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Person to Contact:

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Date:

September 30, 2003

Distributing =

Controlled =

Newco =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

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Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

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Sub 51 =

Sub 52 =

Sub 53 =

Partnership 1 =

Partnership 2 =

Partnership 3 =

Partnership 4 =

Distributing  
Common Stock =Distributing  
Preferred Stock =

Business A =

Business B =

Management Consultant =

Shareholder A =

Shareholder B =

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Date A =

Date B =

Date C =

Date D =

a =b =

Dear

This letter responds to your March 11, 2003, request for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that request 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 penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Publicly traded Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing conducts Business A (and certain related businesses) and Business B (and certain related businesses) indirectly through corporate subsidiaries.

Distributing has two classes of stock outstanding: Distributing Common Stock and Distributing Preferred Stock. Each share of Distributing Preferred Stock is convertible into Distributing Common Stock at a fixed ratio. Shareholder A, together with certain related parties, and Shareholder B each own more than five percent of the Distributing Common Stock and the Distributing Preferred Stock.

Distributing wholly owns Controlled, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7. In addition, Distributing owns interests in the following partnerships: Partnership 1, Partnership 2, Partnership 3, and Partnership 4 (collectively, the "Distributing Partnership Interests").

Sub 1 wholly owns Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25,

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Sub 26, Sub 27, and Sub 28 (Subs 11 through 28, collectively, the "Other Sub 1 Subsidiaries").

Sub 8 wholly owns Sub 29, Sub 30, Sub 31, and certain other subsidiaries.

Sub 9 wholly owns Newco, Sub 32, Sub 33, Sub 34, Sub 35, Sub 36, Sub 37, Sub 38, Sub 39, Sub 40, and Sub 41 (Subs 38 through 41, collectively, the "Other Sub 9 Subsidiaries").

Sub 34 wholly owns Sub 42. Sub 35 wholly owns Sub 43.

Sub 6 wholly owns Sub 44, Sub 45, Sub 46, Sub 47, Sub 48, Sub 49, Sub 50, and Sub 51 (Subs 44 through 51, collectively, the "Sub 6 Subsidiaries").

Sub 7 wholly owns Sub 52, Sub 53, and certain other subsidiaries.

Financial information submitted by Distributing indicates that its 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.

On Date A, Distributing and certain of its subsidiaries consummated a joint plan of bankruptcy reorganization under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Plan"). Under the Bankruptcy Plan, Distributing is obligated to issue Distributing Common Stock to certain claimants who were unsecured creditors of Distributing and/or its subsidiaries before the filing of Distributing's bankruptcy petition. As of Date B, approximately a additional shares of Distributing Common Stock remained to be issued to those claimants (such claimants, "Unsecured Claimants"). Under the Bankruptcy Plan, Unsecured Claimants are entitled to receive shares of Distributing Common Stock, plus any dividend distributions paid on such shares between Distributing's emergence from bankruptcy and its delivery of Distributing Common Stock to Unsecured Claimants. For that purpose, the shares of Controlled common stock to be distributed in the External Distribution (as defined below) are considered dividend distributions. Under a separation and distribution agreement between Distributing and Controlled, Distributing will be responsible for issuing shares of Distributing Common Stock to Unsecured Claimants and Controlled will be responsible for issuing shares of Controlled common stock to Unsecured Claimants.

Distributing's Business A competes with certain existing and potential customers of Distributing's Business B. The affiliation of Distributing's Business A and Business B has resulted in a number of customers declining to renew existing contracts with Distributing's Business B and potential customers refusing to enter into new contracts with Distributing's Business B. Management Consultant advised Distributing that a significant percentage of companies conducting Business A did not want to purchase products or services from a company conducting Business B if that company was affiliated with a competitor conducting Business A.

### Proposed Transaction

To eliminate the customer/competitor conflict that results from operating its Business A and Business B within the same affiliated group, Distributing has proposed and partially completed the following series of transactions (the "Proposed Transaction"):

(i) On Date C, Sub 9 formed Newco as a wholly owned subsidiary. Newco has a single class of common stock outstanding.

(ii) Sub 43 will merge into Sub 35, in a transaction intended to qualify as a tax-free liquidation under § 332, with respect to Sub 35, and § 337, with respect to Sub 43, and a tax-free reorganization under §§ 368 and 354, with respect to Sub 35, and § 361, with respect to Sub 43.

(iii) Sub 42 will merge into Sub 34, in a transaction intended to qualify as a tax-free liquidation under § 332, with respect to Sub 34, and § 337, with respect to Sub 42, and a tax-free reorganization under §§ 368 and 354, with respect to Sub 34, and § 361, with respect to Sub 42.

(iv) Sub 9 will contribute to Newco the stock of Sub 34, Sub 35, Sub 36, Sub 37, and the Other Sub 9 Subsidiaries in constructive exchange for Newco stock and the assumption by Newco of related liabilities (the "First Contribution").

(v) Sub 9 will distribute all the Newco stock to Sub 1 (the "First Distribution").

(vi) Immediately following the First Distribution, Sub 1 will contribute to Newco certain intellectual property held by Sub 1 that is related to Distributing's Business A and the stock of Sub 8, Sub 10, and the Other Sub 1 Subsidiaries in constructive exchange for Newco stock and the assumption by Newco of related liabilities (the "Second Contribution").

(vii) Newco will contribute the stock of the Other Sub 1 Subsidiaries to Sub 10.

(viii) Sub 1 will distribute all the Newco stock to Distributing (the "Second Distribution").

(ix) On Date D, Distributing formed Controlled as a wholly owned subsidiary. Controlled has a single class of common stock outstanding (the "Controlled Common Stock").

(x) Distributing will contribute to Controlled the stock of Newco, Sub 2, Sub 4, Sub 6, and Sub 7. In addition, Distributing will contribute to Controlled the Distributing Partnership Interests, which will be contributed to lower-tier subsidiaries of Controlled. Distributing will also contribute to Controlled certain intellectual property held by Distributing that is related to Distributing's Business A and certain other assets owned

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by Distributing. Distributing will transfer such property to Controlled in constructive exchange for Controlled Common Stock and the assumption by Controlled of related liabilities. In connection with the transaction, Controlled will borrow approximately \$b from third parties and will distribute all or a portion of the proceeds to Distributing (the "Proceeds"). Distributing will transfer all of the Proceeds to its creditors in connection with the plan of reorganization (the transfer of such property by Distributing to Controlled in constructive exchange for Controlled Common Stock, Controlled's assumption of related liabilities, and the distribution of the Proceeds by Controlled to Distributing, collectively, the "Third Contribution").

(xi) Controlled will contribute to Sub 6 the stock of Newco, Sub 2, Sub 4, and Sub 7.

(xii) Sub 6 will contribute to Sub 7 the stock of Sub 2 and the Sub 6 Subsidiaries.

(xiii) Sub 7 will contribute to Sub 52 the stock of Sub 2, the Sub 6 Subsidiaries, and Sub 53.

(xiv) Before the External Distribution, Distributing will cause Controlled to be recapitalized.

(xv) Distributing will distribute all the shares of Controlled Common Stock to the holders of Distributing Common Stock, pro rata (the "External Distribution"). With respect to each share of Distributing Common Stock outstanding, Distributing will distribute a number of shares of Controlled Common Stock equal to a distribution ratio (the "Distribution Ratio") to be determined before the External Distribution. As part of the External Distribution, Distributing may distribute shares of restricted Controlled Common Stock to the holders of Distributing restricted stock.

(xvi) In lieu of issuing fractional shares of Controlled Common Stock, Distributing will cause its exchange agent to aggregate all fractional interests, sell them in the public market, and distribute the proceeds to the shareholders otherwise entitled to receive the fractional interests.

(xvii) Pursuant to the terms of the Distributing Preferred Stock, the conversion price of the Distributing Preferred Stock will be adjusted upon the External Distribution to prevent dilution of the value of the interests of the holders of the Distributing Preferred Stock.

(xviii) In furtherance of its obligation to deliver Controlled Common Stock to Unsecured Claimants, Controlled will deliver newly-issued shares of Controlled Common Stock to an escrow that is subject to the claims of Controlled's general creditors. The number of shares of Controlled Common Stock that Controlled will deliver to the escrow will equal the product of (a) the remaining number of shares of Distributing Common Stock required to be issued to Unsecured Claimants as of the

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date of the External Distribution and (b) the Distribution Ratio. Shares of Controlled Common Stock deposited in the escrow will be delivered to an Unsecured Claimant at the time such claimant becomes entitled to receive shares of Distributing Common Stock.

In connection with the Proposed Transaction, Distributing and Controlled will enter into various agreements (collectively, the "Agreements"), including a separation and distribution agreement, a tax sharing agreement, an employee benefits agreement, a transition services agreement (the "Transition Services Agreement"), a Business B agreement, and certain other commercial agreements.

## **Representations**

### First Contribution and First Distribution

Distributing makes the following representations regarding the First Contribution and the First Distribution:

(a) The indebtedness (if any) owed by Newco to Sub 9 after the First Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Sub 9 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Sub 9.

(c) The five years of financial information submitted on behalf of Sub 32 is representative of Sub 32's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Immediately after the First Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 32 will equal at least five percent of the total fair market value of the gross assets of Sub 32.

(e) Immediately after the First Distribution, at least 90 percent of the fair market value of the gross assets of Sub 9 will consist of the stock of Sub 32, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) The five years of financial information submitted on behalf of Sub 35 is representative of Sub 35's present operation (as conducted by Sub 43 before the merger described above in step (ii)), and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) Immediately after the First Distribution, the fair market value of the gross

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assets of the active trade or business directly conducted by Sub 35 will equal at least five percent of the total fair market value of the gross assets of Sub 35.

(h) The five years of financial information submitted on behalf of Sub 34 is representative of Sub 34's present operation (as conducted by Sub 42 before the merger described above in step (iii)), and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(i) Immediately after the First Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 34 will equal at least five percent of the total fair market value of the gross assets of Sub 34.

(j) The five years of financial information submitted on behalf of Sub 36 is representative of Sub 36's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(k) Immediately after the First Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 36 will equal at least five percent of the total fair market value of the gross assets of Sub 36.

(l) The five years of financial information submitted on behalf of Sub 37 is representative of Sub 37's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(m) Immediately after the First Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 37 will equal at least five percent of the total fair market value of the gross assets of Sub 37.

(n) Immediately after the First Distribution, at least 90 percent of the fair market value of the gross assets of Newco will consist of the stock of Sub 34, Sub 35, Sub 36, and Sub 37, controlled corporations that are each engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(o) Following the First Distribution, Sub 9 (through its controlled subsidiaries) and Newco (through its controlled subsidiaries) will each continue the active conduct of its business, independently and with its separate employees.

(p) The First Distribution is being carried out to facilitate the Second Distribution and the External Distribution, the corporate business purpose for which is to eliminate customer/competitor conflicts. The First Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(q) There is no plan or intention by Sub 1 to sell, exchange, transfer by gift, or

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otherwise dispose of its stock in, or securities of, either Sub 9 or Newco after the transaction, other than pursuant to the Second Distribution and the External Distribution.

(r) There is no plan or intention by either Sub 9 or Newco, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.

(s) There is no plan or intention to liquidate either Sub 9 or Newco, 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.

(t) The total adjusted bases and the fair market values of the assets transferred to Newco by Sub 9 each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Newco. The liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

(u) Except in connection with continuing transactions under the Agreements, no intercorporate debt will exist between Sub 9 and Newco at the time of, or after, the First Distribution.

(v) Immediately before the First Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(w) Payments made in connection with all continuing transactions between Sub 9 and Newco will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Transition Services Agreement, which may be based on cost or cost-plus arrangements (the "Cost Arrangements").

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

(y) For purposes of § 355(d), immediately after the First Distribution, 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 Sub 9 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 9 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(z) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of

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the total combined voting power of all classes of Newco stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Newco stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution or (ii) attributable to distributions on Sub 9 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(aa) The First Distribution is 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 either Sub 9 or Newco stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of stock of either Sub 9 or Newco.

#### Second Contribution and Second Distribution

Distributing makes the following representations regarding the Second Contribution and the Second Distribution:

(bb) The indebtedness (if any) owed by Newco to Sub 1 after the Second Distribution will not constitute stock or securities.

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

(dd) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Sub 1 will consist of the stock of Sub 9, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(ee) The five years of financial information submitted on behalf of Sub 29 is representative of Sub 29's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(ff) Immediately after the Second Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 29 will equal at least five percent of the total fair market value of the gross assets of Sub 29.

(gg) The five years of financial information submitted on behalf of Sub 30 is representative of Sub 30's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

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(hh) Immediately after the Second Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 30 will equal at least five percent of the total fair market value of the gross assets of Sub 30.

(ii) The five years of financial information submitted on behalf of Sub 31 is representative of Sub 31's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(jj) Immediately after the Second Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 31 will equal at least five percent of the total fair market value of the gross assets of Sub 31.

(kk) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Sub 8 will consist of the stock of Sub 29, Sub 30, and Sub 31, controlled corporations that are each engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(ll) The five years of financial information submitted on behalf of Sub 10 is representative of Sub 10's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(mm) Immediately after the Second Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 10 will equal at least five percent of the total fair market value of the gross assets of Sub 10.

(nn) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Newco will consist of the stock of Sub 8, Sub 10, Sub 34, Sub 35, Sub 36, and Sub 37, controlled corporations that are each engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(oo) Following the Second Distribution, Sub 1 (through its controlled subsidiaries) and Newco (through its controlled subsidiaries) will each continue the active conduct of its business, independently and with its separate employees.

(pp) The Second Distribution is being carried out to facilitate the External Distribution, the corporate business purpose for which is to eliminate customer/competitor conflicts. The Second Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(qq) There is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Sub 1 or Newco after the transaction, other than pursuant to the External Distribution.

(rr) There is no plan or intention by either Sub 1 or Newco, directly or through

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any subsidiary corporation, to purchase any of its outstanding stock after the transaction.

(ss) There is no plan or intention to liquidate either Sub 1 or Newco, 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.

(tt) The total adjusted bases and the fair market values of the assets transferred to Newco by Sub 1 each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Newco. The liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

(uu) Except in connection with continuing transactions under the Agreements, no intercorporate debt will exist between Sub 1 and Newco at the time of, or after, the Second Distribution.

(vv) Immediately before the Second Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(ww) Payments made in connection with all continuing transactions between Sub 1 and Newco will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for the Cost Arrangements.

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

(yy) For purposes of § 355(d), immediately after the Second Distribution, 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 Sub 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 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 the Second Distribution.

(zz) For purposes of § 355(d), immediately after the Second Distribution, 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 Newco stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Newco stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution or (ii) attributable to distributions on Sub 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined

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after applying § 355(d)(6)) ending on the date of the Second Distribution.

(aaa) The Second Distribution is 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 either Sub 1 or Newco stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of stock of either Sub 1 or Newco.

### Third Contribution and External Distribution

Distributing makes the following representations regarding the Third Contribution and the External Distribution:

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

(ccc) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled Common Stock that may be received by holders of Distributing restricted stock. The Controlled Common Stock that may be received by holders of Distributing restricted stock in the External Distribution will not exceed 20 percent of the Controlled Common Stock outstanding immediately before the External Distribution.

(ddd) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock of Sub 1, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(eee) The five years of financial information submitted on behalf of Sub 52 is representative of Sub 52's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(fff) Immediately after the External Distribution, the fair market value of the gross assets of the active trade or business directly conducted by Sub 52 will equal at least five percent of the total fair market value of the gross assets of Sub 52.

(ggg) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 7 will consist of the stock of Sub 52, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(hhh) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 6 will consist of the stock of Newco and Sub 7, controlled corporations that are each engaged in the active conduct of a trade or

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business as defined in § 355(b)(2).

(iii) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock of Sub 6, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(jjj) Following the External Distribution, Distributing (through its controlled subsidiaries) and Controlled (through its controlled subsidiaries) will each continue the active conduct of its business, independently and with its separate employees.

(kkk) The External Distribution is being carried out for the corporate business purpose of eliminating customer/competitor conflicts. The External Distribution is motivated, in whole or substantial part, by this corporate business purpose. It is also motivated, in part, by other purposes.

(lll) There is no plan or intention by any shareholder who owns five 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, either Distributing or Controlled after the transaction, except for (i) ordinary market trading and (ii) sales of fractional shares of Controlled Common Stock distributed in the External Distribution.

(mmm) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(nnn) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(ooo) (i) The total adjusted bases and the fair market values of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus the fair market value of any other property, and the amount of any money, transferred by Controlled to Distributing that is transferred to the creditors of Distributing pursuant to the plan of reorganization; and (ii) the liabilities assumed (as determined under § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(ppp) Except in connection with continuing transactions under the Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or

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after, the External Distribution.

(qqq) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the Controlled Common Stock, if any, will be included in income immediately before the External Distribution (See § 1.1502-19).

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

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

(ttt) For purposes of § 355(d), immediately after the External Distribution, 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 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(uuu) For purposes of § 355(d), immediately after the External Distribution, 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 the External Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(vvv) The External Distribution is 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 either Distributing or Controlled stock entitled to vote, or stock possessing 50 percent or more of the total value of shares of all classes of stock of either Distributing or Controlled.

(www) The Proceeds received by Distributing from Controlled will be transferred

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by Distributing to its creditors in connection with the reorganization.

(xxx) Any payment of cash in lieu of fractional shares of Controlled Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. The total cash that will be paid in the transaction to shareholders in lieu of fractional shares of Controlled Common Stock will not exceed one percent of the total consideration that will be distributed in the transaction.

(yyy) The adjustment in the conversion price of the Distributing Preferred Stock will be made in accordance with the terms of the Distributing Preferred Stock, which are intended to protect the value of the interests of the holders of the Distributing Preferred Stock from any dilution that would otherwise be caused by the External Distribution.

## **Rulings**

### First Contribution and First Distribution

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

(1) The First Contribution, followed by the First Distribution, will qualify as a reorganization under § 368(a)(1)(D). Sub 9 and Newco each will be "a party to a reorganization" under § 368(b).

(2) Sub 9 will recognize no gain or loss on the First Contribution (§§ 357(a) and 361(a)).

(3) Newco will recognize no gain or loss on the First Contribution (§ 1032(a)).

(4) The basis of each asset received by Newco in the First Contribution will equal the basis of that asset in the hands of Sub 9 immediately before its transfer (§ 362(b)).

(5) The holding period of each asset received by Newco in the First Contribution will include the period during which Sub 9 held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Sub 1 on Sub 1's receipt of Newco stock in the First Distribution (§ 355(a)(1)).

(7) Sub 9 will recognize no gain or loss on the First Distribution (§ 361(c)).

(8) The holding period of the Newco stock received by Sub 1 in the First Distribution will include the holding period of the Sub 9 stock on which the First

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Distribution is made, provided the Sub 9 stock is held as a capital asset by Sub 1 on the date of the First Distribution (§ 1223(1)).

(9) Earnings and profits will be allocated between Sub 9 and Newco in accordance with §§ 312(h) and 1.312-10(a).

#### Second Contribution and Second Distribution

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

(10) The Second Contribution, followed by the Second Distribution, will qualify as a reorganization under § 368(a)(1)(D). Sub 1 and Newco each will be "a party to a reorganization" under § 368(b).

(11) Sub 1 will recognize no gain or loss on the Second Contribution (§§ 357(a) and 361(a)).

(12) Newco will recognize no gain or loss on the Second Contribution (§ 1032(a)).

(13) The basis of each asset received by Newco in the Second Contribution will equal the basis of that asset in the hands of Sub 1 immediately before its transfer (§ 362(b)).

(14) The holding period of each asset received by Newco in the Second Contribution will include the period during which Sub 1 held that asset (§ 1223(2)).

(15) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on Distributing's receipt of Newco stock in the Second Distribution (§ 355(a)(1)).

(16) Sub 1 will recognize no gain or loss on the Second Distribution (§ 361(c)).

(17) The holding period of the Newco stock received by Distributing in the Second Distribution will include the holding period of the Sub 1 stock on which the Second Distribution is made, provided the Sub 1 stock is held as a capital asset by Distributing on the date of the Second Distribution (§ 1223(1)).

(18) Earnings and profits will be allocated between Sub 1 and Newco in accordance with §§ 312(h) and 1.312-10(a).

#### Third Contribution and External Distribution

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

(19) The Third Contribution, followed by the External Distribution, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(20) Distributing will recognize no gain or loss on the Third Contribution (§§ 357(a), 361(a), 361(b)(1) and 361(b)(3)).

(21) Controlled will recognize no gain or loss on the Third Contribution (§ 1032(a)).

(22) The basis of each asset received by Controlled in the Third Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(23) The holding period of each asset received by Controlled in the Third Contribution will include the period during which Distributing held that asset (§ 1223(2)).

(24) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any Distributing shareholder on the receipt of Controlled Common Stock in the External Distribution (§ 355(a)(1)).

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

(26) The aggregate basis of the Distributing Common Stock and the Controlled Common Stock in the hands of each Distributing shareholder immediately after the External Distribution (including any fractional share interest to which the shareholder would be entitled) will equal the shareholder's aggregate basis in the Distributing stock held immediately before the External Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b) and 358(c)).

(27) The holding period of the Controlled Common Stock received by each Distributing shareholder in the External Distribution (including any fractional share interest to which the shareholder would be entitled) will include the holding period of the Distributing stock with respect to which the distribution is made, provided such Distributing stock is held as a capital asset by the Distributing shareholder on the date of the External Distribution (§ 1223(1)).

(28) Earnings and profits will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

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(29) The adjustment in the conversion price of the Distributing Preferred Stock to reflect the distribution of the Controlled Common Stock will not be treated as a deemed distribution of stock to which § 301 applies because of the application of § 305(b) and (c) (§ 1.305-7(b)).

(30) Shareholders who receive cash in respect of fractional shares of Controlled Common Stock will recognize gain or loss measured by the difference between the amount of the cash received and the basis of the fractional share (as determined under ruling (26) above) (§ 1001). If the fractional share interest is a capital asset in the hands of the exchanging shareholder, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code (§§ 1221 and 1222).

(31) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing or Controlled on the delivery of shares of Distributing Common Stock and Controlled Common Stock, respectively, to Unsecured Claimants (§ 1032(a)).

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations thereunder or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is given regarding:

(i) The federal income tax consequences of the mergers described above in steps (ii) and (iii);

(ii) The federal income tax consequences of the Cost Arrangements; and

(iii) Whether Distributing or Controlled has been or will be a U.S. real property holding corporation ("U.S. RPHC") (within the meaning of § 897(c)(2)) at any time during the five-year period ending on the date of the External Distribution or will be a U.S. RPHC immediately after the External Distribution. Moreover, we express no opinion regarding the possible application of §§ 897 and 1445 to the External Distribution.

### **Procedural Statements**

This ruling letter is directed only to the taxpayers who requested it. Section

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6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

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

Sincerely,

*Richard K. Passales*

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

cc: