



Sub7 =

Sub8 =

FSub1 =

Fsub2 =

Fsub3 =

Partnership =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

Business A =

Business B =

Business C =

Dear :

This letter is in response to your June 20, 2011 request for rulings as to the US Federal income tax consequences of certain steps of a proposed series of transactions. The information submitted in that request and in subsequent correspondence is summarized below.

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. 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.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the distribution described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); and (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)(2)(A)(ii) and Treas. Reg. § 1.355-7).

## FACTS

The following describes the facts immediately before the Proposed Transaction, defined below.

Distributing is the common parent of an affiliated group of corporations that file a U.S. consolidated Federal income tax return. Distributing owns 100% of Controlled and Sub1, and prior to the Proposed Transaction will own a% of Sub2 and b% of Sub3. Sub2 owns 100% of Sub4. Sub3 owns 100% of Sub5 and FSub1. Sub5 owns 100% of Sub6 and c% of Sub7. Sub6 owns the remaining d% of Sub7. Sub7 and Sub5 own e% and f% of Partnership, respectively. FSub1 owns 100% of FSub2. FSub2 owns g% of FSub3.

Distributing has authorized capital of h shares, consisting of (i) i shares of Class A common stock, par value \$j per share (the “Distributing Class A Stock”), (ii) k shares of Class B common stock, par value \$j per share (the “Distributing Class B Stock”), and (iii) l shares of preferred stock, par value \$j per share (“Distributing Preferred Stock”). At the time of the Distribution, defined below, it is anticipated that Distributing will have issued and outstanding (i) m shares of Distributing Class A Stock, (ii) n shares of Distributing Class B Stock, and (iii) 0 shares of Distributing Preferred Stock.

Controlled was formed in anticipation of the Proposed Transaction. Immediately prior to the Contribution, defined below, Controlled held only nominal assets. Prior to the date of the request for ruling, Distributing contributed its interest in Sub2 to Controlled in exchange for all of the stock of Controlled.

Prior to the Distribution, Controlled will have authorized capital of h shares, consisting of (i) i shares of Class A common stock, par value \$j per share (the “Controlled Class A Stock”), (ii) k shares of Class B common stock, par value \$j per share (the “Controlled Class B Stock”), and (iii) l shares of preferred stock, par value \$j per share (“Controlled Preferred Stock”). At the time of the Distribution it is anticipated that Controlled will have issued and outstanding (i) m shares of Controlled Class A Stock, (ii) n shares of Controlled Class B Stock, and (iii) 0 shares of Controlled Preferred Stock.

In addition to the share structure described above, it is anticipated that Controlled will implement an equity incentive plan prior to the Proposed Transaction with shares of Controlled Class B Stock representing approximately o% of Controlled’s total equity being allocated to the plan. Some portion of those shares will be granted in the form of options and restricted stock prior or concurrent with consummation of the Proposed Transaction.

Distributing is a holding company that engages, through its direct and indirect subsidiaries, in Business A, Business B, and Business C operations. Sub1 engages in all of Distributing's Business A and Business C operations. Sub4, a member of Controlled's "separate affiliated group" as defined in section 355(b)(3) ("the Controlled SAG") engages in Business B. Distributing will rely on Business A and Controlled will rely on Business B as their respective active trades or businesses upon the Distribution.

Prior to the date of the Distribution, Distributing intends to contribute all of its Business C assets and additional cash to newly formed Sub8, of which it will own p%, and distribute shares of Sub8 to Distributing's shareholders in a transaction intended to qualify as a non-taxable reorganization under sections 368(a)(1)(D) and 355 (the "Business C Distribution"). Distributing does not intend to request rulings on the Business C Distribution.

The purposes of separating Business A and Business B in the Proposed Transaction are to: (i) enhance the ability of the businesses to raise capital by focusing on their respective industry and growth potential; (ii) allow management of each business to design and implement corporate strategies and policies based on the business characteristics and industry of each business; (iii) focus on core business and growth opportunities for the respective businesses; (iv) concentrate each business's financial resources on its own operations and reduce internal competition for capital; (v) allow Business B to use its common stock to effect future strategic transactions; (vi) allow Business B to develop performance based equity incentive programs to attract and retain key employees directly linked to Business B; and (vii) allow each business to recruit and retain employees pursuant to compensation policies appropriate to the respective business.

## PROPOSED TRANSACTION

Distributing intends to separate Business B from Business A. Distributing proposes to undertake, pursuant to one overall plan, the following steps, some of which have already been completed (the "Proposed Transaction"):

- (i) Prior to the date of the ruling request, Distributing contributed its interest in Sub2 to Controlled in exchange for Controlled stock
- (ii) Distributing will contribute approximately \$q of cash to Controlled (together with step (i), the "Contribution").
- (iii) Distributing will distribute pro rata 100 percent of the issued and outstanding shares of Controlled to its shareholders (the "Shareholders") (the "Distribution"). In the Distribution, each Shareholder will receive one share of Controlled Class A Stock for Every share of Distributing Class A stock and

one share of Controlled Class B Stock for every share of Distributing Class B Stock.

## REPRESENTATIONS

The following representations have been made in connection with the Proposed Transaction:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by the Shareholders as creditors, employees, or in any capacity other than that of shareholders of Distributing.
- (c) The five years of financial information submitted for Business A is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted for Business B is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the Distribution, no person will hold a greater than 50 percent interest in either Distributing or Controlled (within the meaning of section 355(g)) who did not hold such an interest immediately before the Distribution.
- (f) Following the Distribution, Distributing, through its separate affiliated group, will continue the active conduct of Business A, independently and with its separate employees.
- (g) Following the Distribution, Controlled, through its separate affiliated group, will continue the active conduct of Business B, independently and with its separate employees.
- (h) The Proposed Transaction will be carried out for valid business purposes. The distribution of stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by one or more of those purposes.
- (i) The Distribution will not be used principally as a device for the distribution of earnings or profits of Distributing or Controlled or both.
- (j) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of 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 Distribution date.
- (k) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of 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 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 Distribution date.
  - (l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
  - (m) Payments made in connection with all continuing transactions, if any, 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.
  - (n) Neither Distributing nor Controlled is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
  - (o) Distributing and Controlled each will pay its or their own expenses, if any, incurred in connection with the Distribution.
  - (p) 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 (other than persons described in section 355(e)(2)(C)) 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 any such corporation).
  - (q) Neither Business A nor Business B nor control of any entity conducting these businesses was acquired during the five-year period ending on the Distribution date in a transaction in which gain or loss was recognized or treated as recognized in whole or in part.
  - (r) 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 Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas Reg. § 1.1502-13 as published by T.D.

8597). Further, Distributing's excess loss account, if any, with respect to Controlled will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19).

- (s) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (as determined under section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject. The liabilities assumed, if any, (as determined under section 357(d)) by Controlled were incurred in the ordinary course of business and were associated with the assets transferred.
- (t) Distributing was not and will not be a United States real property holding corporation (as defined in section 897(c)(2)) either (i) at any time during the five-year period ending on the Distribution date, or (ii) immediately following the Distribution.
- (u) Controlled will not be a United States real property holding corporation (as defined in section 897(c)(2)) either (i) at any time during the five-year period ending on the Distribution date, or (ii) immediately following the Distribution.

#### RULINGS

1. The Contribution together with the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).
2. Distributing did not recognize any gain or loss upon the transfer of Sub2 and will not recognize any gain or loss upon the transfer of cash to Controlled pursuant to the Contribution (section 361(a)).
3. Controlled will not recognize any gain or loss upon the receipt of Sub2 shares and cash from Distributing pursuant to the Contribution (section 1032(a)).
4. Controlled's basis in the shares of Sub2 received from Distributing pursuant to the Contribution will be the same as the basis of those shares in the hands of Distributing immediately before their transfer (section 362(b)).
5. Controlled's holding period in the shares of Sub2 received from Distributing pursuant to the Contribution will include the period during which Distributing held such shares (section 1223(2)).



6. Distributing will not recognize any gain or loss upon the distribution of Controlled stock in the Distribution (sections 355(c) and 361(c)).
7. The Shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of shares of Controlled stock in the Distribution (section 355(a)(1)).
8. Each Shareholder's basis in a share of Distributing stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the share of Distributing stock with respect to which the Distribution is made and the share of Controlled stock received with respect to that share in proportion to their fair market values. Sections 358(a), 358(b), and 358 (c); Treas. Reg. § 1.358-2(a).
9. The holding period of the Controlled stock received by the Shareholders in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution was made, provided that the Distributing stock is held as a capital asset in the hands of the Shareholder on the date of the Distribution (section 1223(1)).
10. 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).

#### CAVEATS

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Proposed Transaction or any other transaction or item mentioned in this letter under other provisions of the code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the foregoing 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 used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both; or (iii) whether the Distribution is part of a plan (or a series of related transactions) under section 355(e)(2)(A)(ii). Further, because no ruling was requested, no opinion is expressed regarding the tax treatment of the Business C Distribution.

#### 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 may 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 representative.

Sincerely,

Isaac W. Zimbalist  
Isaac W. Zimbalist  
Senior Technical Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Corporate)