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PLR-148756-10
Date:
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LEGEND

Distributing =

Controlled =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LLC 12 =

LLC 13 =

LLC 14 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Shareholder Group =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

PLR-148756-10

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Business A =

Business B =

Business C =

Business D =

Enhancement
Mechanic =

Overlapping
Directors =

Agreements =

Distributing Debt =

Revolving Credit
Facility =

Term Loans =

Security Interests =

Anticipated Term
Credit Rating =

Anticipated Note
Credit Rating =

Credit Rating
Agency A =

Credit Rating
Agency B =

Definition A =

Definition B =

Other Arrangements=

Occurrence =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

Date 1 =

Date 2 =

Dear :

This letter ruling responds to your November 24, 2010 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon 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 material 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 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 section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return. The authorized and outstanding capital stock of Distributing consists of two classes of common stock (the “Distributing Class A Stock” and the “Distributing Class B Stock,” and collectively, the “Distributing Common Stock”). The Distributing Class A Stock is publicly traded and widely held. Based on publicly available securities information, only Shareholder A, Shareholder B, Shareholder C, Shareholder D, and Shareholder E held five percent or more of the Distributing Class A Stock on Date 1. Shareholder Group held all of the Distributing Class B Stock and less than a percent of the Distributing Class A Stock on Date 1. Distributing believes that Shareholder A, Shareholder B, Shareholder C, and Shareholder E are U.S. persons and that Shareholder D is not a U.S. person.

Prior to the Proposed Transactions, (i) Distributing wholly owned LLC 1; (ii) LLC 1 wholly owned LLC 2; (iii) LLC 2 wholly owned Sub 1, Sub 2, Sub 4, Sub 5, Sub 6, LLC 6, and LLC 7; (iv) Sub 1 wholly owned Sub 3 and LLC 3; (v) Sub 3 wholly owned LLC 8; (vi) LLC 8 wholly owned LLC 9; (vii) LLC 9 owned b percent of LLC 10 and was the managing member of LLC 10; (viii) LLC 3 wholly owned LLC 4; (ix) LLC 4 wholly owned LLC 5; and (x) Sub 4, Sub 5, and Sub 6 each owned a third of Sub 7. As part of the Proposed Transactions, LLC 1 formed LLC 11, LLC 12, LLC 13, and LLC 14.

Each of Distributing and Sub 1 through Sub 7 is classified as a corporation for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3. Each of LLC 1 through LLC 9 and LLC 11 through LLC 14 is classified as an entity that is disregarded as separate from its owner for federal income tax purposes under Treas. Reg. § 301.7701-3. LLC 10 is classified as a partnership for federal income tax purposes under Treas. Reg. § 301.7701-3.

Distributing and the members of its “separate affiliated group” (as defined in section 355(b)(3)) (the “Distributing SAG”) directly engage in various businesses, including

Business A, which is a segment of Business B. Financial information has been submitted indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior to the Contribution (as defined below), the Distributing SAG also will have engaged in Business C, which is a segment of Business D. After the Contribution, newly formed Controlled and the members of its separate affiliated group (the "Controlled SAG") will engage in Business C. Financial information has been submitted indicating that Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTIONS

Distributing has proposed the following series of transactions (the "Proposed Transactions"), some of which have already been completed:

- (i) LLC 8 distributed all of the membership interests of LLC 9 to Sub 3.
- (ii) Sub 3 distributed all of the membership interests of LLC 9 to Sub 1.
- (iii) Sub 1 distributed all of the membership interests of LLC 9 to LLC 2 (the "Sub 1 Distribution").
- (iv) LLC 2 distributed all of the membership interests of LLC 9 to LLC 1.
- (v) LLC 1 contributed all of the membership interests of LLC 9 to LLC 14.
- (vi) LLC 2 distributed all of the stock of Sub 2 and all of the membership interests of LLC 6 and LLC 7 to LLC 1 and may distribute other assets with insignificant value to LLC 1.
- (vii) LLC 1 contributed all of the stock of Sub 2 and all of the membership interests of LLC 6 and LLC 7 to LLC 11, LLC 12, and LLC 13, respectively.
- (viii) LLC 2 distributed a note receivable from LLC 10 to LLC 1, followed by a contribution of such note by LLC 1 to LLC 14.
- (ix) Sub 4, Sub 5, and Sub 6 each will declare a distribution of approximately \$c payable via a note to LLC 2 (collectively, the "Notes").
- (x) LLC 2 will contribute the Notes to Sub 1 (the "Sub 1 Contribution").

- (xi) LLC 1 will contribute all the membership interests of LLC 2 to Controlled in exchange for (A) Controlled Class A Stock and Controlled Class B Stock, which constitute all of the outstanding stock of Controlled (the “Controlled Stock”), (B) Controlled indebtedness (the “Controlled Indebtedness”) in the amount of as much as \$d, and (C) the potential assumption of liabilities not in excess of the adjusted basis of the contributed assets (collectively, the “Contribution”).
- (xii) LLC 1 will distribute all of the Controlled Stock to Distributing.
- (xiii) Distributing will distribute all of the Controlled Class A Stock pro rata to the holders of Distributing Class A Stock with respect to their Distributing Class A Stock and the Controlled Class B Stock pro rata to the holders of the Distributing Class B Stock with respect to their Distributing Class B Stock (the “Stock Distribution”) and Distributing or LLC 1 will exchange the Controlled Indebtedness for the Distributing Debt (the “Debt Exchange,” and together with the Stock Distribution, the “Distribution”).

Following the Distribution, the Overlapping Directors will provide services to both Distributing and Controlled. Also following the Distribution, Distributing and its affiliates, on the one hand, and Controlled and its affiliates, on the other hand, will have continuing relationships, including those established in connection with the Proposed Transactions. The types of services to be provided are expected to include tax sharing and allocations, employee matters, Agreements, and may include certain other continuing agreements (the “Continuing Agreements”).

Following the effective date of the Distribution, subject to market and other conditions, Distributing may repurchase Distributing Class A Stock in exchange for cash in open market transactions.

The Controlled Indebtedness is expected to consist of approximately \$e of term loans (the “Controlled Term Loans”) with a term of f years and approximately \$g of senior unsecured notes with h year maturities (the “Controlled Unsecured Notes”). The Controlled Term Loans will be secured by the Security Interests. The Controlled Unsecured Notes will be senior unsecured obligations that will rank pari passu with all present and future senior unsecured debt. The Controlled Indebtedness will not contain a sinking fund provision or a defeasance requirement. Absent a disposition of a substantial portion of Controlled’s assets, which is not anticipated, the Controlled Term Loans will not be payable before maturity other than the annual payment of i percent of the principal of such loans or through a refinancing with debt that will have a maturity date no earlier than the original maturity date of the Controlled Term Loans. The Controlled Unsecured Notes will not be redeemable prior to j years from issuance except in the event of a change of control of Controlled. In such event, it is anticipated that Controlled would either be obligated or permitted to offer to redeem at k percent of

par plus accrued interest to the purchase date. Any redemption after j years may require a premium payment equal to half the interest rate declining ratably to par during years j through l (call right would be at par during any remaining years). The Controlled Term Loans and the Controlled Unsecured Notes initially will have below investment grade credit ratings from Credit Rating Agency A and Credit Rating Agency B. Specifically, the Controlled Term Loans are anticipated to have a credit rating of no greater than the Anticipated Term Loan Credit Rating, and the Controlled Unsecured Notes are anticipated to have a credit rating of no greater than the Anticipated Note Credit Rating. Credit Rating Agency A defines the category of the Anticipated Term Loan Credit Rating to mean Definition A. Similarly, any obligation rated in the category of the Anticipated Term Loan Credit Rating or below by Credit Rating Agency B is considered to have Definition B.

The sum of the Distributing Debt exchanged for the Controlled Indebtedness in the Debt Exchange will not exceed the weighted quarterly average of the third-party indebtedness of Distributing (including the indebtedness of LLC 1) for the twelve-month period ending on the close of business on Date 2, the day before the date the Board of Directors of Distributing directed management to actively pursue the Distribution.

The Debt Exchange will be facilitated by investment banks, commercial banks, or other investment entities that will acquire good and valid title to the Distributing Debt at least m days prior to the date of the Debt Exchange (such bank or entity, an "Investment Entity" and, collectively, the "Investment Entities"). Distributing and the Investment Entities will enter into exchange agreements (the "Exchange Agreements") no sooner than n days after the Investment Entities acquire all the Distributing Debt. Thereafter, on the same day as entering into the Exchange Agreements, the Investment Entities are anticipated to enter into agreements to sell the Controlled Indebtedness they receive in the Debt Exchange to unrelated third parties.

Distributing has not and will not provide any funds to Investment Entities for the purchase of the Distributing Debt and has not and will not act as guarantor for any financing arrangement in connection with such purchases. The Investment Entities may enter into Other Arrangements with respect to the Distributing Debt, but none of Distributing, any member of its affiliated group, or any member of the Shareholder Group will be a party to such arrangements.

REPRESENTATIONS

Distributing makes the following representations in connection with the Proposed Transactions:

- (a) The Sub 1 Contribution will qualify as a transaction to which section 351 applies.

- (b) Indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (c) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (d) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of the corporation.
- (e) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing SAG), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted. For purposes of this representation, the Occurrence is not considered a substantial operational change.
- (f) The five years of financial information submitted on behalf of Business C (as conducted by the Distributing SAG prior to the Contribution and the Controlled SAG after the Contribution), represents the present operations of the business, and regarding the business, there have been no substantial operational changes since the date of the last financial statement submitted.
- (g) The Distributing SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.
- (h) The Distributing SAG neither acquired Business C nor acquired control of an entity conducting Business C during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business C and the Controlled SAG will continue to be the principal owner following the Distribution.

- (i) Following the Distribution, except with respect to the Overlapping Directors and as provided in the Continuing Agreements, the Distributing SAG will continue the active conduct of Business A and the Controlled SAG will directly continue the active conduct of Business C independently and with their separate employees.
- (j) The Distribution is being carried out for the following corporate business purposes: (i) to enhance the credit profile of Distributing by the Enhancement Mechanic, thereby providing Distributing with greater financial and strategic flexibility to pursue acquisitions following the separation; and (ii) to increase the aggregate stock price of Distributing and Controlled relative to the pre-Distribution value of outstanding Distributing stock so as to allow each company to (A) issue equity in connection with acquisitions on more favorable terms, and (B) increase the long-term attractiveness of equity compensation programs, in both cases with less relative dilution to existing equity holders. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.
- (k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (m) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 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 section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (n) The total adjusted basis of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled and (ii) the total

- amount of money and the fair market value of other property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's shareholders or creditors in connection with the plan of reorganization.
- (o) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by Distributing in the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
 - (p) Any liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the Contribution.
 - (q) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
 - (r) Except with respect to the Controlled Indebtedness that will be exchanged in the Debt Exchange and trade payables between Distributing and Controlled created in the ordinary course of business, including those created in connection with the Continuing Agreements, no intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Distribution.
 - (s) Immediately before the Distribution, items of income, gain, loss, deduction, and credit, if any, will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 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; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Furthermore, Distributing's excess loss account with respect to its Controlled Stock, if any, will be included in income immediately before the Distribution to the extent required by applicable regulations (see Treas. Reg. § 1.1502-19).
 - (t) Except for payments with respect to transitional services, which would be intended to equal the costs of such services and are not expected to continue for a period to exceed 0 years, payments made in connection with the other

Continuing Agreements (which could extend beyond 0 years) will be on terms intended to reflect those terms arrived at by parties negotiating at arm's length.

- (u) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (v) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).
- (w) Immediately after the transaction (as defined in section 355(g)(4)), either (i) any person that holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (x) The payment of cash in lieu of fractional shares of Controlled Stock, if any, is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in the transaction to any shareholder in lieu of a fractional share of Controlled Stock will not exceed one percent of the total consideration that will be distributed in the transaction. Any fractional share interests of each Distributing shareholder will be aggregated and sold by an exchange agent on behalf of such shareholder, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled Stock.
- (y) Neither Distributing nor Controlled (i) was or will be a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the Distribution, or (ii) will be a United States real property holding corporation immediately after the Distribution.
- (z) All of the Controlled Indebtedness constitute securities for purposes of section 361.

RULINGS

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

- (1) The Contribution, together with the Distribution, will qualify as a reorganization described in section 368(a)(1)(D). Each of Distributing and Controlled will be a “party to a reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing as a result of the Contribution. Sections 357(a) and 361(a).
- (3) No gain or loss will be recognized by Controlled as a result of the Contribution. Section 1032(a).
- (4) Controlled’s basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer. Section 362(b).
- (5) Controlled’s holding period in each asset received in the Contribution will include the period during which Distributing held the asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the Stock Distribution. Section 361(c).
- (7) Provided that the Controlled Indebtedness is transferred in the Debt Exchange pursuant to the plan of reorganization, Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Indebtedness, other than (i) deductions attributable to the fact that Distributing Debt may be redeemed at a premium, (ii) income attributable to the fact that Distributing Debt may be redeemed at a discount, and (iii) interest expense accrued with respect to Distributing Debt. Section 361(c).
- (8) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon their receipt of the Controlled Stock in the Distribution. Section 355(a).
- (9) Each Distributing shareholder’s basis in a share of Distributing Common Stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the share of Distributing Common Stock with respect to which the Distribution is made and the share of Controlled Stock (or allocable portions thereof) received with respect to the share of Distributing Common Stock in proportion to their fair market values.

- (10) Each Distributing shareholder's holding period in the Controlled Stock received will include the holding period of the Distributing Common Stock with respect to which the distribution of the Controlled Stock is made, provided that the Distributing Common Stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (11) The earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (12) A Distributing shareholder that receives cash in lieu of a fractional share of Controlled Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in Ruling (9), and the amount of cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the Distribution. Sections 1221 and 1222.
- (13) Following the Distribution, Controlled will not be a successor to Distributing for purposes of section 1504(a)(3); therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" (under section 1504(b)) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent immediately following the Distribution.
- (14) Except insofar as it may be relevant to section 355(g), any indemnity payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution (see Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (15) LLC 2 will increase its basis (and/or reduce any excess loss account) with respect to its stock of Sub 1 prior to the Contribution by the aggregate basis in the property contributed to Sub 1 by LLC 2 pursuant to the Sub 1 Contribution.
- (16) The Sub 1 Distribution will be a distribution of the membership interests of LLC 9 by Sub 1 to Distributing prior to the Contribution. Section 301(a) and Treas. Reg. § 1.1502-13(f)(2)(iv).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits or Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and
- (iii) whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling letter 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.

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

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

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: