

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

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Date:

**November 21, 2002**

### Legend

Distributing =

Controlled =

Acquiring =

Acquiring Sub =

LP =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub F1 =

Sub F2 =

Corp F =

LLC LP =

LLC 1 =

LLC 2 =

ULC =

Shareholder A =

Shareholder B =

Country X =

Province Y =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Business G =

Date A =

Date B =

Date C =

Date D =

a =

b =

c =

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f =

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Dear :

This letter responds to your June 17, 2002, request for rulings on certain federal income tax consequences of proposed transactions. 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 whose includible corporations join in filing a consolidated federal income tax return (the "Distributing Group"). Distributing has outstanding one class of common stock and one class of preferred stock. Based on public securities filings, Distributing believes that Shareholder A, together with its affiliates, is the only beneficial owner of Distributing stock representing five percent or more of Distributing's voting power or fair market value.

Distributing, directly and through domestic and foreign affiliates, engages in Business A, Business B, Business C, Business D, Business E, Business F, and Business G. The domestic operations of Business A, Business B, and Business C are collectively referred to as the "Retained Businesses." The domestic operations of Business D, Business E, Business F, Business G and the Country X Business F are collectively referred to as the "Non-Core Businesses." Except for the Country X Business F, the business characteristics of the foreign operations of Business D, Business E, Business F, and Business G more closely resemble the Retained Businesses than the Non-Core Businesses.

Distributing wholly owns Sub 1, Sub 2, Sub 3, and Controlled and owns a percent of the Sub 4 common stock, b percent (at least 80 percent) of Sub 5, c percent (more than 90 percent) of the Corp F common stock, a Class A interest in limited partnership LP representing d percent of LP's value, the sole membership interest in LLC 1, an entity intended to be disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations (a "disregarded entity"), and the sole interest in ULC, a disregarded entity. Sub 1 owns e percent of the Sub 4 common stock, f percent of Sub 5, and a Class A interest in LP representing g percent of LP's value. Sub 2 owns h percent of the Sub 4 common stock, i percent of Sub 5, all the stock of Sub 6, j percent (more than five percent) of the Corp F common stock, and a Class A interest in LP representing k percent of LP's value. Sub 3 wholly owns Sub F1, and Sub F1 wholly owns Sub F2. Sub 4 wholly owns Sub 7. Sub 5 owns an l-percent (less than twenty percent) general partner interest in LP. Corp F and two other members of its affiliated group (the "Corp F Group") own all of the Class B interests in LP, representing m percent of LP's value. Unrelated investors own all of the Corp F preferred stock, representing n percent of the Corp F voting power and o percent of the Corp F value. LP owns LLC LP, a disregarded entity, and LLC LP owns the preferred stock of Sub 4. All of these entities are domestic except for Sub F1 and Sub F2, both of which are Country X corporations, and ULC, which is a Province Y unlimited liability company.

Before a restructuring in Date A (after 1999) (the "Restructuring"), (i) Distributing directly conducted the domestic operations of Business A, Business C, Business D, and Business E, (ii) Sub 1 directly conducted the domestic operations of Business B, and (iii) Sub 2 directly conducted the domestic operations of Business F and Business G. In the Restructuring, Distributing, Sub 1, and Sub 2 transferred these domestic operations to LP for the Class A interests described above, and the Corp F Group contributed cash, business assets, and preferred stock of Sub 4 to LP for its Class B interests. As a result, LP now directly conducts the Non-Core Businesses (other than the Country X Business F, which is conducted by Sub F2) and the Retained Businesses. All operational functions for these businesses are performed by LP employees, and all managerial and supervisory activities are performed by employees of Sub 5, the LP general partner. LP owns, leases, or licenses the tangible and intangible assets used in its businesses.

The Sub 7 assets consist almost entirely of trademarks relating to the Retained Businesses and the Non-Core Businesses. Sub 7 licenses these trademarks to LP for fair market value royalties. p percent (more than 80 percent) of the trademark value relates to the Retained Businesses. Sub 2 owns, among other assets, trademarks relating to the foreign operations of Business F and Business G (including the Country X operations of Business F).

Corp F is the common parent of the Corp F Group and serves as a treasury center and finance company for the Distributing Group, the Corp F Group, and LP.

Corp F borrows funds in the financial markets and re-loans or contributes the funds to these enterprises for use in the ordinary course of their businesses. Corp F is owed a net of  $q$  (more than the sum of  $r$  and  $s$ ) dollars by members of the Distributing Group and owes  $t$  (more than  $q$ ) dollars to unrelated persons. In addition, Distributing owes Sub 1  $u$  dollars, Sub 2  $v$  dollars, and Sub 4  $w$  dollars, all of which debt has arisen in the ordinary course of the Distributing Group businesses.

Publicly traded Acquiring is the common parent of an affiliated group of corporations (the "Acquiring Group"). According to public securities filings,  $x$  percent (more than five percent) of the Acquiring common stock is owned by Shareholder B and its affiliates. Acquiring Sub is the principal operating subsidiary of the Acquiring Group and is wholly owned by Acquiring.

Financial information submitted by Distributing indicates that the domestic operation of Business B (one of the Retained Businesses to be conducted by Distributing through LP) and the domestic operation of Business F (one of the Non-Core Businesses to be conducted by Controlled) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Retained Businesses and the Non-Core Businesses have markedly different business growth rates, capital requirements, cash flow profiles, and strategic goals and opportunities. These differences have reduced managerial efficiency by creating tensions in important areas such as business growth strategies, resource allocation, and employee retention. In addition, Acquiring wishes to acquire the Non-Core Businesses but will not agree to the combination unless these businesses first are separated from the Retained Businesses.

### **Proposed Transactions**

To facilitate Acquiring's acquisition of the Non-Core Businesses, and to eliminate the inefficiencies associated with operating the Retained and Non-Core Businesses within the same affiliated group, Distributing has proposed and partially completed the following series of transactions (the "Proposed Transactions"):

(i) On Date B, Distributing formed Controlled as a wholly owned subsidiary to participate in the Proposed Transactions. Controlled has a single class of common stock outstanding.

(ii) Sub 1 will merge into Distributing under applicable state law (the "Sub 1 Merger"). As a result, Distributing will acquire Sub 1's Class A interest in LP, stock in Sub 4, and stock in Sub 5. This transaction is intended to qualify as a liquidation under §§ 332 and 337 of the Internal Revenue Code (the "Code").

(iii) Sub 2 will merge into LLC 1 under applicable state law (the “Sub 2 Merger”). Because LLC 1 is a disregarded entity, Distributing will be treated as acquiring and directly holding the assets, and assuming the liabilities, of Sub 2 for federal tax purposes. After the Sub 2 Merger, LLC 1 will transfer to Distributing its Class A interest in LP, stock in Corp F, Sub 4, and Sub 5, a receivable from Corp F, assets of the Retained Businesses, and trademarks relating to the foreign operations of Business F and Business G (except for the Country X operations of Business F) (or will transfer the sole interest in one or more disregarded entities owning such assets). Distributing will assume from LLC 1 debt owed Sub 4 and liabilities associated with the Retained Businesses. LLC 1 will retain only assets and liabilities relating to the Non-Core Businesses.

(iv) Sub 4, all of whose common stock will be owned by Distributing after steps (ii) and (iii), will merge into Distributing under applicable state law (the “Sub 4 Merger”). As a result, Distributing will acquire all of the Sub 7 stock. LP (through LLC LP) will receive preferred stock of Distributing in exchange for its Sub 4 preferred stock (Distributing represents that the Sub 4 preferred stock is described in § 1504(a)(4)). This transaction is intended to qualify as a liquidation under §§ 332 and 337 as to Distributing and as a reorganization under § 368(a)(1)(A) as to LP (through LLC LP).

(v) Sub 5, a wholly owned subsidiary of Distributing after steps (ii) and (iii), will convert under applicable state law into LLC 2 (the “Sub 5 Conversion”). Because LLC 2 will be a disregarded entity, Distributing will be treated as acquiring and directly holding the assets, and assuming the liabilities, of Sub 5 for federal tax purposes. These assets and liabilities will include the LP general partner interest, assets and liabilities of the Retained Businesses, and assets and liabilities of the Non-Core Businesses.

(vi) Sub 7, a wholly owned subsidiary of Distributing after steps (ii), (iii), and (iv), will merge into Distributing under applicable state law (the “Sub 7 Merger”). As a result, Distributing will receive the trademarks relating to the Retained Businesses and the Non-Core Businesses. Following the Sub 7 Merger, and partially as a result of the transactions described in steps (ii), (iii), (iv), (v), and (vi), Distributing will have net indebtedness to Corp F of q, all of which will have arisen in the ordinary course of the Distributing Group businesses.

(vii) Distributing will transfer to newly formed, wholly owned Sub 8 the trademarks relating to the Retained Businesses in exchange solely for all the outstanding stock of Sub 8 (the “Sub 8 Exchange”). Sub 8 will license these trademarks to LP for fair market value royalties. This transaction is intended to qualify as an exchange under § 351(a).



(viii) On Date C, Sub F2 formed ULC as a disregarded entity and transferred the sole interest in ULC to Distributing. Distributing transferred cash to ULC. Sub F2 will sell the assets of the Country X Business F to ULC for this cash and ULC's assumption of the related liabilities (the "ULC Purchase").

(ix) LP, whose general partner and Class A interests will be held by Distributing after steps (ii), (iii), and (v), will distribute its assets of the Non-Core Businesses (or interests in one or more disregarded entities owning such assets) to Distributing in partial liquidation of Distributing's Class A limited partner interest (the "LP Distribution"). Distributing (or one or more disregarded entities owned by Distributing) will assume the LP liabilities associated with the Non-Core Businesses.

(x) Distributing will transfer to Controlled the assets of the Non-Core Businesses (the "Non-Core Business Assets") or interests in one or more disregarded entities owning such assets. The Non-Core Business Assets will consist of (a) the sole membership interest in LLC 1, (b) the assets of the Non-Core Businesses received in the Sub 5 Conversion (step (v)), (c) the trademarks relating to the Non-Core Businesses received in the Sub 7 Merger (step (vi)), (d) the sole membership interest in ULC acquired in the ULC Purchase (step (viii)), (e) the assets received in the LP Distribution (step (ix)), and (f) other assets used exclusively in the Non-Core Businesses. Although the transfer of legal title to certain Non-Core Business Assets (the "Delayed Transfer Assets") may be delayed pending receipt of consents from unrelated parties, all substantial rights to these assets will be transferred with the other Non-Core Business Assets. In exchange for the Non-Core Business Assets, Controlled (or one or more disregarded entities owned by Controlled) will (a) assume operating liabilities of  $y$  dollars associated with the Non-Core Business Assets, (b) borrow  $r$  from unrelated lenders and transfer the cash proceeds of such borrowing to Distributing (the "Cash Amount"), and (c) issue to Distributing (i) Controlled securities with a principal amount and issue price of  $s$  dollars (the "Controlled Securities") and (ii) all the outstanding Controlled common stock (including the nominal shares issued for cash on Controlled's formation). The exchange of this consideration for the Non-Core Business Assets is referred to as the "Controlled Asset Exchange." In addition, Distributing will grant to Controlled perpetual, nonexclusive, royalty-free licenses for certain intellectual property needed in both the Retained Businesses and the Non-Core Businesses (the "Licenses").

(xi) Distributing will transfer to Corp F the Cash Amount and the Controlled Securities in payment of debt owed by Distributing to Corp F (the "Distributing Debt Repayment"). Corp F intends to sell the Controlled Securities and use the proceeds and the Cash Amount to repay preexisting debt to unrelated lenders (the "Corp F Debt Repayments").

(xii) Distributing will distribute the Controlled common stock to the holders of its common stock, pro rata (the "Distribution"). The Controlled common stock will not be

delivered directly to Distributing's shareholders but instead will be delivered to an exchange agent (the "Exchange Agent"), who will hold the Controlled common stock until the Controlled Merger (step (xiii)). As part of the Distribution, shares of unrestricted Controlled common stock will be distributed on shares of Distributing restricted stock (the "Restricted Stock Distribution").

(xiii) Immediately after the Distribution, Acquiring Sub will merge into Controlled, with Controlled surviving (the "Controlled Merger"). In the Controlled Merger, (a) Acquiring Sub will transfer substantially all of its assets to Controlled, and Controlled will assume Acquiring Sub's liabilities, (b) Acquiring, as the sole shareholder of Acquiring Sub, will become the owner of all the outstanding Controlled common stock, and (c) the Controlled shareholders will receive solely z shares of Acquiring voting common stock in exchange for each share of Controlled common stock. Instead of issuing fractional shares of Acquiring stock, the Exchange Agent will, as soon as practicable after the merger date, aggregate fractional interests into whole shares and sell them in the open market at the prevailing market prices and distribute the aggregate proceeds, net of brokerage fees, ratably to the Distributing shareholders otherwise entitled to fractional interests. Acquiring stock issued to the former Controlled shareholders in the Controlled Merger will constitute aa percent (more than 70 percent) of the voting power and fair market value of the outstanding Acquiring stock.

In connection with the Proposed Transactions, Distributing and Controlled have entered into various agreements, including a Separation Agreement, a Tax Sharing Agreement, and a Transition Services Agreement (collectively, the "Agreements"). The Agreements may necessitate payments between the parties following the Distribution. In addition, certain adjustments will be made to outstanding compensatory options on Distributing stock, including in some cases the issuance of compensatory options on Controlled common stock, and to outstanding Distributing restricted stock (collectively, the "Adjustments"). The Controlled options then will be converted into Acquiring options as part of the Controlled Merger (the "Conversion").

## **Representations**

### Sub 2 Merger

Distributing makes the following representations regarding the Sub 2 Merger described above in step (iii):

(a) Distributing, on the date of adoption of the Sub 2 plan of merger, and at all times until the merger occurs, will be the owner of at least 80 percent of the single outstanding class of Sub 2 stock.

(b) No shares of Sub 2 stock will have been redeemed during the three years preceding the adoption of the Sub 2 plan of merger.

(c) When the Sub 2 Merger occurs, Sub 2 will cease to exist.

(d) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years before the date of adoption of the Sub 2 plan of merger and (ii) acquisitions occurring as part of the Restructuring.

(e) No assets of Sub 2 have been or will be disposed of by either Sub 2 or Distributing, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before the adoption of the Sub 2 plan of merger, (iii) dispositions occurring as part of the Restructuring, (iv) transfers occurring as part of the LP Distribution (step (ix)), and (v) transfers occurring as part of the Controlled Asset Exchange (step (x)).

(f) The Sub 2 Merger will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock immediately before the Sub 2 Merger also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For this representation, ownership will be determined immediately after the Distribution and by applying the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(g) Before adoption of the Sub 2 plan of merger, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing, except in (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the merger plan.

(h) Sub 2 will report all earned income represented by assets that will be treated as distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(i) The fair market value of the assets of Sub 2 will exceed its liabilities both at the date of the adoption of the Sub 2 plan of merger and immediately before the Sub 2 Merger.

(j) No intercorporate debt between Distributing and Sub 2 has been cancelled, forgiven, or discounted, except in transactions that occurred more than three years before the date of adoption of the Sub 2 plan of merger. The y dollars of debt owed Sub 2 by Distributing will be extinguished as a result of the Sub 2 Merger.

(k) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(l) All transactions that will be undertaken contemporaneously with, in

anticipation of, in conjunction with, or in any way related to, the Sub 2 Merger have been fully disclosed.

#### Sub 5 Conversion

Distributing makes the following representations regarding the Sub 5 Conversion described above in step (v):

(m) Distributing, on the date of adoption of the Sub 5 plan of conversion, and at all times until the conversion occurs, will be the owner of at least 80 percent of the single outstanding class of Sub 5 stock.

(n) No shares of Sub 5 stock will have been redeemed during the three years preceding adoption of the Sub 5 plan of conversion.

(o) When the conversion occurs, Sub 5 will cease to exist.

(p) Sub 5 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years before the date of adoption of the Sub 5 plan of conversion and (ii) acquisitions occurring as part of the Restructuring.

(q) No assets of Sub 5 have been or will be disposed of by either Sub 5 or Distributing, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before the adoption of the Sub 5 plan of conversion, and (iii) transfers occurring as part of the Controlled Asset Exchange (step (x)).

(r) The Sub 5 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 5, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 5 stock immediately before the Sub 5 Conversion also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For this representation, ownership will be determined immediately after the Distribution and by applying the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(s) Before adoption of the Sub 5 plan of conversion, no assets of Sub 5 will have been distributed in kind, transferred, or sold to Distributing, except in (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the conversion plan.

(t) Sub 5 will report all earned income represented by assets that will be treated as distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(u) The fair market value of the assets of Sub 5 will exceed its liabilities both at the date of the adoption of the Sub 5 plan of conversion and immediately before the Sub 5 Conversion.

(v) No intercorporate debt exists or will exist between Distributing and Sub 5, and none has been cancelled, forgiven, or discounted, except in transactions that occurred more than three years before the date of adoption of the Sub 5 plan of conversion.

(w) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(x) All transactions that will be undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed Sub 5 Conversion have been fully disclosed.

#### Sub 7 Merger

Distributing makes the following representations regarding the Sub 7 Merger described above in step (vi), if the transaction should be treated as a reorganization under § 368(a)(1)(A):

(y) The fair market value of the Distributing stock and other consideration deemed received by Distributing will approximately equal the fair market value of the Sub 7 stock surrendered in the exchange.

(z) At least 50 percent of the proprietary interest in Sub 7 will be exchanged for a direct interest in the Sub 7 enterprise and will be preserved (within the meaning of § 1.368-1(e)(1)(i) of the Income Tax Regulations).

(2a) Because it will own all the stock of Sub 7 at the time of the Sub 7 Merger, Distributing will not issue any of its stock in the Sub 7 Merger.

(2b) Distributing has no plan or intention to sell or otherwise dispose of any of the assets of Sub 7 acquired in the Sub 7 Merger, except for (i) dispositions made in the ordinary course of business, (ii) transfers described in § 368(a)(2)(C) (e.g., the Sub 8 Exchange (step (vii))), and (iii) the Controlled Asset Exchange (step (x)).

(2c) Any liabilities of Sub 7 assumed (within the meaning of § 357(d)) by Distributing will have been incurred by Sub 7 in the ordinary course of its business.

(2d) Following the Sub 7 Merger, Distributing will continue the historic business of Sub 7 or use a significant portion of Sub 7's historic business assets in a business, either directly or through one or more members of Distributing's qualified group (within the meaning of § 1.368-1(d)(4)(ii)) or one or more partnerships in which Distributing and members of its qualified group own an aggregate interest representing a significant interest in such business or have active and substantial management functions as partners in such business.

(2e) Distributing and Sub 7 each will pay its expenses, if any, incurred in the Sub 7 Merger.

(2f) No intercorporate indebtedness exists or will exist between Sub 7 and Distributing that was issued, acquired, or will be settled at a discount.

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

(2h) Sub 7 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

(2i) The fair market value of the Sub 7 assets transferred to Distributing will equal or exceed the liabilities assumed (within the meaning of § 357(d)) by Distributing.

(2j) The total adjusted basis of the assets of Sub 7 transferred to Distributing will equal or exceed the liabilities assumed (within the meaning of § 357(d)) by Distributing.

Distributing makes the following representations regarding the Sub 7 Merger described above in step (vi), if the transaction should be treated as a liquidation under §§ 332 and 337:

(2k) No shares of Sub 7 stock will have been redeemed during the three years preceding the adoption of the Sub 7 plan of merger.

(2l) When the Sub 7 Merger occurs, Sub 7 will cease to exist.

(2m) Sub 7 will not have acquired assets in any nontaxable transaction at any time, except for (i) acquisitions occurring more than three years before the date of adoption of the Sub 7 plan of merger and (ii) acquisitions occurring in contemplation of and as part of the Restructuring.

(2n) No assets of Sub 7 have been or will be disposed of by either Sub 7 or Distributing, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years before the adoption of the Sub 7 plan of merger, and (iii) transfers occurring as part of the Sub 8 Exchange (step (vii)) and the

Controlled Asset Exchange (step (x)).

(2o) Except as described in the Sub 8 Exchange (step (vii)), the merger of Sub 7 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 7, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 7 stock immediately before the Sub 7 Merger also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For this representation, ownership will be determined immediately after the Distribution and by applying the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(2p) Before adoption of the Sub 7 plan of merger, no assets of Sub 7 will have been distributed in kind, transferred, or sold to Distributing, except in (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the merger plan.

(2q) Sub 7 will report all earned income represented by assets that will be distributed to Distributing, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(2r) The fair market value of the assets of Sub 7 will exceed its liabilities both at the date of the adoption of the Sub 7 plan of merger and immediately before the Sub 7 Merger.

(2s) No intercorporate debt exists or will exist between Distributing and Sub 7, and none has been cancelled, forgiven, or discounted, except in transactions that occurred more than three years before the date of adoption of the Sub 7 plan of merger.

(2t) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(2u) All transactions that will be undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 7 Merger have been fully disclosed.

#### Controlled Asset Exchange and Distribution

Distributing makes the following representations regarding the Controlled Asset Exchange and the Distribution described above in steps (x) and (xii):

(2v) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(2w) With the possible exception of the Restricted Stock Distribution, no part of the consideration 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. Controlled stock distributed in the Restricted Stock Distribution will not exceed 20 percent of the Controlled stock outstanding immediately before the Distribution.

(2x) The five years of financial information submitted for the domestic operations of Business B and the domestic operations of Business F represents the present operations of these businesses, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2y) Following the Distribution, Distributing (with LP) will continue the active conduct of domestic Business B independently and with its separate employees and the employees of LP.

(2z) Following the Distribution, Controlled will continue the active conduct of domestic Business F independently and with its separate employees. Further, Acquiring represents that Controlled will continue the active conduct of Controlled's Business F after the Controlled Merger.

(3a) Immediately after the Distribution, the gross assets of the trades or businesses directly conducted by Distributing (with LP) that are relied upon by Distributing to satisfy the active trade or business requirement of § 355(b) (domestic Business B) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Distributing.

(3b) Immediately after the Distribution, the gross assets of the trades or businesses directly conducted by Controlled that are relied upon by Controlled to satisfy the active trade or business requirement of § 355(b) (domestic Business F) will have a fair market value equal to at least five percent of the total fair market value of the gross assets of Controlled.

(3c) The Distribution is being carried out to facilitate the acquisition of Controlled by Acquiring. The Distribution is motivated, in whole or substantial part, by this corporate business purpose and is also motivated by a desire to eliminate inefficiencies caused by operating the Retained Businesses and the Non-Core Businesses within the same affiliated group and by other purposes.

(3d) (i) Acquiring has no interest in acquiring the Retained Businesses (or in being acquired by Distributing) or in acquiring Controlled under circumstances that would leave Acquiring as a controlled subsidiary of Distributing, (ii) Distributing has no interest in acquiring Acquiring or in having, as a partially owned subsidiary, a combined entity consisting of Acquiring and the Non-Core Businesses, (iii) the Controlled Merger



will not be completed unless Distributing and Controlled are separated, and (iv) the Controlled Merger cannot be accomplished by an alternative nontaxable transaction that does not involve the distribution of Controlled stock and is neither impractical nor unduly expensive.

(3e) 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 (other than Corp F) to sell, exchange, transfer by gift, or otherwise dispose of (i) any stock in, or securities of, Distributing or Controlled after the Distribution, other than in ordinary market trading or the Controlled Merger, or (ii) any stock in, or securities of, Distributing, Controlled, or Acquiring after the Controlled Merger, other than in ordinary market trading.

(3f) There is no plan or intention by Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(3g) 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 Distribution, except in the ordinary course of business or in the Controlled Merger.

(3h) (i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled (excluding liabilities to which § 357(c)(3) applies) plus the Cash Payment; and (ii) the liabilities assumed (within the meaning of § 357(d)) in the transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(3i) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(3j) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution other than debt arising in the ordinary course of business or pursuant to the Agreements.

(3k) 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 (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, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution to the extent required by applicable regulations (see § 1.1502-19).

(3l) Except for certain payments required by the Agreements regarding transitional matters, payments made in any 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.

(3m) No two parties to the transaction will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(3n) The Controlled Securities issued to Distributing will qualify as "securities" as that term is used in § 361(a).

(3o) The 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 stock of either Distributing or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(3p) 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 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 Distribution.

(3q) 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 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 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 Distribution.

(3r) No election will be made under § 301.7701-3 that would cause any of ULC, LLC 1, LLC 2, LLC LP, or any other disregarded entity involved in the Proposed Transactions to be classified as other than an entity disregarded as separate from its owner for federal tax purposes.

(3s) At all times since Date D (a date more than one year before the date of the Proposed Transactions), Corp F has owed a total of at least bb (more than g) dollars to unrelated lenders. Corp F has not increased and will not increase its level of debt in contemplation of or in connection with the Proposed Transactions.

(3t) At substantially all times since Date D (but with isolated, short-term exceptions), Distributing, Sub 1, Sub 2, Sub 4, Sub 5, Sub 7, and LP, in the aggregate, have owed Corp F a net amount of at least cc (the sum of r and s) dollars. None of these entities has increased or will increase its level of debt to Corp F, or its total level of debt, in contemplation of or in connection with the Proposed Transactions.

### Controlled Merger

Distributing makes the following representations regarding the Controlled Merger described above in step (xiii):

(3u) The fair market value of the Acquiring stock (and any cash for fractional shares) received by each Controlled shareholder will approximately equal the fair market value of the Controlled common stock surrendered in the exchange.

(3v) At least 50 percent of the proprietary interest in Controlled will be exchanged for Acquiring stock and will be preserved (within the meaning of § 1.368-1(e)(1)(i)).

(3w) Acquiring has no plan or intention to reacquire, directly or through a related person (within the meaning of § 1.368-1(e)(3)), any of its stock issued in the Controlled Merger.

(3x) Following the transaction, Controlled will hold (i) at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets transferred by Distributing to Controlled and (ii) at least 90 percent of the fair market value of Acquiring Sub's net assets and at least 70 percent of the fair market value of Acquiring Sub's gross assets held by Acquiring Sub immediately before the transaction. For this representation, amounts paid by Controlled or Acquiring Sub to dissenters, amounts paid by Controlled or Acquiring Sub to shareholders who receive cash or other property, amounts used by Controlled or Acquiring Sub to pay reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Controlled or Acquiring Sub will be included as assets of Controlled or Acquiring Sub, respectively, immediately before the transaction.

(3y) Before the transaction, Acquiring will be in control of Acquiring Sub (within the meaning of § 368(c)).

(3z) Controlled has no plan or intention to issue additional shares of its stock that would result in Acquiring losing control of Controlled (within the meaning of § 368(c)).

(4a) Acquiring has no plan or intention to liquidate Controlled, to merge Controlled with or into another corporation, to sell or otherwise dispose of the stock of Controlled except for transfers of stock to corporations controlled by Acquiring, or to cause Controlled to sell or otherwise dispose of any of its assets or of any of the assets acquired from Acquiring Sub, except for (i) dispositions made in the ordinary course of business or (ii) transfers of assets to a corporation controlled by Controlled.

(4b) The liabilities of Acquiring Sub assumed (within the meaning of § 357(d)) by Controlled were incurred by Acquiring Sub in the ordinary course of its business.

(4c) Following the transaction, Controlled will continue its and Acquiring Sub's historic businesses or use a significant portion of the historic business assets of each business in a business, either directly or through one or more members of Acquiring's qualified group (within the meaning of § 1.368-1(d)(4)(ii)) or one or more partnerships in which Acquiring and members of its qualified group own an interest representing a significant interest in such business or have active and substantial management functions as partners in such business.

(4d) Acquiring, Acquiring Sub, Controlled, and the shareholders of Controlled will pay their respective expenses, if any, incurred in connection with the transaction.

(4e) No intercorporate indebtedness exists between Acquiring and Controlled or between Acquiring Sub and Controlled that was issued, acquired, or will be settled at a discount.

(4f) In the transaction, shares of Controlled common stock representing control of Controlled (as defined in § 368(c)) will be exchanged solely for voting stock of Acquiring (and cash for fractional shares of Acquiring voting stock). For this representation, shares of Controlled common stock exchanged for cash or other property originating with Acquiring will be treated as outstanding Controlled common stock on the date of the transaction.

(4g) At the time of the transaction, Controlled will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Controlled that, if exercised or converted, would affect Acquiring's acquisition or retention of control of Controlled (as defined in § 368(c)).

(4h) Acquiring does not own, nor has it owned during the past five years, any shares of the stock of Controlled.

(4i) No two parties to the transaction are investment companies (as defined in § 368(a)(2)(F)(iii) and (iv)).

(4j) On the date of the transaction, the fair market value of the assets of Controlled will exceed the sum of its liabilities plus the amount of liabilities, if any, to which the assets are subject.

(4k) Controlled is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)).

(4l) The payment of cash in lieu of fractional shares of Acquiring stock by the Exchange Agent is solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing fractional shares and will not represent separately bargained-for consideration. The total cash consideration to be paid in lieu of fractional shares of Acquiring stock will not exceed one percent of the total consideration that will be issued in the transaction to Controlled's shareholders in exchange for their Controlled common stock. The fractional share interests of each Controlled shareholder will be aggregated, and no Controlled shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring stock.

## **Rulings**

### **Sub 2 Merger**

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 2 Merger described above in step (iii):

- (1) The Sub 2 Merger will qualify as a complete liquidation under § 332.
- (2) No gain or loss will be recognized by Sub 2 on the deemed distribution of its assets to Distributing in complete liquidation (§§ 336(d)(3) and 337(a)).
- (3) No gain or loss will be recognized by Distributing on its deemed receipt of the Sub 2 assets in the Sub 2 Merger (§ 332(a)).
- (4) The basis in the hands of Distributing of each asset deemed received from Sub 2 in the Sub 2 Merger will equal the basis of that asset in the hands of Sub 2 immediately before the Sub 2 Merger (§ 334(b)(1)).
- (5) The holding period Distributing will have in each asset deemed acquired in the Sub 2 Merger will include the period during which that asset was held by Sub 2 (§ 1223(2)).

(6) Distributing will succeed to and take into account the items of Sub 2 described in § 381(c)(1), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§§ 381(a) and 1.381(a)-1).

(7) Except to the extent they are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of the Sub 2 Merger (§§ 381(c)(2)(A), 1.381(c)(1)-2, and 1.1502-33(a)(2)). Any deficit in the earnings and profits will be used only to offset earnings and profits accumulated after the date of the Sub 2 Merger (§ 381(c)(2)(B)).

#### Sub 5 Conversion

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 5 Conversion (step (v)):

(8) The Sub 5 Conversion will qualify as a complete liquidation of Sub 5 under § 332.

(9) No gain or loss will be recognized by Sub 5 on the Sub 5 Conversion (§§ 336(d)(3) and 337(a)).

(10) No gain or loss will be recognized by Distributing on the Sub 5 Conversion (§ 332(a)).

(11) The basis Distributing will have in each asset deemed received from Sub 5 in the Sub 5 Conversion will equal the basis of that asset in the hands of Sub 5 immediately before the Sub 5 Conversion (§ 334(b)(1)).

(12) The holding period Distributing will have in each asset deemed received in the Sub 5 Conversion will include the period during which that asset was held by Sub 5 (§ 1223(2)).

(13) Distributing will succeed to and take into account the items of Sub 5 described in § 381(c)(1), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§§ 381(a) and 1.381(a)-1).

(14) Except to the extent they are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 5 as of the date of the Sub 5 Conversion (§§ 381(c)(2)(A), 1.381(c)(1)-2, and 1.1502-33(a)(2)). Any deficit in the earnings and profits will be used only to offset earnings and profits accumulated after the date of the Sub 5 Conversion (§ 381(c)(2)(B)).

### Sub 7 Merger

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 7 Merger (step (vi)):

(15) No gain or loss will be recognized by Sub 7 in the Sub 7 Merger.

(16) No gain or loss will be recognized by Distributing in the Sub 7 Merger.

(17) The basis of each asset received by Distributing in the Sub 7 Merger will equal the basis of that asset in the hands of Sub 7 immediately before the Sub 7 Merger.

(18) The holding period of each asset received by Distributing in the Sub 7 Merger will include the period during which Sub 7 held that asset.

### Controlled Asset Exchange and Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows on the Controlled Asset Exchange, the Distributing Debt Repayment, and the Distribution (steps (x), (xi) and (xii)):

(19) The Controlled Asset Exchange (including the transfer of all substantial rights in the Delayed Transfer Assets), followed by the 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) No gain or loss will be recognized by Distributing in the Controlled Asset Exchange, provided the Cash Amount is transferred to creditors of Distributing in connection with the reorganization (§§ 357(a), 361(a), 361(b)(1)(A), and 361(b)(3)).

(21) The aggregate basis of the Controlled stock and the Controlled Securities in the hands of Distributing immediately after the Controlled Asset Exchange will equal the aggregate basis Distributing had in the Non-Core Business Assets immediately before the Controlled Asset Exchange decreased by (i) the Cash Amount and (ii) the liabilities assumed by Controlled in the Controlled Asset Exchange (§§ 358(a)(1) and 358(d)). Such aggregate basis will be allocated between the Controlled stock and Controlled Securities in proportion to the fair market value of each in accordance with § 1.358-2(b)(2) (§ 358(b)).

(22) No gain or loss will be recognized by Controlled in the Controlled Asset Exchange (§ 1032(a)).

(23) The basis of each Non-Core Business Asset received by Controlled in the Controlled Asset Exchange will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(24) The holding period of each Non-Core Business Asset received by Controlled in the Controlled Asset Exchange will include the period during which Distributing held that asset (§ 1223(2)).

(25) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(26) No gain or loss will be recognized by Distributing on the transfer of the Controlled Securities to Corp F in payment of Distributing debt obligations (§§ 361(c)(2)(B) and 361(c)(3)).

(27) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any shareholder of Distributing on the receipt of Controlled stock in the Distribution (§ 355(a)(1)). Section 355(a)(3)(B) will not treat as “other property” any Controlled stock actually or constructively issued in exchange for the Licenses.

(28) The aggregate basis of the Distributing stock and Controlled stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share of Controlled stock to which the shareholder would be entitled) will equal the shareholder’s aggregate basis in the Distributing stock immediately before the Distribution. Such aggregate basis will be allocated between the Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)).

(29) The holding period of the Controlled stock received by each Distributing shareholder will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock is held as a capital asset on the Distribution date (§ 1223(1)).

(30) 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).

(31) Payments made between Distributing and its affiliates, on the one hand, and Controlled and its affiliates, on the other, under the Agreements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution date or for a taxable period beginning before and ending after the Distribution date and (ii) have not become fixed or ascertainable until after the Distribution date will be treated as occurring immediately before the Distribution (see Rev. Rul. 83-73, 1983-1 C.B. 84).



### Controlled Merger

Based solely on the information submitted and the representations set forth above, we rule as follows on the Controlled Merger (step (xiii)):

(32) Provided the Controlled Merger qualifies as a statutory merger under applicable law, and provided that, immediately after the Controlled Merger, Controlled holds substantially all of the assets transferred by Distributing to Controlled in the Controlled Asset Exchange and substantially all of the assets of Acquiring Sub, the Controlled Merger will qualify as a reorganization under § 368(a)(1)(A). The reorganization will not be disqualified because the voting stock of Acquiring is used in the merger (§ 368(a)(2)(E)). For this ruling, “substantially all” means at least 90 percent of the fair market value of the corporation’s net assets and at least 70 percent of the fair market value of the corporation’s gross assets. Controlled, Acquiring, and Acquiring Sub each will be “a party to a reorganization” under § 368(b).

(33) No gain or loss will be recognized by Acquiring Sub on the transfer of its assets to Controlled in constructive exchange for Controlled common stock and the assumption by Controlled of related liabilities (§§ 361(a) and 357(a)).

(34) No gain or loss will be recognized by Controlled on its receipt of Acquiring Sub assets in constructive exchange for Controlled common stock (§ 1032(a)).

(35) No gain or loss will be recognized by Acquiring on its receipt of Controlled common stock in actual or constructive exchange for Acquiring Sub stock (§ 354(a)(1)).

(36) The basis Controlled will have in each Acquiring Sub asset will equal the basis of that asset in the hands of Acquiring Sub immediately before the exchange (§ 362(b)).

(37) The holding period Controlled will have for each Acquiring Sub asset will include the period during which that asset was held by Acquiring Sub (§ 1223(2)).

(38) Immediately after the Controlled Merger, Acquiring’s basis in the stock of Controlled will equal the sum of (a) Acquiring’s basis in the stock of Acquiring Sub immediately before the Controlled Merger and (b) Controlled’s net asset basis within the meaning of § 1.1502-31(c) (§§ 1.358-6(c)(2)(i)(A) and 1.1502-31(b)(2)).

(39) The holding period Acquiring will have in the stock of Controlled attributable to the stock of Acquiring Sub will include the period during which Acquiring held the stock of Acquiring Sub. Acquiring’s holding period in the remaining stock of Controlled will include the holding period of the Controlled shareholders from whom the stock was acquired in the Controlled Merger (§ 1223(1) and (2)).

(40) No gain or loss will be recognized by a Controlled shareholder on the exchange of Controlled common stock solely for Acquiring stock (including any fractional share interest to which the shareholder would be entitled) (§ 354(a)(1)).

(41) The basis in the hands of a Controlled shareholder of the Acquiring stock received in the transaction (including any fractional share interest to which the shareholder would be entitled) will equal the basis of the Controlled common stock exchanged (§ 358(a)(1)).

(42) The holding period a Controlled shareholder will have for Acquiring stock received in the transaction (including any fractional share interest to which the shareholder would be entitled) will include the holding period in the Controlled common stock exchanged therefor, provided the Controlled common stock is a capital asset in the Controlled shareholder's hands on the date of the exchange (§ 1223(1)).

(43) If cash is received by a Controlled shareholder as a result of the sale of a fractional share of Acquiring stock by the Exchange Agent on behalf of the shareholder, the shareholder 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 (41) 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).

### **Caveats**

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code and regulations 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 Sub 1 Merger described above in step (ii);

(ii) The federal income tax consequences of the Sub 4 Merger described above in step (iv);

(iii) Whether the Sub 8 Exchange described above in step (vii) will qualify under § 351;

(iv) The federal income tax consequences of the ULC Purchase described above in step (viii);

(v) The federal income tax consequences of the LP Distribution described above in step (ix);

(vi) Whether the Licenses granted to Controlled in step (x) constitute property under § 351 or assets under § 368(a)(1)(D);

(vii) Whether the Controlled Securities described above in step (x) will qualify as securities under § 361(a);

(viii) The federal income tax consequences of the Corp F Debt Repayments described above in step (xi);

(ix) The federal income tax consequences of the Adjustments and the Conversion;

(x) Whether ULC, LLC 1, LLC 2, LLC LP, or any other disregarded entity involved in the Proposed Transactions will qualify as a disregarded entity under § 301.7701-3; and

(xi) Other than as described above in ruling (31), the federal income tax consequences of non-arm's length payments with respect to transitional matters made under the Agreements.

For a discussion of the circumstances under which a ruling letter will be revoked or modified, see § 12.04 of Rev. Proc. 2002-1, 2002-1 I.R.B. 4. However, when the criteria in § 12.05 of Rev. Proc. 2002-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

### **Procedural Statements**

**This ruling letter is directed only to the taxpayers who requested it and applies only to the facts of the Proposed Transactions. Section 6110(k)(3) provides that it may not be used or cited as precedent.**

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer representative.

Sincerely yours,

Associate Chief Counsel (Corporate

By: Wayne T. Murray  
Special Counsel to the  
Associate Chief Counsel