

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:CORP:04

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Date:

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### LEGEND:

Holdings =

New Parent =

LLC 1 =

Sub 1 =

LLC 2 =

Sub 2 =

Trust Company =

Depository Trust =

Nominee =

Business A =  
Distribution =  
Date A =  
a% =  
b% =  
c% =  
Ratio A =  
Ratio B =  
x =  
y =

Dear :

This letter is in reply to your letter dated April 25, 2007, requesting rulings as to the federal income tax consequences of a Proposed Transaction (defined below). Additional information was submitted in a letter dated September 4, 2007. The information submitted in the request and later correspondence is summarized below.

### **Facts**

Holdings is a limited liability company that is treated as a partnership for federal income tax purposes. Holdings is owned by (i) members of management of LLC 1, a limited liability company which is a disregarded entity for federal income tax purposes, and members of management of Sub 1 (and their respective affiliates or related parties), and (ii) certain investor partnerships.

Holdings owns (i) all of the equity interest in LLC 1 and (ii) all of the outstanding stock of New Parent, a corporation formed for purposes of effectuating an initial public offering ("IPO").

LLC 1 owns (i) all of the outstanding stock of Sub 1, (ii) all of the outstanding equity interests in LLC 2, a limited liability company which is a disregarded entity for federal income tax purposes, and (iii) directly-owned operating assets which it employs in the conduct of its business. Sub 1 owns all of the stock of Sub 2, which directly and indirectly, owns all of the equity interests of several domestic and international corporations, as well as interests in certain domestic partnerships.

Holdings' subsidiaries and limited liability companies are engaged in Business A.

The proposed IPO will enable New Parent to raise additional capital in order to, among other things, (i) finance acquisitions and internal growth, (ii) create a more liquid market for the trading of its equity through access to the public markets, and (iii) optimize its debt-to-equity ratio based on industry standards.

### **Proposed Transaction**

To accomplish the foregoing business objectives, Holdings has proposed the following steps (collectively the "Proposed Transaction"):

- (i) Holdings will form New Parent.
- (ii) Holdings will contribute all of the outstanding memberships interests of LLC 1 (which will be treated as a transfer of all the assets and liabilities of LLC 1) to New Parent in exchange for shares of New Parent common stock (the "New Parent Shares") (the "Contribution").
- (iii) As part of the same plan, New Parent will offer and sell newly-issued shares of common stock ("Primary Shares"), and Holdings will offer and sell shares of its New Parent common stock ("Secondary Shares") in an IPO. Each purchaser of Primary Shares and Secondary Shares is referred to herein as a "Public Participant." Holdings and the Public Participants in the IPO are collectively referred to herein as the "Transferors." Depending on the size of the IPO, the equity value of New Parent and the Ratio (as defined in below in step (iv)(b)), the Secondary Shares may represent more than a% of New Parent's outstanding common stock.
- (iv) The IPO will be underwritten by a syndicate of underwriters (the "Underwriters") and will be consummated in the following manner:
  - a. New Parent will deliver a share certificate representing the number of Primary Shares that it intends to sell ("Certificate #1"), and Holdings will deliver one or more share certificates representing the number of Secondary Shares that it intends to sell (collectively, "Certificate #2") to Trust Company, an unrelated financial institution that will act as a Depository ("Depository").
  - b. Depository will create Depository shares (the "Depository Shares") representing the total number of shares of New Parent stock (both Primary Shares and Secondary Shares) to be sold in the IPO. Pursuant to a deposit agreement (the "Deposit Agreement") between Depository and New Parent, each Depository Share will represent a fraction of both a Primary Share and a Secondary Share. The Depository Shares will represent pro rata interests in the entire pool of Primary Shares and Secondary Shares, and the ratio of Secondary Shares sold in the IPO to Primary Shares issued in the IPO (the

“Ratio”) is not expected to exceed Ratio A and in no event will exceed Ratio B.

- c. Depository will deposit a global Depository receipt (a “Depository Receipt”) evidencing all of the Depository Shares (representing both Primary Shares and Secondary Shares) to be sold in the IPO with Nominee, a nominee for the Depository Trust.
- d. The Depository Shares will be offered and sold to investors in the IPO.
- e. Depository Trust will credit interests in the Depository Shares to or for the benefit of the Public Participants.
- f. The Underwriters will have the right to purchase additional Depository Shares within x days of the closing of the IPO (the “Over-allotment Option”). If the Underwriters exercise the Over-allotment Option, the same procedures described in steps (a) through (e) above would be repeated at that time.
- g. After the passage of y days from the pricing of the IPO, Depository will deliver all of the shares of New Parent stock represented by Certificate #1 and Certificate #2 (together with any shares of New Parent stock deposited in connection with the Underwriters’ exercise, if any, of the Over-allotment Option) to Nominee, in exchange for the Depository Receipt.
- h. Depository Trust will credit interests in the shares of New Parent stock to or for the benefit of the Public Participants in exchange for interests in the Depository Shares on a one-for-one basis. New Parent will not be in privity of contract with Depository Trust, and will not be able to control the manner in which interests in such shares are credited by Depository Trust to the Public Participants. Such crediting will occur by book-entry.
- i. Depository will cancel the Depository Shares, and the Deposit Agreement will be terminated.

### **Representations**

Holdings makes the following representations with respect to the Proposed Transaction:

- (a) For federal income tax purposes, from New Parent’s inception through the time of the Contribution, Holdings will have been the sole shareholder of New Parent, and immediately prior to and immediately following the Proposed Transaction, New Parent will have only one class of stock outstanding.

(b) The shares of New Parent stock to be issued by New Parent in connection with the Proposed Transaction will be (i) the New Parent Shares issued to Holdings pursuant to the Contribution described above, and (ii) the Primary Shares issued to the Public Participants pursuant to the IPO described above.

(c) The Proposed Transaction is being undertaken for the purpose of facilitating an initial public offering of shares of New Parent at a time when it holds the operating business and related assets of LLC 1 and its affiliated entities. The Proposed Transaction will consolidate the related business operations currently conducted by LLC 1 and its affiliated entities within New Parent, facilitating a stock offering that positions New Parent to capitalize on numerous opportunities by raising additional capital equity in order to, among other things, make acquisitions and grow internally, create a more liquid market for the trading of its equity through access to the public markets (making the shares more attractive to new investors and enabling existing investors to dispose of their interests) and optimize its debt-to-equity ratio based on industry standards.

(d) Other than the sale of Secondary Shares by Holdings in the IPO, neither Holdings nor any of its direct or indirect owners has any current plan or intention to sell, exchange or otherwise dispose of shares of New Parent stock.

(e) At the time of the IPO, New Parent will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in New Parent, other than compensatory options to purchase New Parent common stock that may be granted to certain employees of New Parent or its subsidiaries pursuant to its equity incentive plan upon the effectiveness of the IPO and that would have an exercise price equal to the price at which shares will be offered in the IPO. Prior to the IPO, New Parent is expected to adopt an equity incentive plan that would provide for the grant of stock options, stock appreciation rights, restricted stock, and other stock-based awards to directors, officers, employees and service providers of New Parent and its subsidiaries, for purposes of attracting, retaining and motivating these individuals through a proprietary interest in New Parent. It is not contemplated that New Parent will issue any stock to employees as compensation in connection with the IPO.

(f) New Parent has no plan or intention to reacquire any of the New Parent Shares issued pursuant to the Contribution or the Primary Shares sold pursuant to the IPO.

(g) New Parent has no current plan or intention to sell or otherwise dispose of any of the assets acquired in connection with the Proposed Transaction, except for dispositions made in the ordinary course of business.

(h) The liabilities of LLC 1 assumed (within the meaning of § 357(d)) by New Parent in the Contribution were incurred in the ordinary course of LLC 1's business and are associated with the assets transferred, or were otherwise incurred to fund: (i) a Distribution on Date A to its investors as a return on their initial investment and (ii) acquisitions, unrelated to the Proposed Transaction, undertaken to grow the business.

(i) No Transferor will receive securities or other property in the Proposed Transaction, and the only consideration other than New Parent stock to be received will be the assumption, within the meaning of § 357(d), of the liabilities of LLC 1 in the Contribution.

(j) New Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(k) The Primary Offering and Secondary Offering will end when the Underwriters complete the sale of all of the Depository Shares representing shares of New Parent common stock received by the Depository from Holdings and New Parent (including any Depository Shares in respect of the Underwriters' exercise of the Over-allotment Option). The Deposit Agreement pursuant to which the Depository Shares are issued will provide that each Depository Share represents a fraction of a Primary Share and a fraction of a Secondary Share. The ratio of Secondary Shares sold in the IPO to Primary Shares sold in the IPO will not exceed Ratio B.

(l) No stock will be issued to Holdings for services rendered to or for the benefit of New Parent in connection with the Proposed Transaction and no stock will be issued for indebtedness of New Parent that is not evidenced by a security or for interest on indebtedness of New Parent which accrued on or after the beginning of the Transferor's holding period for the debt.

(m) The Contribution is not the result of the solicitation by a promoter, broker, or investment house.

(n) The Transferors will not retain any rights in the property transferred to New Parent.

(o) None of the stock issued by New Parent is "other than common stock" as described in § 306.

(p) The adjusted basis and fair market value of the assets to be transferred by each Transferor to New Parent in the Proposed Transaction will be equal to or exceed the sum of the liabilities to be assumed by New Parent (within the meaning of § 357(d)) or to which the transferred assets are subject.

(q) New Parent will have positive net value both before and after the consummation of the Proposed Transaction.

(r) The aggregate adjusted basis of the assets to be transferred by each Transferor to New Parent in the Proposed Transaction will not exceed the fair market value of such assets immediately after the Contribution.

(s) The transfers and exchanges made in connection with the Proposed Transaction will occur under a plan agreed upon before the Proposed Transaction is consummated and in which the rights of the parties are defined.

(t) Each Transferor will receive shares of New Parent stock approximately equal to the fair market value of the property transferred in exchange therefor.

(u) New Parent will remain in existence and retain and, except for dispositions in the ordinary course of business, use the property transferred to it in its trade or business.

(v) Each of the parties to the Proposed Transaction will otherwise pay their own expenses, if any, incurred in connection with the Proposed Transaction; provided that New Parent will pay legal and registration fees relating to the SEC registration process.

(w) New Parent is not an investment company within the meaning of § 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).

(x) New Parent is not a “personal service corporation” within the meaning of § 269A.

(y) The proceeds received in collection of any income items contributed to New Parent in the Contribution will be included as ordinary income in computing the taxable income of New Parent.

(z) To the extent that any patents, patent applications, or technical know-how are contributed in the Contribution, Holdings will transfer all substantial rights in such patents or patent applications within the meaning of § 1235.

(aa) Holdings will not retain any significant power, right, or continuing interest, within the meaning of § 1253(b), in the franchises, trademarks, trade names, or technical know-how, being transferred, if any.

(bb) To the extent that any copyrights are contributed in the Contribution, Holdings will transfer all rights, title and interests for each copyright, in each medium of exploitation.

(cc) Holdings and New Parent will comply with all reporting requirements under § 351 with respect to the Proposed Transaction.

(dd) Provided that the requested ruling is granted to treat the Public Participants as transferors of property to New Parent to the extent of their purchase of Primary Shares, Holdings and the Public Participants (i.e., the Transferors) will, in the aggregate, own stock in New Parent representing “control” as defined in § 368(c) immediately after the consummation of the IPO.

(ee) No indebtedness will exist between Holdings and New Parent at the time of, nor will be created in connection with, the Contribution.

(ff) To the best knowledge and belief of management of Holdings, the Contribution and the IPO will occur pursuant to a single plan, the steps of which will occur on the same day or within close proximity to each other, and the exercise (if any) of the Over-allotment Option is expected to occur within 35 days of the consummation of the IPO.

## Rulings

Based on the information and representations submitted, we rule as follows with respect to the Proposed Transaction:

(1) Provided that the number of Primary Shares that New Parent will offer for sale in the IPO will not be less than 6% of the total number of shares that Holdings will offer for sale in the IPO (i.e., that the Ratio of Secondary Shares to Primary Shares is no greater than Ratio B), the Public Participants, to the extent of their purchase of Primary shares in the IPO, will be transferors of property to New Parent within the meaning of § 351(a) of the Code.

(2) No gain or loss will be recognized by the Holdings by reason of the Contribution (excluding the liabilities)(§ 351(a)).

(3) Section 304 (and not § 351 and not so much of §§ 357 and 358 as relates to § 351) will apply to the acquisition by New Parent from Holdings of that portion of stock deemed exchanged for liabilities of Holdings assumed by New Parent attributable to the stock of Sub 1 (§ 304(b)(3)(A)). The acquisition by New Parent from Holdings of the portion of the stock of Sub1 deemed exchanged for liabilities of Holdings assumed by New Parent attributable to the stock of Sub 1 will be treated as a distribution in redemption of a corresponding portion of New Parent stock. Holdings and New Parent will be treated in the same manner as if Holdings had transferred the portion of the stock of Sub 1 so acquired to New Parent in exchange for a corresponding portion of New Parent stock in a transaction to which § 351(a) applies, and then New Parent had redeemed the corresponding portion of stock it was treated as issuing (§ 304(a)(1)). The deemed redemption distribution will constitute a dividend to the extent of the earnings and profits of New Parent and Sub 1. The balance of the deemed redemption distribution, if any, will reduce Holdings' basis in the New Parent stock (§ 301(c)(2)). The remaining balance of the deemed redemption distribution, if any, will be treated as gain from the sale or exchange of property (§ 301(c)(3)).

(4) Except as provided in ruling 3, the basis in the New Parent Shares received by Holdings pursuant to the Contribution will be the same as the basis of the property exchanged by Holdings for the New Parent Shares decreased by the corresponding amount of liabilities assumed by New Parent in the exchange and increased by the corresponding amount of gain or dividend, if any, pursuant to §§ 358(a)(1) and 358(d).

(5) The holding period of the New Parent Shares received by Holdings will include the holding period of the assets so transferred by Holdings, provided that such transferred assets were capital assets on the date of the exchange (§ 1223(1)).

(6) No gain or loss will be recognized by New Parent upon the receipt of property from the Transferors in exchange for New Parent stock as described above (§ 1032(a)).



(7) The basis in the property received by New Parent pursuant to the Proposed Transaction will be the same as it would be in the hands of the Transferors (§ 362(a)).

(8) The holding period of the assets received in the Contribution, will in the hands of the New Parent, include the holding period during which such assets were held by Holdings (§ 1223(2)).

(9) Holdings will recognize gain or loss, if any, on the sale of the Secondary Shares measured by the difference between the basis of the Secondary Shares sold and the amount of cash received in the Secondary Offering (less any applicable underwriting discounts and commissions) (§ 1001).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any Proposed Transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

### **Procedural Statements**

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically must satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

*Lewis K. Brickates*  
Lewis K Brickates  
Chief, Branch 4  
Associate Chief Counsel (Corporate)

cc: