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Dear :

This letter responds to your May 8, 2013 request for rulings regarding the federal income tax characterization of certain outstanding Company indebtedness (the “Notes”) for purposes of section 382 of the Internal Revenue Code (the “Code”). The information provided in that request 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.

### SUMMARY OF FACTS

Company is the common parent of an affiliated group of corporations (“Company Group”) that files a consolidated federal income tax return. Company has one class of stock outstanding—publicly traded common stock.

On Date 1 (the “Filing Date”), Company and its U.S. subsidiaries filed for bankruptcy under Chapter 11. Company Group has continued to operate its business since the Filing Date, and Company expects to finish restructuring its U.S.-based operations in Year 1.

As of the Filing Date, Company had outstanding long-term debt of approximately \$a, including (i) \$b of secured long-term debt, (ii) \$c of convertible senior unsecured notes (the “Notes” (described further below)), and (iii) \$d of other unsecured long-term debt. Company also entered into \$e of “debtor-in-possession” credit facilities (the “DIP Facilities”) on the day after the Filing Date; the DIP Facilities are senior to all pre-petition

debt. The foregoing debt obligations other than the Notes are referred to in this letter ruling as the "Other Debt Obligations."

Company issued the Notes on Date 2 (the "Issuance Date"), which was about f years before the Filing Date. The Notes were issued at par to unrelated parties to provide funding for the repurchase of another class of Company debt. The Notes bear a fixed interest rate of g%, have a term of h years, are convertible into Company common stock at a fixed exercise price of \$i (the "Conversion Rights"), and include standard default provisions. On the Issuance Date, the Conversion Rights were approximately j% out of the money.

The Notes and the Other Debt Obligations are publicly traded, and Company believes that recent transfers of these debt obligations have occurred at a significant discount relative to their respective principal amounts. Company's stock price had fallen to \$k per share as of the Filing Date, and it is unclear whether Company's common stock currently has any value.

In the period leading up to the Filing Date, Company Group had incurred significant NOLs (Company Group had approximately \$l of consolidated NOLs as of the Filing Date). On Date 3 (before the Filing Date), Company entered into an NOL rights agreement (the "NOL Agreement") in order to discourage acquisitions of its common stock. Under the NOL Agreement, holders of preferred share purchase rights that were newly issued to Company's shareholders as of the record date may purchase Company common stock at a discount in the event of certain equity transactions in Company stock. At the end of Year 2 (shortly before the Filing Date), Company had a cumulative owner shift for purposes of section 382 of approximately m percentage points.

On the Filing Date, the U.S. Bankruptcy Court (the "Court") issued an interim order restricting trading in Company common stock and securities in order to preserve Company Group's NOLs and certain other tax attributes. On Date 4, the Court issued a final order restricting trading in Company common stock, stock options, and debt securities. The final Court order as applied to Company's debt securities is conditioned on the issuance of a "Notice of 382(l)(5) Plan." As of the date of this letter, Company's draft bankruptcy reorganization plan does not contain a 382(l)(5) plan.

## REPRESENTATIONS

- (a) As of the Issuance Date, Company expected that it would be able to make all payments of principal and interest on the Notes as they came due.
- (b) Holders of the Notes (and persons related thereto) neither have control over Company nor have influence over the management of Company.

- (c) The Notes do not, and will not, entitle a holder (or any person related thereto) to receive dividends, vote for directors, or receive liquidation proceeds, or to participate in management of Company (or any subsidiary thereof), or to any other rights that ordinarily would be afforded to owners of Company stock.
- (d) The Notes were not issued or transferred to any person or related persons who had, in the aggregate, a direct and indirect ownership interest in Company of more than 50 percent (determined in accordance with Treas. Reg. § 1.382-4(d)(4)(i)(B)).
- (e) As of the Issuance Date, Company anticipated that the Notes would not be converted into equity in Company, based upon Company's experience with other issuances of other similar notes that were not converted.
- (f) Company does not have actual knowledge of the existence of any group of persons who, through a formal or informal understanding among themselves, made or will make one or more coordinated acquisitions of Notes (alone or in conjunction with acquisitions of Other Debt Obligations and/or Company stock).
- (g) The Notes neither have facilitated nor will facilitate the creation of income (including accelerating income or deferring deductions) or value (including unrealized built-in gains) prior to the exercise of the Conversion Rights, and Company has not engaged in income acceleration transactions in connection with the issuance or transfer of the Notes.
- (h) To the best of Company's knowledge, holders of the Notes (or persons related thereto) have not purchased stock from, or made a capital contribution or a loan to, Company in connection with the issuance or transfer of the Notes in a transaction that reasonably could be expected to avoid or ameliorate the impact of a section 382 ownership change.

### **RULINGS**

Based solely on the information submitted and the representations set forth above, we rule that the Notes will not be treated as stock under either § 1.382-4(d) or § 1.382-2T(f)(18)(iii), provided that: (i) neither Company nor any person related to Company (within the meaning of sections 267(b) or 707(b)) is actively involved or engaged in placing the Notes with, or transferring the Notes to, any person; (ii) the Notes are not issued or transferred to an acquiring person (or related persons) who becomes the owner of more than 50% of the Notes; and (iii) there is no material change (in kind or extent) in the terms of the Notes. No opinion is expressed under either § 1.382-4(d) or § 1.382-2T(f)(18)(iii) if any of the foregoing events occur.

For purposes of these rulings, an acquiring person and all related persons within the meaning of sections 267(b) or 707(b) will be treated as a single person. Also for purposes of these rulings, if two or more persons would be treated as making a coordinated acquisition under § 1.382-3(a)(1)(i), such persons will be treated as a single person.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Notes under other provisions of the Code or the regulations or general principles of tax law. In addition, no opinion is expressed under either § 1.382-4(d) or § 1.382-2T(f)(18)(iii) with respect to the Other Debt Obligations.

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter 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,

Mark S. Jennings  
Branch Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)