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Legend:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country G =

a =

b =

State A =

Business A =

Business B =

Business C =

Directors =

Dear :

This letter responds to a September 30, 2011 letter requesting rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Distribution 1, Distribution 2 or Distribution 3 (each defined 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 Distributing 1, Distributing 2, Distributing 3, Controlled 1 or Controlled 2 or any combination thereof (see section 355(a)(1)(B) of the Internal Revenue Code (“Code”) 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 Distributing 1, Distributing 2, Distributing 3, Controlled 1 or Controlled 2 (see section 355(e) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing 3, a privately held State A corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (“Distributing 3 Group”). Distributing 3 has one class of common stock and multiple series of convertible preferred stock outstanding (the shareholders of all such stock together, “D3 Shareholders”). Each share of such preferred stock is convertible into one share of Distributing 3 common stock upon the occurrence of certain events, including at the option of its holder, and is entitled to Distributing 3 distributions on an as converted basis pro rata with the Distributing 3 common stock.

Distributing 3 owns all of the outstanding stock of Controlled 2 and Distributing 2, each a State A corporation. Distributing 2 owns all of the outstanding common stock of Distributing 1 (“D1 Common Stock”), a Country B entity classified as a corporation for U.S. Federal income tax purposes. Distributing 2 owns a% of the only class of outstanding stock of Sub 1, a Country A entity classified as a corporation for U.S. Federal income tax purposes, with the remaining b% owned by Directors. Sub 1 owns all of the outstanding stock of DRE 1, a State A limited liability company disregarded as separate from its owner for U.S. Federal income tax purposes under Treas. Reg. § 301.7701-3. DRE 1 owns all of the outstanding preferred equity certificates (“D1 PECs”) issued by Distributing 1.

Distributing 1 will form Controlled 1, a wholly owned foreign entity classified as a corporation for U.S. Federal income tax purposes and a controlled foreign corporation within the meaning of section 957(a), for the purpose of facilitating the Proposed Transactions (defined below). Distributing 1 owns all of the outstanding interests of DRE 2, a Country C entity disregarded as separate from its owner for U.S. Federal income tax purposes under Treas. Reg. § 301.7701-3. DRE 2 owns all of the

outstanding interests of DRE 3, which in turn owns all of the outstanding interests of DRE 6. DRE 3 and DRE 6 are each a Country D entity disregarded as separate from its owner for U.S. Federal income tax purposes under Treas. Reg. § 301.7701-3. DRE 2 also owns: all of the outstanding interests of DRE 4, a Country C entity disregarded as separate from its owner for U.S. Federal income tax purposes under Treas. Reg. § 301.7701-3; all of the outstanding interests of DRE 5, a Country E entity disregarded as separate from its owner for U.S. Federal income tax purposes under Treas. Reg. § 301.7701-3; and all of the outstanding stock of Sub 2, a Country F entity classified as a corporation for U.S. Federal income tax purposes. Sub 2 wholly owns Sub 3, a Country F entity classified as a corporation for U.S. Federal income tax purposes. Sub 3 wholly owns Sub 4, a Country F entity classified as a corporation for U.S. Federal income tax purposes. Sub 4 wholly owns Sub 5, a Country F entity classified as a corporation for U.S. Federal income tax purposes, which in turn wholly owns Sub 6, a Country G entity classified as a corporation for U.S. Federal income tax purposes. Sub 3 also wholly owns Sub 7, a Country F entity classified as a corporation for U.S. Federal income tax purposes, which in turn wholly owns Sub 8, a Country E entity classified as a corporation for U.S. Federal income tax purposes. Each of Distributing 1, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7 and Sub 8 is a “controlled foreign corporation” within the meaning of section 957(a).

Distributing 1, Distributing 2, and Distributing 3 and the members of each of their respective “separate affiliated groups” as defined in section 355(b)(3) (“SAG”) directly engage in various businesses, including Business A, Business B and Business C. Following the Proposed Transactions (defined below), each of the Distributing 1, Distributing 2, and Distributing 3 SAGs will continue to directly engage in Business A. Following the First Contribution, the Controlled 1 SAG will directly engage in Business B and Business C. Following the Second Contribution, the Controlled 2 and Controlled 1 SAGs will directly engage in Business B and Business C. Financial information has been submitted indicating that each of Business A and 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.

The proposed transactions are intended to separate Business A from Business B and Business C (which will operate as a segment of Business B). The purposes of the proposed transactions are: (i) to simplify and clarify the operational structure of Business B, streamline management, reporting and administration, and achieve strategic coherence; (ii) to develop financing strategies and capital structures that are designed to better meet the underlying fundamentals of their respective businesses; (iii) to improve Business B’s ability to attract and retain qualified management using equity-based compensation and to align more closely the performance of Business B’s managers with the equity compensation they receive, thus increasing the effectiveness of their equity compensation plans; and (iv) to create a pure play acquisition currency to simplify potential acquisitions by Business A or Business B, with less relative dilution to existing equity holders (together, “Corporate Business Purposes”).

### Proposed Transactions

To achieve the business purposes described above, the taxpayer has proposed the following transactions, some of which have already been completed (“Proposed Transactions”):

- (i) Sub 8 transferred certain non-Business B assets to DRE 5 in exchange for an amount of cash equal to the fair market value of such assets.
- (ii) An election will be made to classify Sub 6 as a disregarded entity under Treas. Reg. § 301.7701-3(c) (“First Election”).
- (iii) Sub 5 will transfer all of the interests of Sub 6 to Distributing 1 in exchange for an amount of cash equal to the fair market value of such interests.
- (iv) An election will be made to classify Sub 7 as a disregarded entity under Treas. Reg. § 301.7701-3(c) (“Second Election”).
- (v) An election will be made to classify Sub 3 as a disregarded entity under Treas. Reg. § 301.7701-3(c) (“Third Election”).
- (vi) An election will be made to classify Sub 2 as a disregarded entity under Treas. Reg. § 301.7701-3(c) (“Fourth Election”).
- (vii) Sub 7 will transfer all of the stock of Sub 8 to Distributing 1 in exchange for an amount of cash equal to fair market value of such stock in a transaction intended to be disregarded for U.S. Federal income tax purposes.
- (viii) DRE 3 will transfer all of the interests of DRE 6 to Distributing 1 in exchange for an amount of cash equal to the fair market value of such interests in a transaction intended to be disregarded for U.S. Federal income tax purposes.
- (ix) DRE 2 will distribute all of the interests of DRE 4 to Distributing 1 in exchange for no consideration in a transaction intended to be disregarded for U.S. Federal income tax purposes.
- (x) Distributing 1 will transfer all of the interests of DRE 6 and Sub 6, and all of the stock of Sub 8 to Controlled 1, along with other Business B assets and cash (to be used to satisfy any remaining intercorporate indebtedness of Controlled 1 or Sub 8 to the other members of the Distributing 3 Group), in

- exchange for all of the outstanding stock of Controlled 1 and the assumption of liabilities.
- (xi) Distributing 1 will transfer all of its interests in DRE 4 to Controlled 1, along with other Business B assets, in exchange for no consideration other than the assumption of liabilities (steps (x) and (xi) together, "First Contribution").
  - (xii) Distributing 1 will distribute all of the stock of Controlled 1 to Distributing 2 solely with respect to the Distributing 1 Common Stock ("Distribution 1").
  - (xiii) Distributing 2 will distribute all of the stock of Controlled 1 pro rata to Distributing 3 ("Distribution 2").
  - (xiv) Distributing 3 will transfer all of the stock of Controlled 1 to Controlled 2, along with other Business B assets and cash (to be used to satisfy any remaining intercorporate indebtedness of Controlled 2 to the other members of the Distributing 3 Group), in exchange for stock of Controlled 2 and the assumption of liabilities ("Second Contribution").
  - (xv) Distributing 3 will distribute all of the stock of Controlled 2 to D3 Shareholders pro rata on an as converted basis ("Distribution 3," and together with Distribution 1 and Distribution 2, "Distributions").

In connection with the Proposed Transactions, Distributing 3 and its affiliates after Distribution 3, on the one hand, and Controlled 2 and its affiliates after Distribution 3, on the other hand will enter into: (i) transitional services agreements ("Transitional Services Agreements"); (ii) certain continuing agreements ("Continuing Agreements"); and (iii) various indemnification agreements (any indemnification payments under any such indemnification agreement, "Indemnity Payments"). The services under the Transitional Services Agreements may be compensated on a cost basis for a period not to exceed two years following the effective date of Distribution 3. To the extent that the Transitional Services Agreements continue beyond such two year period, the underlying services will be compensated on an arm's-length basis.

Also, following the Proposed Transactions, Distributing 3 expects that a majority (and potentially all) of the members of Distributing 3's board of directors will also serve as members of Controlled 2's board of directors, and that certain officers of Distributing 3 may serve as officers of Controlled 2 ("Overlapping Directors and Officers"). Distributing 3 expects that each of Distributing 3 and Controlled 2 will have its own chief executive officer who will not be an officer of the other corporation, and that each of Distributing 3 and Controlled 2 will have one or more officers that will not serve concurrently as officers of the other corporation.

There have been discussions between Distributing 3 and unrelated third parties concerning acquisitions of the stock of Controlled 2 subsequent to Distribution 3 ("Discussions"). However, Distributing 3 is not aware of any potential or planned acquisitions by third parties of the stock of Controlled 2 or Distributing 3 from any shareholders of Distributing 3.

### **Representations**

The following representations have been made with respect to the First Contribution and Distribution 1:

- (a) Distributing 1 and Controlled 1 will each treat all members of its SAG 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.
- (b) Distribution 1 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 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- (c) No part of the consideration to be distributed by Distributing 1 in Distribution 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (d) The five years of financial information submitted on behalf of Business A conducted by the Distributing 1 SAG is representative of the present business operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business C to be conducted by the Controlled 1 SAG, is representative of the present business operations of Business C, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following Distribution 1, the Distributing 1 SAG will continue the active conduct of Business A independently and with its separate employees, and the Controlled 1 SAG will continue the active conduct of Business C independently and with its separate employees.

- (g) The Distributing 1 SAG neither acquired Business C nor acquired control of an entity conducting Business C during the five-year period ending on the date of Distribution 1 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 except for transactions that have expanded Business C.
- (h) The Distributing 1 SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of Distribution 1 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 except for transactions that have expanded Business A.
- (i) Distribution 1 will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (j) For purposes of section 355(d), immediately after Distribution 1, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 1 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 Distribution 1.
- (k) For purposes of section 355(d), immediately after Distribution 1, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 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 Distribution 1, or (ii) attributable to distributions on Distributing 1 stock or securities that were 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 Distribution 1.
- (l) The total fair market value of the assets transferred to Controlled 1 by Distributing 1 will exceed the sum of (i) the amount of liabilities assumed (within the meaning of section 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 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 permitted to be received under section 361(a) without the recognition of gain) received by Distributing 1 in connection with the

- exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.
- (m) The total adjusted bases of the assets transferred to Controlled 1 by Distributing 1 will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled 1 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 1 and transferred by it to its creditors and shareholders in connection with the reorganization.
  - (n) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 in the First Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled 1 in connection with the First Contribution.
  - (o) No property is being transferred between Distributing 1 and Controlled 1 with respect to which any investment credit determined under section 46 has been or will be claimed.
  - (p) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 1.
  - (q) No income items, including accounts receivable or any item resulting from a sale, exchange or disposition of property, that would have resulted in income to Distributing 1, and no items of expense will be transferred to Controlled 1 if Distributing 1 has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.
  - (r) Except with respect to indebtedness satisfied in connection with the Proposed Transactions, no intercorporate debt will exist between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) at the time of, or subsequent to, Distribution 1.
  - (s) Except for the Transitional Services Agreements, payments made in all continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
  - (t) Neither Distributing 1 nor Controlled 1 is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
  - (u) Distributing 1, Controlled 1, and Distributing 2 each will pay their own expenses, if any, incurred in connection with Distribution 1.

- (v) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (w) Distribution 1 is motivated, in whole or substantial part, by the business purposes of: (i) simplifying and clarifying the operational structure of Business B, streamlining management, reporting and administration, and achieving strategic coherence; and (ii) facilitating Distribution 3.
- (x) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the transaction.
- (y) Distributing 1 and Controlled 1 will be controlled foreign corporations, within the meaning of section 957(a), immediately before and after Distribution 1.
- (z) Distributing 2 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing 1 and Controlled 1 immediately before and after Distribution 1.
- (aa) Distributing 1 and Controlled 1 will not be passive foreign investment companies within the meaning of section 1297(a) immediately before or after Distribution 1.
- (bb) Distributing 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Distribution 1.
- (cc) Controlled 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Distribution 1.
- (dd) Distribution 1 will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T.
- (ee) No classes of Controlled 1 stock other than the Controlled 1 stock that will be issued to Distributing 1 pursuant to the First Contribution will be outstanding prior to Distribution 1.
- (ff) The First Contribution is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).
- (gg) The PECs issued by Distributing 1 to DRE 1 are treated as equity for U.S. federal income tax purposes. The PECs have no rights with respect to Distribution 1 under relevant local law.

The following representations have been made with respect to Distribution 2:

- (hh) Distributing 2 and Controlled 1 will each treat all members of its SAG 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.
- (ii) Distribution 2 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 2 or Controlled 1 (including any predecessor or successor of any such corporation).
- (jj) No part of the consideration to be distributed by Distributing 2 in Distribution 2 will be received by Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (kk) The five years of financial information submitted on behalf of Business A conducted by the Distributing 2 SAG is representative of the present business operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ll) The five years of financial information submitted on behalf of Business C to be conducted by the Controlled 1 SAG, is representative of the present business operations of Business C, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (mm) Following Distribution 2, the Distributing 2 SAG will continue the active conduct of Business A independently and with its separate employees, and the Controlled 1 SAG will continue the active conduct of Business C independently and with its separate employees.
- (nn) The Distributing 2 SAG neither acquired Business C nor acquired control of an entity conducting Business C during the five-year period ending on the date of Distribution 2 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 except for transactions that have expanded Business C.
- (oo) The Distributing 2 SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of Distribution 2 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 except for transactions that have expanded Business A.
- (pp) Distribution 2 will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
  - (qq) For purposes of section 355(d), immediately after Distribution 2, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 2 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 Distribution 2.
  - (rr) For purposes of section 355(d), immediately after Distribution 2, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 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 Distribution 2 or (ii) attributable to distributions on Distributing 2 stock or securities that were 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 Distribution 2.
  - (ss) No property is being transferred between Distributing 2 and Controlled 1 with respect to which any investment credit determined under section 46 has been or will be claimed.
  - (tt) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 2.
  - (uu) No income items, including accounts receivable or any item resulting from a sale, exchange or disposition of property, that would have resulted in income to Distributing 2, and no items of expense will be transferred to Controlled 1 if Distributing 2 has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.
  - (vv) Except with respect to indebtedness satisfied in connection with the Proposed Transactions, no intercorporate debt will exist between Distributing 2 (and its subsidiaries) and Controlled 1 (and its subsidiaries) at the time of, or subsequent to, Distribution 2.

- (ww) Except for the Transitional Services Agreements, payments made in all continuing transactions between Distributing 2 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (xx) Neither Distributing 2 nor Controlled 1 is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (yy) Distributing 2, Controlled 1 and Distributing 3 each will pay their own expenses, if any, incurred in connection with Distribution 2.
- (zz) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing 2 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (aaa) Distribution 2 is motivated, in whole or substantial part, by the business purposes of: (i) simplifying and clarifying the operational structure of Business B, streamlining management, reporting and administration, and achieving strategic coherence; and (ii) facilitating Distribution 3.
- (bbb) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the transaction.
- (ccc) Controlled 1 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after Distribution 2.
- (ddd) Distributing 3 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to Controlled 1 immediately before and after Distribution 2.
- (eee) Controlled 1 will not be a passive foreign investment company within the meaning of section 1297(a) immediately before or after Distribution 2.
- (fff) Distributing 2 will not be a United States real property holding corporation within the meaning of section 897(c)(2) at any time during the five-year period ending on the date of Distribution 2 and will not be a United States real property holding corporation immediately after Distribution 2.
- (ggg) Controlled 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after Distribution 2.
- (hhh) Distribution 2 will not include the transfer of stock in any corporation that as been a U.S. transferor, the transferee foreign corporation, or the transferred

corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T.

The following representations have been made with respect to the Second Contribution and Distribution 3:

- (iii) Distributing 3 and Controlled 2 will each treat all members of its SAG 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.
- (jjj) Distribution 3 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 3 or Controlled 2 (including any predecessor or successor of any such corporation).
- (kkk) 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 Treas. 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; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, Distributing 3's excess loss account with respect to Controlled 2 stock, if any, will be included in income immediately before the distribution.
- (lll) No part of the consideration to be distributed by Distributing 3 in Distribution 3 will be received by any shareholder of Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.
- (mmm) The five years of financial information submitted on behalf of Business A conducted by the Distributing 3 SAG is representative of the present business operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (nnn) The five years of financial information submitted on behalf of Business C to be conducted by the Controlled 2 SAG, is representative of the present business operations of Business C, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ooo) Following Distribution 3, except with respect to (i) services to be provided under the Transitional Services Agreements and the Continuing Agreements,

- and (ii) the Overlapping Directors and Officers, the Distributing 3 SAG will continue the active conduct of Business A independently and with its separate employees, and the Controlled 2 SAG will continue the active conduct of Business C independently and with its separate employees.
- (ppp) The Distributing 3 SAG neither acquired Business C nor acquired control of an entity conducting Business C during the five-year period ending on the date of Distribution 3 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 except for transactions that have expanded Business C.
- (qqq) The Distributing 3 SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of Distribution 3 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 except for transactions that have expanded Business A.
- (rrr) Distribution 3 will not be used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 2 or both.
- (sss) For purposes of section 355(d), immediately after Distribution 3, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 3 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 Distribution 3.
- (ttt) For purposes of section 355(d), immediately after Distribution 3, no person (determined after applying section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 2 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 Distribution 3 or (ii) attributable to distributions on Distributing 3 stock or securities that were 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 Distribution 3.
- (uuu) The total fair market value of the assets transferred to Controlled 2 by Distributing 3 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

- 3 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 permitted to be received under section 361(a) without the recognition of gain) received by Distributing 3 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.
- (vvv) The total adjusted bases of the assets transferred to Controlled 2 by Distributing 3 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 3 and transferred by it to its creditors and shareholders in connection with the reorganization.
- (www) Any liabilities assumed (within the meaning of section 357(d)) by Controlled 2 in the Second Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled 2 in connection with the Second Contribution.
- (xxx) No property is being transferred between Distributing 3 and Controlled 2 with respect to which any investment credit determined under section 46 has been or will be claimed.
- (yyy) Distributing 3 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 3.
- (zzz) No income items, including accounts receivable or any item resulting from a sale, exchange or disposition of property, that would have resulted in income to Distributing 3, and no items of expense will be transferred to Controlled 2 if Distributing 3 has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.
- (aaaa) Except with respect to indebtedness satisfied in connection with the Proposed Transactions, no intercorporate debt will exist between Distributing 3 (and its subsidiaries) and Controlled 2 (and its subsidiaries) at the time of, or subsequent to, Distribution 3.
- (bbbb) Except for the Transitional Services Agreements, all payments made in all continuing transactions between Distributing 3 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (cccc) Neither Controlled 2 nor Distributing 3 is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).

- (dddd) Distributing 3, Controlled 2, and the Distributing 3 shareholders, each will pay its own expenses, if any, incurred in connection with Distribution 3.
- (eeee) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing 3 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (ffff) Distribution 3 is motivated, in whole or substantial part, by the Corporate Business Purposes.
- (gggg) Neither Distributing 3 nor Controlled 2 will be a United States real property holding corporation within the meaning of section 897(c)(2) at any time during the five-year period ending on the date of Distribution 3 nor will be a United States real property holding corporation immediately after Distribution 3.
- (hhhh) The Second Contribution will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T.
- (iiii) The Second Contribution is not an exchange described in Treas. Reg. §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).
- (jjjj) The stock of Controlled 2 will be distributed to Distributing 3's shareholders pro rata on an as converted basis. Distribution 3 will neither dilute nor proportionally increase any Distributing 3 shareholder's investment in the combined earnings and profits and assets of Distributing 3 and Controlled 2, as of immediately before Distribution 3.

### **Rulings**

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

#### **The First Contribution and Distribution 1**

- (1) The First Contribution and Distribution 1, taken together, will qualify as a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be a "party to the reorganization" within the meaning of section

- 368(b).
- (2) No gain or loss will be recognized by Distributing 1 as a result of the First Contribution (sections 357(a) and 361(a)).
  - (3) No gain or loss will be recognized by Controlled 1 as a result of the First Contribution (section 1032(a)).
  - (4) Controlled 1's basis in each asset received in the First Contribution will be the same as the basis of that asset in the hands of Distributing 1 immediately before its transfer (section 362(b)).
  - (5) Controlled 1's holding period in each asset received in the First Contribution will include the period during which Distributing 1 held the asset (section 1223(2)).
  - (6) No gain or loss will be recognized by Distributing 1 in Distribution 1 (section 361(c)).
  - (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 upon its receipt of the Controlled 1 stock in Distribution 1 (section 355(a)).
  - (8) The basis of the stock of Distributing 1 and Controlled 1 in the hands of Distributing 2 after Distribution 1 will be the same as the basis of the Distributing 1 stock held by Distributing 2 immediately before Distribution 1, allocated in proportion to the fair market value of Distributing 1 and Controlled 1 in accordance with section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
  - (9) Distributing 2's holding period in the Controlled 1 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the Controlled 1 stock will be distributed, provided that such Distributing 1 stock is held as a capital asset on the date of Distribution 1 (section 1223(1)).
  - (10) As provided in section 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 1 will be made under Treas. Reg. § 1.312-10.
  - (11) The distribution of Controlled 1 stock by Distributing 1 to Distributing 2 will be an exchange to which Treas. 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 Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Controlled 1 or Distributing 1 is

less than its predistribution amount with respect to such corporation, then 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 Controlled or Distributing 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 Treas. Reg. § 1.367(b)-5(c)(4).

#### Distribution 2

- (12) No gain or loss will be recognized by Distributing 2 in Distribution 2 (section 355(c)).
- (13) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 on its receipt of Controlled 1 stock in Distribution 2 (section 355(a)(1)).
- (14) The basis of the stock of Distributing 2 and Controlled 1 in the hands of Distributing 3 after Distribution 2 will be the same as the basis of the Distributing 2 stock held by Distributing 3 immediately before Distribution 2, allocated in proportion to the fair market value of Distributing 2 and Controlled 1 in accordance with section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (15) Distributing 3's holding period in the Controlled 1 stock received by Distributing 3 will include the holding period of the Distributing 2 stock with respect to which the Controlled 1 stock will be distributed, provided that such Distributing 2 stock is held as a capital asset on the date of Distribution 2 (section 1223(1)).
- (16) As provided in section 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 1 will be made under Treas. Reg. § 1.312-10.

#### The Second Contribution & Distribution 3

- (17) The Second Contribution and Distribution 3, taken together, will qualify as a reorganization under section 368(a)(1)(D). Each of Distributing 3 and Controlled 2 will be a "party to the reorganization" within the meaning of section 368(b).

- (18) No gain or loss will be recognized by Distributing 3 as a result of the Second Contribution (sections 357(a) and 361(a)).
- (19) No gain or loss will be recognized by Controlled 2 as a result of the Second Contribution (section 1032(a)).
- (20) Controlled 2's basis in each asset received in the Second Contribution will be the same as the basis of that asset in the hands of Distributing 3 immediately before its transfer (section 362(b)).
- (21) Controlled 2's holding period in each asset received in the Second Contribution will include the period during which Distributing 3 held the asset (section 1223(2)).
- (22) No gain or loss will be recognized by Distributing 3 in Distribution 3 (section 361(c)).
- (23) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing 3 upon receipt of the Controlled 2 stock in Distribution 3 (section 355(a)).
- (24) The basis of the stock of Controlled 2 and Distributing 3 in the hands of each Distributing 3 shareholder will be the same as the basis of the Distributing 3 stock held by such shareholder immediately before Distribution 3, allocated in proportion to the fair market value of Distributing 3 and Controlled 2 in accordance with section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (25) Each Distributing 3 shareholder's holding period in the Controlled 2 stock received by the shareholder in Distribution 3 will include the holding period of the Distributing 3 stock with respect to which the Controlled 2 stock will be distributed, provided that such Distributing 3 stock is held as a capital asset on the date of Distribution 3 (section 1223(1)).
- (26) As provided in section 312(h), proper allocation of earnings and profits between Distributing 3 and Controlled 2 will be made under Treas. Reg. § 1.312-10 and Treas. Reg. § 1.1502-33(e)(3).
- (27) A Distributing 3 shareholder that receives cash in lieu of a fractional share of Controlled 2 stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in the preceding Ruling (24), 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 Distribution 3 (sections

1221 and 1222).

- (28) Except insofar as it may be relevant to section 355(g), any Indemnity Payments that (i) have arisen or will arise for a taxable period ending on or before Distribution 3 or for a taxable period beginning on or before and ending after Distribution 3 and (ii) will not have become fixed and ascertainable until after Distribution 3 will be treated as occurring immediately before Distribution 3. (See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (29) The earnings and profits of Controlled 1, to the extent attributable to Distributing 3 under Treas. Reg. §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in tax years of such foreign corporation beginning after December 31, 1962, and during the period in which such corporation was a CFC, will be attributable to such stock held by Controlled 2 (Treas. Reg. § 1.1248-1(a)(1)).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, except as expressly provided herein. In particular, no opinion is expressed regarding:

- (i) Whether any of the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any of the Distributions is being used principally as a device for the distribution of the earnings and profits of one or more of Distributing 1, Distributing 2, Distributing 3, Controlled 1 or Controlled 2 (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any of the Distributions and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7;
- (iv) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367(a) or (b) apply;

- (v) To the extent not otherwise specifically ruled upon above, any other consequences under section 367 on any transaction in this ruling letter;
- (vi) Whether any or all of the above-referenced foreign corporations are PFICs within the meaning of section 1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of sections 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code;
- (vii) The U.S. Federal income tax treatment of steps (i) through (ix) of the Proposed Transactions; and
- (viii) The potential application of section 482 to any payments made in connection with continuing transactions between Distributing 3 (and its subsidiaries) and Controlled 2 (and its subsidiaries) that are not made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

### **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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2012-1, 2012-1 I.R.B. 1, 50-51. However, when the criteria in section 11.06 of Rev. Proc. 2012-1, 2012-1 I.R.B. 1, 51 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

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.

Sincerely,

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