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PLR-116661-04

Date:

September 15, 2004

Distributing 3 =-----

Distributing 2 =

Distributing 1 =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-116661-04

2

FSub 1

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FSub 2

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FSub 3

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FSub 4

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Controlled 1

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Controlled 2

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Business A

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Business B

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Business C

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Business D

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Business E =

Business F =

Business G =

Business H =

Business I =

Business J =

Business K =

Asset BB =

Continuing Contract A1 =

\$X =

\$Y =

\$Z =

Country X =

Date 1 =

Date 2 =

Month AA =

Month BB =

Month CC =

Month DD =

#AAA =

#BBB =

#CCC =

#DDD =

Dear

We respond to your representative's letter dated March 19, 2004, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in the First Supplemental letter dated June 18, 2004, the Second and Third Supplemental letters dated August 10, 2004, the Fourth Supplemental letter dated August 18, 2004, the Fifth Supplemental Letter dated August 23, 2004, the Sixth Supplemental Letter dated August 31, 2004, the Seventh Supplemental Letter dated September 7, 2004 and the Eight Supplemental Letter dated September 15, 2004.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7T).

The information submitted for consideration is summarized below.

#### Summary of Facts

Distributing 3 is a domestic, publicly traded corporation that has served as the common parent of a group of corporations filing a U.S. consolidated tax return which includes Sub 1, Sub 2, Sub 3, Distributing 1 and Distributing 2. Distributing 3 has a single class of common stock outstanding. Each outstanding share of common stock possesses one preferred share purchase right. The right is not exercisable, however, until #AAA days after a person or group acquires or announces a tender offer that would result in the ownership of #BBB percent or more of Distributing 3's outstanding common stock.

Certain employees of Distributing 3 and its subsidiaries hold stock subject to certain restrictions ("Restricted Stock") that was issued by Distributing 3 pursuant to its existing and prior equity participation plans. Under the terms of the Distributing 3 plans, holders of Restricted Stock are entitled to receive dividends (including without limitation dividends payable in shares of stock) to the same extent as holders of unrestricted shares of Distributing 3 common stock.

Distributing 3 has regularly paid quarterly dividends every year since Date 1. The dividends are typically paid on or about the #CCC business day of Month AA, Month BB, Month CC and Month DD. Distributing 3 also has a stock repurchase program which entitles Distributing 3 to purchase up to #DDD percent of its outstanding stock. In Date 2, Distributing 3 adopted plans enabling it to purchase shares of its stock on the open market every day of the year.

Distributing 3, either directly or indirectly through its subsidiaries, engages in Business A throughout the world. The ownership and businesses of each of the entities involved in the transaction are as follows.

Distributing 3 conducts Business B and Business C. Distributing 3 owns all of the outstanding stock of Sub 1, Sub 2 and Distributing 1, all of which are domestic corporations. Sub 1 acts as a holding company. Sub 2 is engaged in Business D. Distributing 1 is engaged in Business E and Business F.

Distributing 3 owns all of the outstanding common stock of Distributing 2, a domestic corporation with outstanding common stock and nonparticipating preferred stock. Sub 1 owns all of the outstanding preferred stock of Distributing 2. Distributing 2 is engaged in Business G. In addition to conducting Business G, Distributing 2 owns almost all of the Asset BB used by Distributing 3 and its various U.S. subsidiaries, funds all future Asset BB development, and bears all associated entrepreneurial risk with respect to Asset BB.

Distributing 2 owns all of the outstanding stock of Sub 3, a domestic corporation. Sub 3 owns all of the outstanding stock of FSub 1. FSub 1 owns all of the stock of FSub 2. FSub 2 owns all of the outstanding stock of FSub 3. FSub 3 is engaged in Businesses H, I and J. FSub 1, FSub 2 and FSub 3 are all Country X corporations.

Distributing 3's management has determined that it no longer wishes to focus on, and invest time, money and its other corporate resources in, Businesses C, D, E, H, I, and J. In order to enhance the fit and focus of the core businesses conducted by Distributing 3 and its subsidiaries, Distributing 3 has decided to engage in the following transactions (hereinafter referred to as the "Proposed Transactions"):

1. Distributing 1 has created Controlled 1, a domestic corporation, and will transfer to it the assets and employees associated with Business E solely in exchange for Controlled 1 stock and the assumption of liabilities associated with the transferred assets (the "First Contribution").
2. Distributing 1 will distribute all of Controlled 1's outstanding stock to Distributing 3 (the "First Distribution").
3. Distributing 2 has formed Controlled 2, a domestic corporation, as a wholly owned subsidiary. Controlled 2 will have solely common stock outstanding.

4. Controlled 2 will form FSub 4, a company formed under one of the Provinces of Country X. Because FSub 4 is a foreign entity and its shareholder has unlimited liability, FSub 4 will be treated as a disregarded entity wholly owned by Controlled 2 for U.S. federal income tax purposes. Treas. Reg. § 301.7701-3(b)(2)(i)(C).
5. Controlled 2 will borrow \$X from unrelated lenders.
6. Distributing 2 will contribute \$Y to Controlled 2.
7. Controlled 2 will contribute \$Z to FSub 4.
8. FSub 4 will purchase all of the assets and hire the employees associated with Businesses H, I and J from FSub 3 in exchange for \$Z and the assumption of the liabilities associated with Businesses H, I and J. Because FSub 4 is treated as a disregarded entity that is wholly owned by Controlled 2, Controlled 2 will be considered to conduct Businesses H, I and J after the purchase.
9. Distributing 2 will contribute to Controlled 2 Business K that Controlled 2 will use in its business in exchange for stock or as a capital contribution (the "Second Contribution").
10. Distributing 2 will distribute all of the outstanding stock of Controlled 2 to its common shareholder, Distributing 3 (the "Second Distribution"). No portion of the Controlled 2 stock will be distributed on, or with respect to, the preferred stock, all of which is held by Sub 1. As a result, Sub 1 will not receive any stock in the Second Distribution.
11. Distributing 3 will contribute Business C to Controlled 2 in exchange for stock or as a capital contribution (the "Third Contribution").
12. Distributing 3 will contribute all of the outstanding stock of Sub 2 to Controlled 2 either in exchange for stock or as a capital contribution (the "Fourth Contribution").
13. Distributing 3 will contribute all of the outstanding stock of Controlled 1 to Controlled 2 either in exchange for stock or as a capital contribution (the "Fifth Contribution").
14. Distributing 3 will distribute all of the outstanding stock of Controlled 2 to its public shareholders (the "Third Distribution"), including the holders of the Restricted Stock. Distributing 3 will not distribute its own cash in lieu of fractional shares. Instead, Distributing 3 will aggregate the fractional shares that each shareholder would otherwise be entitled to receive and will sell them in the public market via a distribution agent. The aggregate net cash proceeds of these sales will be distributed ratably to those stockholders who would otherwise have received fractional shares of Controlled 2 common stock.

Distributing 3 (and its subsidiaries) and Controlled 2 (and its subsidiaries) have entered into an agreement for the provision of various transitional services. In addition, the parties have entered into a tax-sharing agreement, an employee matters agreement, a shared facilities agreement and a Continuing Contract A1 agreement which are not expected to be merely transitional in nature. The First Distribution, Second Distribution and Third Distribution are referred to collectively as the "Distributions".

## Representations

The following representations have been made with respect to the General Applicability of the Proposed Transactions:

1. FSub 4 will be a disregarded entity within the meaning of § 301.7701 of the Procedure and Administration regulations before and after the Proposed Transactions.
2. FSub 1, FSub 2 and FSub 3 will be controlled foreign corporations within the meaning of § 957(a) of the Code before and after the Proposed Transactions.
3. FSub 1, FSub 2 and FSub 3 will not be passive foreign investment companies within the meaning of § 1297(a) of the Code before and after the Proposed Transactions.

The following representations have been made concerning the First Contribution and the First Distribution:

4. No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
5. No part of the consideration to be distributed by Distributing 1 will be received by a security holder as an employee or in any capacity other than that of a security holder of the corporation.
6. The 5 years of financial information submitted on behalf of Business F is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
7. The 5 years of financial information submitted on behalf of Business E is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

8. Following the Proposed Transactions, Distributing 1 and Controlled 1 will each continue the active conduct of its business, independently and with its separate employees.
9. The distribution of stock, or stock and securities, of Controlled 1 is being carried out to facilitate the Third Distribution. The Third Distribution is being carried out for the following corporate business purpose: to enhance the “fit and focus” of Distributing 3 and its subsidiaries by allowing them to focus on their core business. The Distributions are motivated, in whole or substantial part, by this corporate business purpose.
10. The First Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
11. The total adjusted bases and the fair market value of the assets transferred to Controlled 1 by Distributing 1 each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 1 plus the fair market value of any other property, and the amount of any money, transferred by Controlled 1 to Distributing 1 that is distributed to the shareholders of Distributing 1, or transferred to the creditors of Distributing 1, pursuant to the plan of reorganization. The sum of the liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.
12. No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the distribution of the Controlled 1 stock.
13. Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 1’s excess loss account (if any) with respect to Controlled 1 will be included in income immediately before the distribution.
14. Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.
15. Neither Distributing 1 nor Controlled 1 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
16. Distributing 1 will complete the First Distribution within 12 months after the receipt of a ruling from the Internal Revenue Service.

17. No cash will be distributed in lieu of fractional shares in connection with the First Distribution.
18. No shareholder of Distributing 1 will be entitled to dissenters' rights in connection with the First Distribution.
19. For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
20. For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing 1's stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
21. Distributing 1 does not have an excess loss account within the meaning of Treas. Reg. § 1.1502-19(a)(2) with respect to Controlled 1's stock.
22. The First Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

The following representations have been made concerning the Second Contribution and the Second Distribution:

23. No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
24. No part of the consideration to be distributed by Distributing 2 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 2.
25. The 5 years of financial information submitted on behalf of Business G is representative of its present operations, and with regard to such business, there

have been no substantial operational changes since the date of the last financial statements submitted.

26. The 5 years of financial information submitted on behalf of Business H is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
27. Following the Proposed Transactions, Distributing 2 and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.
28. The distribution of the stock, or stock and securities, of Controlled 2 is carried out to facilitate the Third Distribution. The Third Distribution is being carried out for the following corporate business purpose: to enhance the “fit and focus” of Distributing 3 and its subsidiaries by allowing them to focus on their core businesses. The Distributions are motivated, in whole or substantial part, by this corporate business purpose.
29. The Second Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
30. The total adjusted bases and the fair market value of the assets transferred to Controlled 2 by Distributing 2 each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 2 plus the fair market value of any other property, and the amount of any money, transferred by Controlled 2 to Distributing 2 that is distributed to the shareholders of Distributing 2, or transferred to the creditors of Distributing 2, pursuant to the plan of reorganization. The sum of the liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.
31. No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 2 stock.
32. Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 2’s excess loss account (if any) with respect to Controlled 2 will be included in income immediately before the distribution.
33. Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.

34. Neither Distributing 2 nor Controlled 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
35. Distributing 2 will complete the Second Distribution within 12 months after the receipt of a ruling from the Internal Revenue Service.
36. No cash will be distributed in lieu of fractional shares in connection with the Second Distribution.
37. No shareholder of Distributing 2 will be entitled to dissenters' rights in connection with the Second Distribution.
38. For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Distributing 2's stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
39. Taking into account the contribution of \$Y, for purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing 2's stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
40. Distributing 2 does not have an excess loss account within the meaning of Treas. Reg. § 1.1502-19(a)(2) with respect to Controlled 2's stock.
41. The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).
42. Each share of Controlled 2 common stock will possess a preferred share purchase right of the type described in Rev. Rul. 90-11, 1990-1 C.B. 10.

The following representations have been made concerning the Third, Fourth and Fifth Contributions and the Third Distribution:

43. Neither Distributing 3 nor Controlled 2 has been a United States real property holding corporation (a "USRPHC"), as defined in section 897(c)(2), at any time during the 5 year period ending on the date of the Third Distribution, and neither Distributing 3 nor Controlled 2 will be a USRPHC immediately after the Third Distribution.
44. Except for the Controlled 2 stock distributed to the holders of the Restricted Stock, no part of the consideration to be distributed by Distributing 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.
45. If a holder of Distributing 3 securities also owns Distributing 3 common stock, that security holder may receive common stock of Controlled 2, but only in their capacity as common stock shareholders of Distributing 3.
46. The 5 years of financial information submitted on behalf of Business B is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
47. The 5 years of financial information submitted on behalf of Business H is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
48. Following the Proposed Transactions, Distributing 3 and Controlled 2 will each continue the active conduct of its business, independently and with its separate employees.
49. The distribution of the stock, or stock and securities, of Controlled 2 is being carried out to facilitate the Third Distribution. The Third Distribution is being carried out for the following corporate business purpose: to enhance the "fit and focus" of Distributing 3 and its subsidiaries by allowing them to focus on their core business. The Distributions are motivated, in whole or substantial part, by this corporate business purpose.
50. The Third Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 2 or both.
51. The total adjusted bases and the fair market value of the assets transferred to Controlled 2 by Distributing 3 each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 2 plus the fair market value of any other property, and the amount of any money, transferred by Controlled 2 to Distributing 3 that is distributed to the shareholders of Distributing 3, or transferred to the creditors of Distributing 3, pursuant to the plan of

reorganization. The sum of the liabilities assumed (as determined under § 357(d)) were incurred in the ordinary course of business and are associated with the assets being transferred.

52. No intercorporate debt will exist between Distributing 3 and Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 2 stock.
53. Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing 3's excess loss account (if any) with respect to Controlled 2 will be included in income immediately before the distribution.
54. Payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
55. Neither Distributing 3 nor Controlled 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
56. Distributing 3 will complete the Third Distribution within 12 months after the receipt of a ruling from the Internal Revenue Service.
57. No shareholder of Distributing 3 will be entitled to dissenters' rights in connection with the Third Distribution.
58. For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
59. For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing 3's stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
60. Distributing 3 does not have an excess loss account within the meaning of Treas. Reg. § 1.1502-19(a)(2) with respect to Controlled 2's stock.

61. The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 3 or Controlled 2 (including any predecessor or successor of any such corporation).
62. Shares of Controlled 2 common stock distributed with respect to Distributing 3's Restricted Stock will not exceed, in the aggregate, 20 percent of Controlled 2's common stock outstanding immediately after Distributing 3 distributes the stock of Controlled 2 to the public.

### Rulings

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

#### The First Contribution and the First Distribution:

1. The First Contribution followed by the First Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be a "party to a reorganization" within the meaning of § 368(b).
2. No gain or loss will be recognized by Distributing 1 upon the transfer of its assets to Controlled 1 in exchange for Controlled 1 stock and the assumption by Controlled 1 of Distributing 1's liabilities, if any. Sections 361(a) and 357(a).
3. No gain or loss will be recognized by Controlled 1 upon the receipt of Distributing 1's assets in exchange for stock of Controlled 1. Section 1032(a).
4. The basis of Distributing 1's assets in the hands of Controlled 1 will be the same as the basis of those assets in the hands of Distributing 1 immediately prior to the transfer. Section 362(b).
5. The holding period of the Distributing 1 assets acquired by Controlled 1 will include the period during which those assets were held by Distributing 1. Section 1223(2).
6. No gain or loss will be recognized by Distributing 1 on the First Distribution. Section 361(c)(1).
7. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholder of Distributing 1 upon its receipt of the Controlled 1 stock. Section 355(a)(1).

8. The holding period of the Controlled 1 stock received by Distributing 3 will include the holding period of its Distributing 1 stock, provided the Distributing 1 stock is held as a capital asset on the date of the First Distribution. Section 1223(1).
9. As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 1 will be made under Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(f)(2).

The Second Contribution and the Second Distribution:

10. The Second Contribution and the Second Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be a “party to a reorganization” within the meaning of § 368(b).
11. No gain or loss will be recognized by Distributing 2 upon the transfer of its Business K assets to Controlled 2 in exchange for Controlled 2 stock and the assumption by Controlled 2 of Distributing 2’s liabilities, if any. Sections 361(a) and 357(a).
12. FSub 4’s purchase of Business H from FSub 3 will not prevent Controlled 2 from satisfying the 5-year active trade or business requirement. Section 355(b); Treas. Reg. § 1.355-3(b)(4)(iii); and Rev. Rul. 78-442, 1978-2 C.B. 143.
13. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 3 upon its receipt of the Controlled 2 stock. Section 355(a)(1).
14. No gain or loss will be recognized by Controlled 2 upon the receipt of Distributing 2’s Business K assets in exchange for stock of Controlled 2. Section 1032(a).
15. No gain or loss will be recognized by Distributing 2 with respect to the Second Distribution. Section 361(c).
16. The basis of Distributing 2’s Business K assets in the hands of Controlled 2 will be the same as the basis of those assets in the hands of Distributing 2 immediately prior to the transfer. Section 362(b).
17. The holding period of the Distributing 2 Business K assets acquired by Controlled 2 will include the period during which those assets were held by Distributing 2. Section 1223(2).
18. The holding period of the Controlled 2 stock received by Distributing 3 will include the holding period of its Distributing 2 stock, provided the Distributing 2 stock is held as a capital asset on the date of the Second Contribution and the Second Distribution. Section 1223(1).

19. As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 2 will be made under Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(f)(2).

The Third, Fourth and Fifth Contributions and the Third Distribution:

20. The Third, Fourth and Fifth Contributions followed by the Third Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing 3 and Controlled 2 each will be “a party to a reorganization” within the meaning of § 368(b).
21. No gain or loss will be recognized by Distributing 3 upon the transfer of its Business C, stock Sub 2 and stock of Controlled 1 assets to Controlled 2 in exchange for Controlled 2 stock and the assumption by Controlled 2 of Distributing 3’s liabilities, if any. Sections 361(a) or 357(a).
22. No gain or loss will be recognized by Controlled 2 upon the receipt of Distributing 3’s Business C, stock Sub 2 and stock of Controlled 1 assets in exchange for Controlled 2 stock. Section 1032(a).
23. The basis of Distributing 3’s Business C, stock Sub 2 and stock of Controlled 1 assets in the hands of Controlled 2 will be the same as the basis of those assets in the hands of Distributing 3 immediately prior to the transfer. Section 362(b).
24. The holding period of the Distributing 3 Business C, stock Sub 2 and stock of Controlled 1 assets acquired by Controlled 2 will include the period during which those assets were held by Distributing 3. Section 1223(2).
25. No gain or loss will be recognized by Distributing 3 on the Third Distribution. Sections 361(c)(1).
26. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 3’s shareholders upon their receipt of the Controlled 2 stock or the preferred stock purchase rights associated with that stock. Section 355(a)(1); Rev. Rul. 90-11, 1990-1 C.B. 10.
27. The basis of the Controlled 2 stock in the hands of Distributing 3’s shareholders immediately after the Third Distribution will be the same as the aggregate basis of the Distributing 3 stock held immediately before the Third Distribution, allocated in proportion to the relative fair market value of the Distributing 3 and Controlled 2 stock after the distribution. Section 358(b)(2); and Treas. Reg. § 1.358-2(a)(2).
28. The holding period of the Controlled 2 stock received by Distributing 3’s shareholders will include the holding period of their Distributing 3 stock, provided

the Distributing 3 stock is held as a capital asset on the date of the Third Distribution. Section 1223(1).

29. Stockholders of Distributing 3 who receive cash from the distribution agent in respect of fractional shares will recognize gain or loss on the sale of the fractional share interest equal to the difference between the cash received and the stockholder's basis in the fractional share interest. The gain or loss will be capital gain or loss to the stockholder provided the fractional share interest is a capital asset in the hands of the stockholder.
30. As provided in § 312(h), proper allocation of earnings and profits between Distributing 3 and Controlled 2 will be made under Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(e)(3).

#### 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. Particularly (but not exclusively), no opinion is expressed regarding: (i) whether any distributions satisfy the business purpose requirement of § 1.355-2(b); (ii) whether any of the Proposed Transactions are used principally as a device for the distribution of the earnings and profits of the distributing corporations or the controlled corporations or both the distributing and controlled corporations (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) whether any distribution and an acquisition or acquisitions (of the stock of the controlled or distributing corporation) are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii). No opinion is expressed regarding: (a) the basis of Controlled 1 stock in the hands of Distributing 3 immediately after the First Distribution, and (b) the basis of Controlled 2 stock in the hands of Distributing 3 immediately after the Second Distribution. Other than as provided in ruling #12, the Service expresses no opinion as to the tax consequences with respect to FSub 4's purchase of Business H from FSub 3.

This ruling is only directed to Distributing 3 acting on behalf of all members, (for the affected tax years) of the Distributing 3 consolidated group. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

*Steven J. Hankin*

Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Corporate)

cc: