlled 11 (and Business B) and Target or the market price of the Target common stock. Thus, although the relative values of Controlled 11 (and Business B) and Target could fluctuate prior to consummation of the

Acquisition, the Target shareholders in all cases will receive the same percentage ownership of Controlled 11's voting stock in the Acquisition.

Before the Acquisition, the Controlled 11 group intends to issue debt securities in the amount of approximately \$ff (the "New Securities"). Controlled 10 will issue and Controlled 11 will guarantee the New Securities, the proceeds of which will be held in escrow and would not be released until after the closing of the Acquisition. Controlled 10 will use the proceeds, once released from escrow, (i) to repay a portion of the outstanding third-party indebtedness of Target, (ii) to repay debt owed to Distributing 8, and (iii) for general corporate purposes. Distributing 9 has agreed, in the event the Controlled 11 group is unable to obtain third-party indebtedness in the amount of \$cc at an interest rate of no higher than dd percent annually, to extend a ee-day term loan to Controlled 11 to provide Controlled 11 additional time to secure long-term financing.

Following the Acquisition, it is anticipated that Controlled 11 will contribute the stock of Sub 19 to Controlled 10, Controlled 10 will contribute the stock of Sub 19 to Controlled 8, Controlled 8 will contribute the stock of Sub 19 to Controlled 7, and Controlled 7 will contribute the stock of Sub 19 to Controlled 5 (such transfers, the "Subsequent Contributions").

In addition, following the Acquisition, Controlled 11 intends to repurchase shares of its stock (the "Share Repurchases"). The Share Repurchases will be completed through an open market share repurchase program or through an accelerated share repurchase ("ASR") program (or some combination of both). To the extent the Share Repurchases are completed through an open market share repurchase program, all Controlled 11 shareholders will be allowed to participate in and benefit from the Share Repurchases, and Controlled 11 will be indifferent to which shareholders participate in the Share Repurchases. In addition, because such Share Repurchases will be made on the open market (through a broker), Controlled 11 will not know with certainty the identity of any shareholder from which stock is repurchased. Under the ASR program, Controlled 11 would purchase a specified number of shares from a third-party investment bank at an agreed per-share price. The bank would obtain the shares by borrowing shares (e.g., from customers or mutual funds) and would buy shares in the open market over time to return the borrowed shares. Controlled 11 will be indifferent to which shareholders lend or sell shares to the bank and will not know with certainty the identity of any shareholders from which stock is borrowed or purchased by the bank.

The Share Repurchases are not motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders. Neither Distributing 9 nor Target currently has any "controlling shareholders," within the meaning of § 1.355-7(h)(3) of the Income Tax Regulations, and it is anticipated that Controlled 11 will not have any controlling shareholders following Distribution 17. There have been no discussions regarding the Share Repurchases with any particular shareholder or group of shareholders.

The Share Repurchases are intended to be accretive to Controlled 11's future earnings and will be undertaken as part of Controlled 11's capital allocation strategy, in which Controlled 11 determines the optimal use for cash. The Share Repurchases will be undertaken when, consistent with the overall capital allocation strategy, Controlled 11 has excess available cash and has the opportunity to repurchase shares at an attractive price.

SUPPLEMENTAL REPRESENTATIONS

The following representations have been made with respect to the proposed transactions:

- (a) All of the facts, representations, and statements contained in the Original Ruling, as modified herein, by the Supplemental Submissions, and by PLR-137492-12, are hereby affirmed, including the representations that Distribution 17 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)) of the Internal Revenue Code in Distributing 9 or any of the controlled corporations (including any predecessor or successor of any such corporation).
- (b) The Share Repurchases will be motivated by a business purpose, the stock to be repurchased in the Share Repurchases will be widely held, the Share Repurchases will be made in the open market, and Controlled 11 will have no plan or intention to repurchase directly or through any of its subsidiaries an aggregate amount of its stock that would equal or exceed 20 percent of its outstanding stock before the fifth anniversary of Distribution 17.
- (c) The fair market value of the Controlled 11 shares to be received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the Acquisition.
- (d) Except for the Share Repurchases, there is no plan or intention by Controlled 11, or any person related (within the meaning of § 1.368-1(e)(4)) to Controlled 11, to either directly or indirectly acquire any of the Controlled 11 shares issued in the Acquisition.
- (e) None of Controlled 11, Sub 19, or any person related (within the meaning of § 1.368-1(e)(4)) to Controlled 11 or Sub 19 will have acquired any Target stock with consideration other than Controlled 11 stock.
- (f) Target has no plan or intention to issue additional shares of its stock that would result in Sub 19 losing control of Target within the meaning of § 368(c).

- (g) Sub 19 has no plan or intention to liquidate Target, to merge Target into another corporation, to cause Target to sell or otherwise dispose of any of its assets, or to sell or otherwise dispose of any of the Target stock acquired in the Acquisition, except, in each case, for (i) the Potential Dispositions, (ii) dispositions made in the ordinary course of business, and (iii) transfers described in § 368(a)(2)(C) or § 1.368-2(k) (including the Subsequent Contributions).
- (h) Sub 19 will acquire all of the outstanding stock of Target solely in exchange for Controlled 11 voting shares. For purposes of this representation, Target stock redeemed for cash or other property furnished by Controlled 11 or Sub 19 will be considered as acquired by Sub 19. Further, no liabilities of Target or the Target shareholders will be assumed (within the meaning of § 357(d)) by Sub 19 or Controlled 11, nor will any Target stock be subject to any liabilities.
- (i) In connection with the Acquisition, any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target will be converted into an identical right to acquire Controlled 11 voting shares. Subsequent to the Acquisition, there will not be outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target that, if exercised or converted, would affect Sub 19's acquisition or retention of control of Target, as defined in § 368(c).
- (j) None of Controlled 11, Sub 19, or any affiliate of Controlled 11 or Sub 19 owns, directly or indirectly, or has owned during the past five years, directly or indirectly, any stock of Target.
- (k) Except for expenses that are "solely and directly related" (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Acquisition, Controlled 11, Sub 19, Target, and the Target shareholders will pay their respective expenses, if any, incurred in connection with the Acquisition.
- (l) Following the Acquisition, Target will continue its historic business or use a significant portion of its historic business assets in a business.
- (m) No two parties to the Acquisition will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (n) None of the shareholders of Target will have dissenters' rights with respect to the Acquisition and therefore no funds will be supplied, directly or indirectly, by Controlled 11 or Sub 19 nor will Controlled 11 or Sub 19 directly or indirectly reimburse Target for any payments to any dissenting shareholders for the value of their stock.

- (o) At the time of the Acquisition, the fair market value of the assets of Target will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject.
- (p) After the Acquisition, Target will satisfy the reporting requirements under § 1.367(a)-3(c)(6).
- (q) Target shareholders will receive, in the aggregate, less than 50 percent of both the total voting power and the total value of the stock of Controlled 11 (taking into account the attribution rules of § 318, as modified by § 958(b)) in exchange for their Target stock in the Acquisition.
- (r) U.S. persons who are officers, directors, or five-percent target shareholders (as defined in § 1.367(a)-3(c)(5)(iii)) of Target will own, in the aggregate, immediately after the Acquisition, less than 50 percent of each of the total voting power and total value of the stock of Controlled 11 (taking into account the attribution rules of § 318, as modified by § 958(b)).
- (s) Controlled 11 or a qualified subsidiary (a “Qualified Subsidiary”) or a qualified partnership (a “Qualified Partnership”) (each within the meaning of § 1.367(a)-3(c)(5)) of Controlled 11, will have been engaged in an active trade or business outside the United States, within the meaning of § 1.367(a)-2T(b)(2) and (3) (the “Active Business”), for the entire 36-month period preceding the Acquisition.
- (t) At the time of the Acquisition, neither Controlled 11 (including any of its Qualified Subsidiaries or Qualified Partnerships) nor, to the knowledge of Controlled 11 or Target, the shareholders of Target will have an intention to substantially dispose of or discontinue the Active Business.
- (u) The assets of the Active Business will not have been owned by Target or any affiliate of Target (within the meaning of § 1504(a), but excluding the exceptions contained in § 1504(b) and substituting “50 percent” for “80 percent” where it appears therein) at any time during the 36-month period ending immediately prior to the Acquisition. The Active Business was not acquired for the principal purpose of satisfying the active trade or business test contained in § 1.367(a)-3(c)(3).
- (v) During the 36-month period ending immediately prior to the Acquisition, neither Controlled 11 nor any of Controlled 11’s Qualified Subsidiaries or Qualified Partnerships will have acquired: (i) any assets (including, in particular, assets producing, or held for the production of, passive income as defined in § 1297(b)) for any purpose of satisfying the substantiality test of § 1.367(a)-3(c)(3)(iii); or (ii) any assets owned by Target or any affiliate of Target (within the meaning of § 1504(a), but excluding the exceptions contained in § 1504(b) and substituting

“50 percent” for “80 percent” where it appears therein) at any time during the 36-month period ending immediately prior to the Acquisition.

- (w) The fair market value of Controlled 11 (including the fair market value of any Qualified Subsidiary or Qualified Partnership) will include assets producing, or held for the production of, passive income as defined in § 1297(b) which were acquired outside the ordinary course of business within the 36-month period preceding the Acquisition only to the extent the assets were acquired in a transaction which was not undertaken for any purpose of satisfying the substantiality test.
- (x) Target has not issued or acquired and will not issue or acquire options (or interests similar to options) with a principal purpose of avoiding the general rule of § 367(a)(1).
- (y) The Acquisition is not a transaction to which § 1.367(b)-10 applies.
- (z) The exchange ratio in the Acquisition, which is the result of arm’s-length bargaining and pursuant to which Target shareholders will receive approximately aa percent of the stock of Controlled 11 in exchange for their Target stock, is fixed.
- (aa) The New Securities will constitute debt and not equity for federal income tax purposes and will not be convertible into equity.

SUPPLEMENTAL RULINGS

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

- (1) The proposed transactions will not adversely affect the Original Ruling, which will remain in full force and effect.
- (2) For purposes of testing the effect of the Share Repurchases on Distribution 17 under § 355(e), the Share Repurchases will be treated as being made from all holders of Controlled 11 common stock on a pro rata basis. The effect of the Share Repurchases will be taken into account under § 355(e) and this ruling only to the extent such Share Repurchases are otherwise treated, for purposes of § 355(e), as part of a plan (or series of related transactions) with Distribution 17.
- (3) For federal income tax purposes, the formation of Sub 20 and its merger with and into Target pursuant to the Acquisition will be disregarded, and the transaction instead will be treated as the acquisition by Sub 19 of all of the outstanding stock of Target in exchange solely for shares of Controlled 11 voting stock (Rev. Rul. 67-448, 1967-2 C.B. 144).

- (4) The Acquisition will qualify as a reorganization pursuant to § 368(a)(1)(B). Controlled 11, Sub 19, and Target each will be a “party to a reorganization” within the meaning of § 368(b).
- (5) Except to the extent provided by § 367(a)(1) (as determined under Ruling 12), no gain or loss will be recognized by Target shareholders on the exchange of their Target stock solely for Controlled 11 voting common stock in the Acquisition (§ 354(a)(1) and § 1.367(a)-3(a)).
- (6) Except to the extent provided by § 367(a)(1) (as determined under Ruling 12), no gain or loss will be recognized by a holder of Target options, restricted stock, or other rights to acquire Target stock upon the exchange of Target options, restricted stock, or other rights to acquire Target stock for Controlled 11 options, restricted stock, or other rights to acquire Controlled 11 stock, respectively, with identical terms (§ 354(a), §§ 1.354-1(e) and 1.367(a)-3(a)).
- (7) Neither Sub 19 nor Controlled 11 will recognize any gain or loss upon the receipt by Sub 19 of Target common stock in exchange solely for Controlled 11 voting common stock in the Acquisition (§ 1032(a) and § 1.1032-2).
- (8) The basis of the Target stock acquired by Sub 19 will be determined under § 362(b), taking into account the provisions of § 362(e)(1).
- (9) Immediately after the Acquisition, Controlled 11’s basis in the stock of Sub 19 will be determined under § 1.358-6(c)(3).
- (10) The basis of the Controlled 11 voting common stock received by each Target shareholder in the Acquisition will be the same as the basis of the Target stock surrendered in exchange therefor, increased by the gain recognized, if any, by such shareholder in accordance with Ruling 12 (§ 358(a)(1)).
- (11) The holding period of the Controlled 11 voting common stock received by each Target shareholder in the Acquisition will include the period during which the Target stock surrendered by such shareholder was held, provided that the Target stock surrendered by such shareholder was held as a capital asset on the date of the exchange (§ 1223(1)).
- (12) The transfer of Target stock by Target shareholders pursuant to the Acquisition, other than by Target shareholders who are U.S. persons and are or will be “five-percent transferee shareholders” within the meaning of § 1.367(a)-3(c)(5)(ii) but who do not enter into gain recognition agreements within the meaning of §§ 1.367(a)-3(c)(1)(iii)(B) and 1.367(a)-8, will qualify for an exception to § 367(a)(1) (§ 1.367(a)-3(c)(1) and § 1.367(a)-3(c)(9)).

CAVEATS

No opinion is expressed about the tax treatment of the proposed transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether any of Distributions 1 through 18 or any of the transactions described in this letter: (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7). Further, no opinion is expressed as to the reporting requirements of U.S. persons exchanging Target stock under § 6038B and the regulations thereunder.

PROCEDURAL STATEMENTS

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

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Isaac W. Zimbalist
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Corporate)