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Date:

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Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

LLC 1 =

LLC 2 =

Business A =

Business B =

Business C =

B Properties =

Shareholder A =

Shareholder B =

State A =

Investment Bank =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

This letter responds to your August 13, 2012 request for rulings on certain Federal income tax consequences of a series of proposed transactions (the “Proposed Transactions”). The information provided in that request 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 the distribution described below: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of a distributing corporation or a controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 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 any distributing corporation or any controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

### **Summary of Facts**

Distributing is the common parent of a group of corporations the includible affiliates of which join in filing a consolidated return for Federal income tax purposes. Distributing is engaged through its direct and indirect domestic and foreign subsidiaries, partnerships, and limited liability companies (“LLCs”) (the “Distributing Group”) in Business A,

Business B, and Business C. The outstanding capital stock of Distributing consists of a single class of common stock. Based on publicly available securities information, only Shareholder A and Shareholder B held five percent or more of the common stock on Date 1. The remaining shares of Distributing are widely held and publicly traded. Distributing issues restricted stock (“Distributing Restricted Shares”) to its non-employee directors.

Until the time of the Controlled IPO, Distributing, a State A corporation, owned all the stock of Sub 1, a State A corporation, and Controlled, a State A corporation newly formed to facilitate the Proposed Transactions, and all of the outstanding interests in LLC 1, a State A limited liability company disregarded as separate from Distributing for Federal tax purposes under § 301.7701-3 of the Procedure and Administration Regulations. Distributing owns directly and indirectly the stock of and interests in numerous other entities that conduct the businesses of Distributing. Distributing, LLC1, and certain other entities in the Distributing Group are engaged in Business A. Following the Distribution (described below), these entities will all belong to the Distributing separate affiliated group (“SAG,” as defined in § 355(b)(3)(B))(the “Distributing SAG”).

Sub 1 wholly owns Sub 2, a State A corporation, and also owns directly and indirectly all the stock of and interests in several other corporations, partnerships, and LLCs (collectively, the “Sub 1 Subgroup”). The Sub 1 Subgroup is engaged in Business B. Following the Distribution, these entities will all belong to the Controlled SAG.

Financial information has been submitted indicating that Business A (conducted by the Distributing SAG) and Business B (to be conducted by the Controlled SAG following the Contribution) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

LLC 1 owns all of the interests in LLC 2, a State A LLC treated as a corporation for Federal tax purposes. LLC 2 owns directly and indirectly all the stock of and interests in several corporations, partnerships, and LLCs (the “LLC 2 Subgroup”). The LLC 2 Subgroup is engaged in Business C. Distributing announced on Date 9 that it has entered into a definitive agreement to sell LLC 2 and Business C. The sale of LLC 2 and Business C should not have any effect on the Proposed Transactions’ qualification under § 355.

The Distribution will separate Business B from Business A to (a) resolve capital allocation issues between Business A and Business B; (b) enhance the value of the stock of Distributing and Controlled and thereby (i) facilitate future strategic acquisitions by Controlled using its stock as acquisition “currency” and (ii) increase the long-term effectiveness of equity-linked incentive compensation programs for the employees of each business; and (c) resolve management, operational, and other business issues

caused by the operation of these businesses within the same affiliated group ((a), (b), and (c) together, the "Corporate Business Purposes").

### **Proposed Transactions**

To achieve the Corporate Business Purposes, Distributing has proposed and partially undertaken the following series of transactions:

- (i) On Date 3, Distributing organized Controlled under State A law.
- (ii) On Date 4, Sub 1 issued several intercompany notes in the aggregate principal amount of f dollars to Distributing (the "Sub 1 Notes" and the "Note Distribution"). The Sub 1 Notes had terms ranging from a months to b months and bore a market rate of interest.
- (iii) On Date 5, Controlled filed an Amended and Restated Certificate of Incorporation with the State of State A. Controlled authorized two classes of common stock: (the "Controlled High-Vote Common Stock" and the "Controlled Low-Vote Common Stock"). Each share of Controlled High-Vote Common Stock is identical to each share of Controlled Low-Vote Common Stock, except for voting rights and conversion. Regarding voting rights, each share of Controlled High-Vote Common Stock entitles its holder to e votes on all matters submitted to a vote of the stockholders, while each share of Controlled Low-Vote Common Stock entitles its holder to d votes per share. Regarding conversion, the Controlled High-Vote Common Stock may be electively or automatically converted under certain circumstances to Controlled Low-Vote Common Stock. In particular, any member of the Distributing Group has the right to convert all or a portion of any Controlled High-Vote Common Stock held by it into Controlled Low-Vote Common Stock at any time before the Distribution in Step (xi) (any conversion of all of Distributing's Controlled High-Vote Common Stock, a "Complete Pre-Distribution High-Vote Conversion").

Distributing may not transfer Controlled High-Vote Common Stock outside the Distributing Group, except to Distributing's shareholders in the Distribution at which time the conversion features of the Controlled High-Vote Common Stock will cease to apply. The Controlled Low-Vote Common Stock is not convertible into Controlled High-Vote Common Stock or any other security. In addition, at any time before the Distribution, Controlled, subject to Distributing's consent and the satisfaction of certain other requirements, may elect to reduce the number of votes per share of the Controlled High-Vote Common Stock for either or both of (a) the election of directors or (b) all matters other than the election of directors to the minimum number of whole votes per share (but not less than one) required to preserve Distributing's

- control of Controlled, as defined in § 368(c) (“Section 368(c) Control” and a “Vote Reduction Election”). The dual-vote capitalization ensured that Distributing would have Section 368(c) Control of Controlled after the Controlled IPO in Step (viii) and that Distributing would have Section 368(c) Control before the Distribution in Step (x).
- (iv) On Date 6, Distributing transferred to Sub 1 in non-taxable transactions the B Properties related to Business B.
  - (v) On Date 7, Sub 2 transferred to LLC 2 in taxable transactions certain intellectual property related to Business C (the “IP” and the “IP Distribution”).
  - (vi) On Date 7, Distributing contributed all of the Sub 1 stock to Controlled in exchange for Controlled High-Vote Common Stock (the “Contribution”). The resulting group of entities is referred to as the “Controlled Group.”
  - (vii) On Date 8, Controlled borrowed g dollars from unrelated third parties under new senior secured credit facilities (such amount, less fees and expenses, the “Cash Proceeds”). These credit facilities consist of a i year revolving credit facility and two term loans of varying maturities provided by a syndicate of financial institutions.
  - (viii) As a result of an initial public offering on Date 7 and related funding on Date 8, Controlled issued j shares for h dollars to public investors in exchange for cash (the “Controlled IPO” and, such amount, less fees and expenses, the “IPO Proceeds”). Following the Controlled IPO, public investors owned all of the outstanding Controlled Low-Vote Common Stock (the “Public Investor Stock”). If prevailing capital market conditions and other factors are favorable, Controlled may undertake additional public offerings of its Controlled Low-Vote Common Stock (together, the “Aggregate Controlled Offerings”). In addition, Distributing may convert a portion of its Controlled High-Vote Common Stock into Controlled Low-Vote Common Stock to effect a follow-on offering (any such offering may take the form of (an) equity for debt exchange(s) similar to the Equity for Debt Exchange(s) described in steps (xiii) and (xiv)). In no event will (a) the Public Investor Stock resulting from the Aggregate Controlled Offerings, (b) any Controlled common stock not distributed by Distributing in the Distribution (the “Retained Shares”), and (c) the shares in the Restricted Stock Distribution (defined below) together represent more than      percent of the outstanding Controlled common stock by voting power.
  - (ix) Immediately after the closing of the Controlled IPO, on Date 8, Controlled contributed f dollars of the Cash Proceeds and IPO Proceeds (together, the “Combined Proceeds”) to Sub 1, and Sub 1 transferred the Combined

Proceeds plus the then-accrued interest on the Sub 1 Notes to Distributing in full satisfaction of the Sub 1 Notes. At the time of its payment, the Sub 1 Notes had been outstanding for k days. Payment had previously been authorized by the boards of directors of both Controlled and Sub 1. Immediately after receipt, Distributing used the Combined Proceeds to pay down existing third-party debt (“Distributing Historical Debt”).

- (x) Before the Distribution in Step (xi), Controlled intends through a Vote Reduction Election to reduce to d votes per share the number of votes per share of the Controlled High-Vote Common Stock for all matters other than the election of directors. In addition, Controlled intends to reduce the number of votes to which each share of Controlled High-Vote Common Stock is entitled in the election of directors of Controlled to the lowest whole number that is less than e (but not less than d) that is necessary to preserve Section 368(c) Control in the Distribution.
  
- (xi) Distributing intends to distribute sufficient Controlled common stock, whether Controlled High-Vote Common Stock, Controlled Low-Vote Common Stock, or a combination of the two, to ensure the distribution of at least      percent of the voting power of Controlled common stock to its shareholders, pro rata (the “Distribution”). Holders of Distributing Restricted Shares who are directors of Controlled at the time of the Distribution will exchange such shares for Controlled restricted shares having similar terms (the “Restricted Stock Distribution”). If, at the time of the Distribution, the Controlled High-Vote Common Stock that Distributing intends to distribute in the Distribution represents more than      percent of the total number of outstanding shares of Controlled common stock, Distributing may effect a Complete Pre-Distribution High-Vote Conversion. Alternatively, if the Controlled High-Vote Common Stock that Distributing intends to distribute in the Distribution does not represent more than      percent of the total number of outstanding shares of Controlled common stock, Distributing may elect to convert some of its shares of Controlled High-Vote Common Stock to Controlled Low-Vote Common Stock such that the Controlled High-Vote Common Stock and the Controlled Low-Vote Common Stock that Distributing intends to distribute in the Distribution satisfies Section 368(c) Control. No fractional shares of Controlled common stock will be distributed in the Distribution. Instead, all fractional shares of Controlled common stock that Distributing shareholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the Distribution, will be sold at the prevailing price on the New York Stock Exchange. Any Distributing shareholder entitled to receive a fractional share of the Controlled common stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sales. Any Retained Shares, which, upon the Distribution, shall

- automatically convert into Controlled Low-Vote Common Stock, may be used to effect the Equity for Debt Exchange(s) described in step (xiii).
- (xii) If any Complete Pre-Distribution High-Vote Conversion or other conversion has not eliminated the Controlled High-Vote Common Stock, it is expected that, following consummation of the Distribution, and in connection with the consideration of resolutions to be submitted to the Controlled shareholders at the next regularly scheduled annual shareholders' meeting of Controlled or at a special shareholders' meeting of Controlled, the Controlled Board of Directors (the "Controlled Board") may consider a proposal to convert the Controlled High-Vote Common Stock to Controlled Low-Vote Common Stock on a share-for-share basis, subject to the approval of the Controlled shareholders by a majority of the aggregate number of outstanding shares of Controlled High-Vote Common Stock and Controlled Low-Vote Common Stock, voting together as a single class, with one vote per share (the "Post-Distribution High-Vote Conversion"). There will be no binding commitment by the Controlled Board to, and there can be no assurance that the Controlled Board will, consider the issue or resolve to present the proposal to the Controlled shareholders at that meeting or any subsequent meeting. Moreover, there can be no assurance that, if presented, the Controlled shareholders will approve the Post-Distribution High-Vote Conversion.
- (xiii) Not later than c months following the Distribution, Distributing may issue short-term debt (the "Distributing Short-term Debt") to one or more investment banks ("Investment Bank") in exchange for cash. This Step (xiii) may occur earlier in the sequence of Proposed Transactions Steps, including before the Distribution. Not earlier than five days following the issuance of the Distributing Short-term Debt, Distributing and Investment Bank (acting as principal for its own account) will enter into an exchange agreement (the "Exchange Agreement") pursuant to which Distributing will transfer an amount of the Retained Shares (up to and including all of the Retained Shares), in one or more transactions, to Investment Bank in repayment of the Distributing Short-term Debt (the "Equity for Debt Exchange(s)"). It is expected that immediately after the receipt of Retained Shares, Investment Bank will sell the Retained Shares to unrelated third parties in a public or private offering. In this regard, Investment Bank may solicit orders (but not binding agreements) from third parties before entering into the Exchange Agreement and engaging in the Equity for Debt Exchange(s). Investment Bank may enter into other arrangements respecting the Distributing Short-term Debt, including hedging arrangements, provided neither Distributing nor any member of its affiliated group is a party to the arrangements.

To the extent requested by Investment Bank, the Exchange Agreement will also grant to Investment Bank the option to acquire additional Controlled

common stock from Distributing in exchange for the Distributing Short-term Debt to cover any over-allotment of Controlled common stock (the "Over-Allotment Option"). In the event the Over-Allotment Option is exercised by Investment Bank, the exchange of Controlled common stock for Distributing Short-term Debt pursuant to the Over-Allotment Option will close approximately 1 business days after the date of exercise. Any Distributing Short-term Debt exchanged by Investment Bank for Controlled common stock pursuant to the Over-Allotment Option will have been held by Investment Bank for at least 14 days, subject to applicable waiver provisions.

- (xiv) Not earlier than 14 days following issuance of the Distributing Short-term Debt, Distributing and Investment Bank will complete the Equity for Debt Exchange(s). This Step (xiv) may occur earlier in the sequence of Proposed Transactions Steps if the issuance of Distributing Short-term Debt in step (xiii) occurs earlier in the sequence. Any portion of the Distributing Short-term Debt that remains outstanding after completion of the Equity for Debt Exchange(s) will be repaid by Distributing in cash at its maturity.
- (xv) As soon as practicable following the Equity for Debt Exchange(s) (unless it/they occur(s) before the Distribution), Distributing will dispose of any remaining Retained Shares by distribution, sale, or other exchange (the "Retained Shares Disposition").

Once the Distribution and any Retained Shares Disposition are concluded, the separation of Business B from Business A will be complete except for the Continuing Agreements described below.

In connection with the Proposed Transactions, the Distributing Group and the Controlled Group have entered into a variety of agreements (collectively, the "Continuing Agreements"), including a Separation Agreement, a Tax Matters Agreement, an Employee Matters Agreement, Transitional Agreements (including a Transition Services Agreement), and certain commercial agreements (including manufacturing & supply, sales & distribution, transition sales, and intellectual property agreements). Indemnification provisions in the Separation and Tax Matters Agreements are together referred to as the "Contingent Liability Arrangements."

## **Representations**

### The Contribution and Distribution

Distributing has made the following representations for the Proposed Transactions:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or

indirectly by Distributing) after the Distribution will not constitute stock or securities.

- (b) Except for the Restricted Stock Distribution, no part of the consideration distributed by Distributing in the Distribution will be received by any shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing. In no event will the Restricted Stock Distribution, combined with the Retained Shares and stock issued in the Aggregate Controlled Offerings, represent more than      percent of the voting power for directors of the Controlled common stock (restricted or unrestricted) immediately before the Distribution.
- (c) No shareholder of Distributing will surrender Distributing stock in the Distribution except for the Restricted Stock Distribution.
- (d) Distributing and Controlled each will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (e) The five years of financial information submitted for Business A conducted by the Distributing SAG and for Business B to be conducted by the Controlled SAG following the Contribution is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted
- (f) Neither Business A conducted by the Distributing SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with expansions of Business A. See § 1.355-3(b)(3)(ii).
- (g) Neither Business B to be conducted by the Controlled SAG following the Contribution nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with expansions of Business B. See § 1.355-3(b)(3)(ii).
- (h) Apart from transitional and administrative support services that are being provided under the Continuing Agreements, the Distributing SAG will continue the active conduct of Business A, independently and with its separate employees, following the Distribution.

- (i) Apart from transitional and administrative support services that are being provided under the Continuing Agreements, the Controlled SAG will continue the active conduct of Business B, independently and with its separate employees, following the Distribution.
- (j) The Distribution will be carried out to accomplish the Corporate Business Purposes. The Distribution is motivated in whole or substantial part by the Corporate Business Purposes.
- (k) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled or Distributing or both.
- (l) There is no plan or intention to liquidate any member of the Distributing SAG engaged in Business A or any member of the Controlled SAG engaged in Business B, to merge any member of either SAG with any other entity, or to sell or otherwise dispose of the assets or shares of any member after the Distribution, except for transactions in the ordinary course of business and the anticipated sale of LLC 2 and Business C.
- (m) The total adjusted basis of the assets transferred to Controlled in the Contribution exceeded the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's creditors in connection with the reorganization.
- (n) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets transferred.
- (o) The total fair market value of the assets transferred to Controlled in the Contribution exceeded the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that were discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled exceeded the amount of its liabilities immediately after the Contribution.
- (p) The aggregate fair market value of the assets Distributing transferred to Controlled in the Contribution exceeded the aggregate adjusted basis of those assets.

- (q) No investment tax credit determined under § 46 has been, or will be, claimed for any property that was transferred by Distributing to Controlled in the Contribution.
- (r) No two parties to the Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (s) 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 § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing has in the Controlled common stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by regulations (see § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled or the stock of any direct or indirect subsidiary of Controlled.
- (t) Apart from debt arising in connection with the Proposed Transactions and intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) at the time of, or after, the Distribution.
- (u) Apart from certain payments made under the Tax Matters Agreement, the Employee Matters Agreement, and/or the Transitional Agreements, payments made in connection with all continuing transactions between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing     percent or more of the total combined voting power for directors of all classes of Distributing stock entitled to vote, or     percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (w) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing     percent or

more of the total combined voting power for directors of all classes of Controlled common stock entitled to vote, or      percent or more of the total value of shares of all classes of Controlled common stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

- (x) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a      -percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).
- (y) Immediately after the transaction (as defined in § 355(g)(4)), (i) no person will hold a      -percent or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a      -percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before the Distribution, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (z) Distributing will hold the Retained Shares, if any, following the Distribution to provide flexibility in further reducing indebtedness of Distributing (including in the Equity for Debt Exchange(s)).
- (aa) Distributing will transfer the Retained Shares, if any, to Investment Bank in the Equity for Debt Exchange(s) no later than c months following the Distribution. Any Retained Shares not transferred to Investment Bank in the Equity for Debt Exchange(s) will be distributed in the Retained Shares Disposition as soon as commercially practicable, but in no event later than five years after the Distribution.
- (bb) After the Distribution, Distributing will vote the Retained Shares, if any, in proportion to votes cast by the other Controlled shareholders and will grant Controlled a proxy for the Retained Shares requiring this manner of voting.
- (cc) In the event a Retained Shares Disposition is necessary, from the date of the Distribution until the date Distributing has disposed of all Retained Shares, no director or officer of Distributing or any of its subsidiaries will be a director or officer of Controlled or any of its subsidiaries.

- (dd) Controlled has no legally binding obligation to any person to consider or present to the Controlled shareholders a proposal to convert the Controlled High-Vote Common Stock to Controlled Low-Vote Common Stock following the Distribution.
- (ee) If a proposal to convert the Controlled High-Vote Common Stock to Controlled Low-Vote Common Stock is approved by the Controlled Board and presented to the Controlled shareholders, its adoption will require the approval of a majority of the aggregate number of outstanding Controlled High-Vote Shares and Controlled Low-Vote Shares, voting together as a single class, with d votes per share.
- (ff) The aggregate amount of Distributing Historical Debt and Distributing Short-term Debt repaid with the Retained Shares will not exceed the weighted quarterly average of Distributing third-party debt for the 12-month period ending on the close of business on Date 2.
- (gg) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled common stock resulting from the open market sale of these shares will be solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of Distributing from the open market sale of their fractional shares will not exceed \_\_\_\_\_ percent of the total consideration that will be distributed in the Distribution. It is also intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled common stock. Neither Controlled nor Distributing is aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled through the purchase of bundled Controlled shares sold in connection with the issuance of cash in lieu of fractional shares.

## **Rulings**

### The Contribution and Internal Distribution

- (1) The IP Distribution and the Note Distribution each will be a distribution within the meaning of § 301. Sub 1 will recognize gain (if any) as if it had sold the IP to Distributing at its fair market value (§ 311(b)).
- (2) The Contribution, followed by the Distribution, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).

- (3) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).
- (4) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (5) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (6) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
- (7) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).
- (8) No gain or loss will be recognized by Distributing on the Equity for Debt Exchange(s) (§ 361(c)(3)).
- (9) No gain or loss will be recognized by Distributing on the Retained Shares Disposition to the extent it takes the form of a distribution, should it occur (§ 361(c)).
- (10) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the Distribution (§ 355(a)(1)).
- (11) No gain or loss will be recognized by the Distributing shareholders on the Retained Shares Disposition to the extent it takes the form of a distribution, should it occur (§ 355(a)(1)).
- (12) The basis of the Distributing stock and Controlled common stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share interest in Controlled common stock to which the shareholder may be entitled) will equal the basis of the Distributing stock held by such Distributing shareholder immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with § 1.358-2(a)(2)(iv) (§ 358(b)(2) and (c)). If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled common stock (or portion thereof) is received with respect to a particular share of Distributing stock (or portion thereof), the shareholder may designate which share of Controlled common stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the Distribution (§ 1.358-2(a)(2)(vii)).

- (13) Should the Retained Shares Disposition occur and take the form of a distribution, immediately after such distribution, a Distributing shareholder who receives Retained Shares will have an adjusted basis in its Distributing stock, Controlled common stock (excluding the Retained Shares but including any fractional share interest in Controlled common stock to which the shareholder may be entitled in the Distribution), and Retained Shares equal to the adjusted basis of the Distributing stock held by such Distributing shareholder immediately before the Distribution, allocated among the Distributing stock, Controlled common stock (excluding the Retained Shares but including any fractional share interest in Controlled common stock to which the shareholder may be entitled in the Distribution), and Retained Shares in proportion to the fair market value of each immediately following the Distribution in accordance with § 1.358-2(a)(2)(iv) (§ 358(b)(2) and (c)). If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled common stock (or portion thereof) is received with respect to a particular share of Distributing stock (or portion thereof), the shareholder may designate which share of Controlled common stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the Distribution (§ 1.358-2(a)(2)(vii)).
- (14) The holding period of the Controlled common stock received by each Distributing shareholder in the Distribution (including any fractional share interest in Controlled common stock to which the shareholder may be entitled) will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock is held by the Distributing shareholder as a capital asset on the date of the Distribution (§ 1223(1)).
- (15) Should the Retained Shares Disposition occur and take the form of a distribution, the holding period of the Controlled common stock received by a Distributing shareholder in the Retained Shares Disposition (including any fractional share interest in the Retained Shares to which the shareholder may be entitled) will include the holding period of the Distributing stock (as it existed on the date of the Distribution) on which the Retained Shares Disposition is made, provided the Distributing stock was held by the Distributing shareholder as a capital asset on the date of the Distribution (§ 1223(1)).
- (16) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).
- (17) Any payments between Distributing and Controlled that are made following the Distribution pursuant to the Contingent Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or

before the Distribution or for a taxable period beginning before but ending after the Distribution and (ii) will not have become fixed or ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution (cf. Arrowsmith v. Comm'r, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

- (18) Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled as the common parent.
- (19) The retention of the Retained Shares is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax within the meaning of § 355(a)(1)(D)(ii).
- (20) Effecting the Post-Distribution High-Vote Conversion will not prevent the Distribution from qualifying under § 355, whether the conversion occurs before or after Distributing disposes of the Retained Shares.
- (21) The receipt by a Distributing shareholder of cash in lieu of fractional shares of Controlled common stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholder as part of the Distribution and then had been disposed of by the shareholder for the cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (12) or (13) and the holding period attributed to the fractional shares in ruling (14) or (15)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).

### **Caveats**

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

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

- (ii) Whether the Distribution is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and
- (iv) The tax treatment of any payment made under the Continuing Agreements that is not for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

### **Procedural Matters**

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. 2013-1, 2013-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2013-1, 2013-1 I.R.B. 1, 50 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)

cc: