

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201202007**  
Release Date: 1/13/2012

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 355.00-00, 355.01-00

, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:2  
PLR-120370-11  
Date:  
September 30, 2011

Legend

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

DRE 1 =

DRE 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Foreign  
Disregarded  
Entities =

LP1 =

Business 1 =

Business 2 =

Business 3 =

Business 4 =

State A =

Country A =

Country B =

Country C =

Advisors =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

e =  
f =  
g =  
h =  
i =  
j =  
k =  
Year 1 =

Dear :

This letter ruling responds to your May 3, 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 each of the Internal Distribution and External Distribution (defined below): (i) satisfies the business purpose requirement of 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 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 Reg. § 1.355-7).

**FACTS**

Distributing 2 is a publicly traded State A corporation and is the common parent of an affiliated group of corporations electing to file a consolidated Federal income tax return (“Distributing 2 Consolidated Group”). Distributing 2 owns all of the outstanding stock of Sub 1, a State A corporation, Sub 5, a State A corporation, Sub 6, a State A corporation, and DRE 1, a State A limited liability company disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3. Sub 1 owns all of the outstanding stock of Sub 2, a Country A entity classified as a corporation for U.S. federal income tax purposes and a controlled foreign corporation within the meaning of section 957. Sub 6 owns all of the outstanding stock of Sub 7, a State A corporation. DRE 1 owns all of the outstanding stock of Sub 3, a State A corporation, and Sub 4, a Country A entity classified as a corporation for U.S. federal income tax purposes. Sub 3 owns all of the outstanding stock of DRE 2, a State A limited liability company disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3. The outstanding stock of Distributing 1, a Country B entity classified as a corporation for U.S. Federal income tax purposes, is owned a percent and b percent by Sub 3 and DRE 2, respectively. Controlled 1, a publicly traded Country C entity classified as a corporation for U.S. Federal income tax purposes, has one class of stock outstanding (“Controlled 1 Common Stock”). Distributing 1, through Foreign Disregarded Entities, owns c percent of the Controlled 1 Common Stock. The remaining Controlled 1 Common Stock is owned by Advisors and other public shareholders, which own d and e percent of the Controlled 1 Common Stock, respectively.

To facilitate the proposed transactions described below, the taxpayer has undertaken the following preliminary transactions:

- (i) On Date 1, Distributing 2 formed Controlled 2, a State A corporation.
- (ii) On Date 2, Sub 1 converted to a limited liability company under the laws of State A that is disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3, Distributing 2 (“Sub 1 Conversion”).
- (iii) On Date 3, Sub 3 converted to a limited liability company under the laws of State A that is disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3, Distributing 2 (“Sub 3 Conversion”).
- (iv) On Date 4, Controlled 1 recapitalized its stock (“Recapitalization”). In the Recapitalization, Controlled 1 authorized the creation of high-vote common stock (“Controlled 1 Class A Common Stock”), and Distributing 1 exchanged all of its Controlled 1 Common Stock, which it held through the

Foreign Disregarded Entities, for Controlled 1 Class A Common Stock on a one share-for-one share basis. The owners of Controlled 1 Class A Common Stock have f percent of the voting power. The owners of Controlled 1 Common Stock have the remaining g percent of the voting power. The Controlled 1 Class A Common Stock and Controlled 1 Common Stock are identical in all other respects (including with respect to dividends, proceeds upon liquidation and voting on all matters other than the election of directors).

- (v) On Date 5, Distributing 2 transferred its Sub 1 interests to DRE 1, and DRE 1 transferred its Sub 1 interests and Sub 4 stock to the Foreign Disregarded Entities in exchange for Distributing 1 interests (“Transfer”).
- (vi) On Date 5, the Foreign Disregarded Entities transferred the stock of Sub 4 to Sub 1, Sub 1 transferred the stock of Sub 4 to Sub 2.

Distributing 2 will rely on Business 1 for its active trade or business upon the External Distribution (see below). Distributing 2 is engaged in the conduct of Business 1 through LP1, a partnership in which general partnership interests representing h percent of the total partnership units and limited partnership interests representing i percent of the total partnership units are owned by Distributing 2, either directly or through members of Distributing 2’s separate affiliated group as defined in section 355 (b)(3)(B) (“SAG”). Controlled 2, a newly formed corporation, will rely on Business 4 for its active trade or business upon the External Distribution (see below). Following the Contribution (see below) and immediately after the External Distribution (see below), Controlled 2 will be engaged in the active trade or business of Business 4 through members of its SAG.

Distributing 1 will rely on Business 3 for its active trade or business upon the Internal Distribution (see below). Distributing 1 is engaged, indirectly through Sub 2, a member of Distributing 1’s SAG, in the conduct of Business 3. Controlled 1 is engaged in the operation of Business 2 through its SAG, and will rely on Business 2 for its active trade or business upon the Internal Distribution (see below).

For at least the last five years, Distributing 2, through its SAG, has operated Business 1 and Business 4. For at least the last five years, Distributing 2 or Distributing 1, through their respective SAGs, has operated Business 3. For at least the last five years, Controlled 1, through its SAG, has operated Business 2.

Financial information has been received indicating that each of Business 1, Business 2, Business 3, and Business 4 had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The distributions of the stock, or stock and securities, of Controlled 1 and Controlled 2 are carried out for the following corporate business purpose: to enable Distributing 2 and Controlled 2 to focus on their respective businesses, including Business 1 (with respect to Distributing 2), Business 2, and Business 4 (with respect to Controlled 2), and to enable Distributing 2 and Controlled 2 to develop financing strategies and capital structures that are designed to better meet the underlying fundamentals of their respective businesses.

## PROPOSED TRANSACTIONS

To achieve the business purpose described above, the taxpayer has proposed the following transactions (together, with the preliminary transactions described above, "Proposed Transactions"):

1. Distributing 1 will distribute, through DRE 1, Sub 3 and DRE 2 ("Domestic DREs") 100 percent of its Controlled 1 Class A Common Stock held by Foreign Disregarded Entities to Distributing 2 ("Internal Distribution").
2. Distributing 1 will distribute certain assets, through the Domestic DREs, to Distributing 2 in a transaction intended to be treated as a distribution under section 301(a). Sub 5 will convert to a State A domestic limited liability company disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3 ("Sub 5 Conversion"), and distribute assets to Distributing 2.
3. Sub 7 and Sub 6 will each convert to a State A domestic limited liability company disregarded as separate from its owner for U.S. Federal income tax purposes under Reg. § 301.7701-3 ("Sub 7 Conversion" and "Sub 6 Conversion", respectively). Sub 7 will distribute assets to Sub 6. Sub 6 will distribute assets to Distributing 2.
4. Controlled 2 will issue Controlled 2 Common Stock to the public in an initial public offering ("Controlled 2 IPO"). Less than j percent of the Controlled 2 Common Stock will be issued in the Controlled 2 IPO.
5. Controlled 2 will issue up to \$k of debt to the public ("Controlled 2 Debt Offering").

6. Distributing 2 will contribute certain assets, Business 4 assets, and Controlled 1 Class A Common Stock to Controlled 2 in exchange for additional Controlled 2 Common Stock and cash to be funded out of the proceeds of the Controlled 2 IPO and the Controlled 2 Debt Offering. Distributing 2 will use the cash received from Controlled 2 to repay some of Distributing 2's historical debt. ("Contribution")
7. Distributing 2 will distribute (pro rata) all of its Controlled 2 Common Stock to Distributing 2's shareholders ("External Distribution").

Distributing 2 may issue cash in lieu of fractional shares with respect to the Controlled 2 Common stock in the External Distribution. If so, any fractional shares will be aggregated and sold by the transfer agent on the open market with the proceeds of such sale distributed to any Distributing 2 shareholder entitled to receive a cash payment in an amount equal to the shareholder's proportionate interest in the net proceeds from the open market sale.

## **REPRESENTATIONS**

The following representations are made with respect to the Internal Distribution:

- (a1) No part of the Controlled 1 stock to be distributed by Distributing 1 will be received by any shareholder in their capacity as a creditor, employee or in any capacity other than that of a shareholder of Distributing 1.
- (b1) Distributing 1 and Controlled 1 will each treat all members of its respective SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (c1) The five years of financial information submitted on behalf of the Distributing 1 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d1) The five years of financial information submitted on behalf of the Controlled 1 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.



- (e1) Neither Business 3 conducted by the Distributing 1 SAG nor control of an entity conducting that business was acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Sub 2 has been the principal owner of the goodwill and significant assets of Business 3. Sub 2 will be the principal owner of the goodwill and significant assets of Business 3 following the Internal Distribution.
- (f1) Neither Business 2 conducted by the Controlled 1 SAG nor control of an entity conducting that business was acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, the Controlled 1 SAG has been the principal owner of the goodwill and significant assets of Business 2. The Controlled 1 SAG will be the principal owners of the goodwill and significant assets of Business 2 following the Internal Distribution.
- (g1) Following the Internal Distribution, the Distributing 1 SAG and the Controlled 1 SAG will each continue the active conduct of their respective businesses, in each case independently and with their respective separate employees.
- (h1) The distribution of the stock of Controlled 1 pursuant to the Internal Distribution is carried out for the corporate business purpose of aligning the management and ownership of Distributing 2's Business 2 and Business 4 operations in a separate publicly-traded corporation, which will enable Distributing 2 and Controlled 2 to focus on their respective businesses and develop financing strategies and capital structures that are designed to better meet the underlying fundamentals of their respective businesses. The Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (i1) The Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1.
- (j1) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Distribution.
- (k1) No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the Internal Distribution.
- (l1) Payments made in connection with any continuing transactions between Distributing 1 and Controlled 1 following the Internal Distribution will be for fair

market value based on terms and conditions arrived at by the parties at arm's length.

- (m1) No parties to the Internal Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (n1) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold Distributing 1 stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock or 50 percent or more of the total value of all classes of Distributing 1 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (o1) For purposes of section 355(d), immediately after the Internal 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 1 stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled 1 stock, that was either: (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution; or (ii) attributable to distributions on Distributing 1's stock that were acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (p1) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of 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 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- (q1) Immediately after the Internal Distribution, neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (r1) The Recapitalization will qualify as a nonrecognition transaction pursuant to section 368(a)(1)(E) or section 1036.
- (s1) Following the Recapitalization, the Internal Distribution, and the External Distribution, the owners of Controlled 1 Class A Common Stock will own Controlled 1 stock constituting "control" of Controlled 1 as that term is defined in section 368(c).

- (t1) Other than pursuant to the Recapitalization, there is no plan or intent to amend Controlled 1's corporate charter to alter the rights associated with the Controlled 1 Class A Common Stock or Controlled 1 Common Stock.
- (u1) There is no regulatory, legal, contractual or economic compulsion or requirement that the Transfer be made as a condition of the distribution by Distributing 1 of either: (i) the distribution of Controlled 1 stock in the Internal Distribution or (ii) the assets distributed by Distributing 1 to Distributing 2 in step (2) of proposed transactions.
- (v1) The Sub 1 Conversion and the Transfer will qualify for nonrecognition treatment pursuant to section 368(a)(1)(C), section 351(a) and section 368(a)(2)(C).
- (w1) The Sub 3 Conversion will qualify as a complete liquidation of Sub 3 under section 332, and no gain or loss will be recognized by Sub 3 or Distributing 2 under sections 332(a) and 337(a).
- (x1) Distributing 1 and Controlled 1 will be controlled foreign corporations, within the meaning of section 957(a), immediately before and after the Internal Distribution.
- (y1) Distributing 2 will be a section 1248 shareholder, within the meaning of Reg. § 1.367(b)-2(b), with respect to each of Distributing 1 and Controlled 1 immediately before and after the Internal Distribution.
- (z1) Distributing 1 and Controlled 1 will not be passive foreign investment companies ("PFICs") within the meaning of section 1297(a) immediately before or after the Internal Distribution.
- (aa1) Controlled 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after the Internal Distribution.
- (bb1) Distributing 2, as parent of the Distributing 2 Consolidated Group, will enter into a gain recognition agreement ("GRA") satisfying the requirements of Reg. § 1.367(a)-8 with respect to the transfer by Distributing 2 of the stock of Sub 2 to Distributing 1 in the Transfer.
- (cc1) With respect to any existing GRA previously entered into by Distributing 2, as parent of the Distributing 2 Consolidated Group, in connection with a prior transfer of stock or securities, or any GRA to be entered into in connection with the Proposed Transactions, Distributing 2 will, in accordance with Reg. § 1.367(a)-8(k) and Reg. § 1.367(a)-8(c)(5), enter into a new GRA (i) identifying all triggering events and exceptions thereto resulting from the Proposed Transactions, (ii) designating a successor transferor corporation, transferee corporation, and/or transferred corporation, as applicable, and (iii) complying with

all other requirements for GRAs under Reg. § 1.367(a)-8. Additionally, Distributing 2 will comply with the notification requirements of Reg. § 1.367(a)-8 with respect to any such GRA.

- (dd1) Distributing 2 will satisfy the notification requirements of Reg. § 1.367(b)-1(c), as applicable, with respect to all transfers of assets or stock in the Proposed Transactions.

The following representations are made with respect to the External Distribution:

- (a2) No part of the consideration to be distributed by Distributing 2 to its shareholders in the External Distribution will be received by any shareholder in their capacity as a creditor, employee or in any capacity other than that of a shareholder of Distributing 2.
- (b2) Distributing 2 and Controlled 2 will treat all members of its respective SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (c2) The five years of financial information submitted on behalf of the Distributing 2 SAG is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d2) The five years of financial information submitted on behalf of the Controlled 2 SAG is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e2) Neither Business 1 conducted by the Distributing 2 SAG nor control of an entity conducting that business was acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, Distributing 2, either directly or through its ownership of LP1, has been the principal owner of the goodwill and significant assets of Business 1 and will continue to be such owner following the External Distribution.
- (f2) Neither Business 4 conducted by the Controlled 2 SAG nor control of an entity conducting that business was acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as Recognized under Prop. Reg. § 1.355-3)) in whole or in

part. Throughout the five-year period ending on the date of the External Distribution, the principal owner of the goodwill and significant assets of Business 4 has been the Distributing 2 SAG. The Controlled 2 SAG will be the principal owners of the goodwill and significant assets of Business 4 following the External Distribution.

- (g2) Following the External Distribution, the Distributing 2 SAG and the Controlled 2 SAG will each continue the active conduct of their respective businesses, in each case independently and with their respective separate employees, except, as provided in a transition services agreement, under which Controlled 2 will have the right to obtain certain administrative services from Distributing 2 for up to one year after the External Distribution.
- (h2) The distribution of the stock, or stock and securities, of Controlled 2 pursuant to the External Distribution is carried out for the corporate business purpose of aligning the management and ownership of Distributing 2's Business 2 and Business 4 operations in a separate publicly traded corporation, which will enable Distributing 2 and Controlled 2 to focus on their respective businesses and develop financing strategies and capital structures that are designed to better meet the underlying fundamentals of their respective businesses. The External Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (i2) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of any of Distributing 2 or Controlled 2.
- (j2) If cash is paid in lieu of fractional shares of Controlled 2, such payment will be solely for purposes of avoiding the expense and inconvenience to Controlled 2 of issuing fractional shares and does not represent separately bargained for consideration. The total cash consideration to be paid to the shareholders of Distributing 2 in lieu of fractional shares is not expected to exceed one percent of the total consideration that will be distributed in the External Distribution. The fractional share interests will be aggregated, and no shareholder of Distributing 2 will receive cash in an amount equal or greater than the value of one full share of Controlled 2 stock.
- (k2) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the External Distribution.
- (l2) Except for any possible claims under the tax sharing agreement and certain intercompany payables for administrative services or continuing transactions, no intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the External Distribution. Any indebtedness owed by

Controlled 2 to Distributing 2 after the External Distribution will not constitute stock or securities.

- (m2) Payments made in connection with any continuing transactions between Distributing 2 and Controlled 2 following the External Distribution will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (n2) No parties to the External Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (o2) For purpose of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold Distributing 2 stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock or 50 percent or more of the total value of all classes of Distributing 2 stock that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (p2) For purposes of section 355(d), immediately after the External 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 2 stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled 2 stock, that was either: (i) acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution; or (ii) attributable to distributions on stock or securities of Distributing 2 that were acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (q2) The External Distribution is not part of a plan or series of related transactions (within the meaning of 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 2 or Controlled 2 (including any predecessor or successor of any such corporation).
- (r2) Immediately after the External Distribution, neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (s2) The total fair market value of the assets transferred to Controlled 2 by Distributing 2 will exceed the sum of (i) the amount of liabilities assumed (within the meaning of section 357(d)) by Controlled 2 in connection with the exchange,

- (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 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 stocks or securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.
- (t2) Any liabilities assumed (as determined under section 357(d)) by Controlled 2 were incurred in the ordinary course of business and are associated with the assets being transferred.
- (u2) The total adjusted bases of the assets transferred to Controlled 2 by Distributing 2 will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled 2 and (ii) the total amount of money and the fair market value of other property (within the meaning of section 361(b)) received by Distributing 2 and transferred by it to its creditors and shareholders in connection with the reorganization.
- (v2) The aggregate fair market value of the assets transferred to Controlled 2 in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (w2) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Reg. § 1.1502-13 and Reg. § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by Reg. § 1.1502-19 will be included in income immediately before the External Distribution.
- (x2) The distribution of assets through the Domestic DRE's by Distributing 1 to Distributing 2 in step (2) of the Proposed Transactions, will be treated as a distribution under section 301(a).
- (y2) All payments made by Distributing 2 with respect to the cash proceeds from the Controlled 2 IPO or Controlled 2 Debt Offering to Distributing 2's creditors will not exceed the weighted quarterly average of the Distributing 2 debt owed to third parties for the 12-month period ending on the close of business on or about Date 6, the last full business day before the date on which the Distributing 2 Board of Directors initially discussed the potential separation of Business 1, Business 2, Business 3 and Business 4. The term "Distributing 2 debt" refers only to debt of Distributing 2 owed to unrelated parties.

## **RULINGS**

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

### **The Internal Distribution**

1. Under section 355(a)(1), no gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 upon the receipt of Controlled 1 stock pursuant to the Internal Distribution.
2. Under section 355(c), no gain or loss will be recognized by Distributing 1 on the Internal Distribution.
3. Under sections 358(b)(2) and (c), the aggregate basis of the stock of Distributing 1 and Controlled 1 in the hands of Distributing 2 immediately after the Internal Distribution will be equal to the basis of the stock of Distributing 1 held by Distributing 2 immediately before the Internal Distribution, and will be allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each in accordance with Reg. § 1.358-2(a)(2).
4. Under section 1223(1), the holding period of the Controlled 1 stock received by Distributing 2 in the Internal Distribution will include Distributing 2's holding period for the Distributing 1 stock.
5. Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Reg. § 1.312-10(a).
6. Internal Distribution will be an exchange to which Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a) and 1.367(b)-5(c) apply. If Distributing 2's postdistribution amount (as defined in Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than its predistribution amount (as defined in Reg. § 1.367(b)-5(e)(1)) with respect to Distributing 1 or Controlled 1, Distributing 2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Distributing 2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing 2 must instead include such amount in income as a deemed dividend from such corporation. If Distributing 2 reduces the basis in the stock of Distributing 1 or Controlled 1 (or has an inclusion with respect to such stock), Distributing 2 must increase its basis in the stock of the other corporation to the extent provided in Reg. § 1.367(b)-5(c)(4).



**The Contribution and External Distribution**

7. The Contribution and the External Distribution will, collectively, qualify as a "reorganization" within the meaning of section 368(a)(1)(D).
8. Distributing 2 and Controlled 2 each will be a "party to the reorganization" within the meaning of section 368(b).
9. Under sections 357 and 361(a), no gain or loss will be recognized by Distributing 2 with respect to the Contribution.
10. Under sections 361(a) and (b)(3), no gain will be recognized by Distributing 2 with respect to the cash distributed to Distributing 2 by Controlled 2 as partial consideration for the assets contributed to Controlled 2 by Distributing 2 in the Contribution.
11. Under section 1032(a), no gain or loss will be recognized by Controlled 2 with respect to the Contribution.
12. Under section 362(b), Controlled 2's basis in each applicable asset contributed by Distributing 2 to Controlled 2 will equal the basis of that asset in the hands of Distributing 2 immediately before the Contribution.
13. Under section 1223(2), Controlled 2's holding period for each applicable asset contributed by Distributing 2 to Controlled 2 will include the period during which Distributing 2 held that asset.
14. Under section 361(c)(1), no gain or loss will be recognized by Distributing 2 with respect to the distribution of the Controlled 2 common stock to the shareholders of Distributing 2.
15. Under section 355(a)(1), no gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing 2 upon the receipt of Controlled 2 common stock in the External Distribution.
16. The payments of cash in the External Distribution, if any, in lieu of fractional shares of Controlled 2, will be treated for federal income tax purposes as if the fractional shares had been distributed to the shareholder as part of the distribution and then had been disposed of by such shareholder for the amount of such cash in a sale or exchange. Under sections 1001 and 1221, the gain (or loss), if any, will be treated as a capital gain (or loss), provided such stock was held as a capital asset by the selling shareholder of Distributing 2.

17. Under sections 358(a)(1), (b) and (c), the basis of the Distributing 2 common stock and the Controlled 2 common stock in the hands of the shareholders of Distributing 2 immediately after the distribution by Distributing 2 of its stock in Controlled 2 to shareholders of Distributing 2 (including any fractional share interest to which the shareholder may be entitled) will be the same as the basis of the Distributing 2 common stock held by the shareholders of Distributing 2 immediately before the distribution, allocated in proportion to the fair market value of each in accordance with Reg. § 1.358-2(a)(2).
18. Under section 1223(1), the holding period of the Controlled 2 common stock received by the shareholders of Distributing 2 in the distribution of such stock by Distributing 2 to the shareholders of Distributing 2 (including any fractional share interest to which the shareholder may be entitled) will include the holding period of Distributing 2 common stock with respect to which the distribution was made, provided that Distributing 2 common stock was held as a capital asset on the date of the External Distribution.
19. As provided in section 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 2 will be made under section 312(h), Reg. § 1.1502-33(e)(3), and Reg. § 1.312-10(a).
20. Payments made by and between any of Distributing 2, Controlled 2, or their subsidiaries under the tax sharing agreement regarding tax liabilities that: (i) have arisen or will arise for a taxable period ending before the External Distribution; or (ii) will not become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External Distribution.

### **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 Internal Distribution and the External Distribution satisfy the business purpose requirement of Reg. § 1.355-2(b);

- (ii) Whether the Internal Distribution and the External Distribution are used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, Controlled 1 or Controlled 2, or any combination thereof (see section 355(a)(1)(B) and Reg. § 1.355-2(d)); and
- (iii) Whether the Internal Distribution and the External Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

In particular, no opinion is expressed regarding the Federal income tax treatment of (i) the Transfer; (ii) the Recapitalization; (iii) the Sub 1 Conversion; (iv) the Sub 3 Conversion; (v) the Sub 5 Conversion; (vi) the Sub 6 Conversion; (vii) the Sub 7 Conversion; and (viii) the distribution of assets through the Domestic DRE's by Distributing 1 to Distributing 2 in step (2) of the Proposed Transactions.

In addition, to the extent not otherwise specifically ruled upon above, no opinion is expressed regarding (i) the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which sections 367(a) or (b) apply; and (ii) any other consequences under section 367 with respect to any transaction described in this letter ruling.

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

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Richard Heinecke  
Assistant to the Branch Chief, Branch 6  
Office of Associate Chief Counsel (Corporate)

cc: