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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-124640-12

Date:
August 30, 2013

Legend

FParent =

FSub1 =

FSub2 =

Distributing1 =

Distributing2 =

Distributing3 =

PLR-124640-12

2

Controlled1 =

Controlled2 =

Controlled3 =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

PLR-124640-12

3

Sub8 =

Sub9 =

Sub10 =

Sub11 =

Foreign Sale Agreement =

Foreign Agreement =

Business A =

Business A1 =

Business A2 =

Business A3 =

Business A4 =

Business Purposes =

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Dear _____ :

This letter responds to your authorized representative's letter dated June 4, 2012, requesting rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below (collectively, the "PLR Submission").

The rulings contained in this letter are based on 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 materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether Distribution 1, Distribution 2, and Distribution 3 (collectively, the "Distributions") described below: (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) are parts 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 controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Organizational Structure

FParent, a publicly traded Country A corporation, owns all of the stock of FSub1, a Country A corporation, which in turn owns all of the stock of FSub2, a Country B corporation, and all of the stock of Distributing3, the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Distributing3 Consolidated Group"). FParent and all of its subsidiaries are referred to as the "FParent Group."

Distributing3 owns all of the stock of Sub1 and Sub2. Sub2 owns all of the stock of Sub5. Sub1 owns all of the common stock of Distributing1. Distributing1 owns all of the stock of Controlled1 and Distributing2. Distributing3 and Distributing2 own j and n percent of the only class of stock of Sub3, respectively. Distributing1 owns k percent of the only class of common stock of Sub4. The remaining common stock of Sub4 is owned by other members of the Distributing3 Consolidated Group. Sub4 § 1504(a)(4) preferred stock is owned l percent by members of the Distributing3 Consolidated Group and m percent by unrelated parties. Distributing1's remaining stock, § 1504(a)(4) preferred stock, is owned by Sub4 and Sub9. Sub9 is an indirect wholly owned subsidiary of Distributing3.

Controlled2 has one class of common stock and two classes of § 1504(a)(4) preferred stock. Distributing3, Distributing1, Distributing2, Sub5, and Sub3 own o, p, q, r, and s percent, respectively, totalling 100 percent of the common stock of Controlled2 (the

“Controlled2 Common Stock”). Additionally, Sub5 owns t shares (100 percent) of Controlled2 Series A preferred stock and u shares of Controlled2 Series B preferred stock. Controlled2 owns all of the stock of Sub6 which in turn owns all of the only class of common stock of Sub7 and Sub8. Controlled1 owns all of the issued and outstanding § 1504(a)(4) preferred stock of Sub7 and Sub8. Sub6 owns y shares of Controlled2 Series B preferred stock.

Distributing1, Distributing2, Distributing3, Controlled1, Controlled2, Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, Sub7, Sub8, Sub9 and Sub10 are each members of the Distributing3 Consolidated Group.

FParent conducts Business A in four segments, Businesses A1, A2, A3 and A4, through its subsidiaries: Sub5 is directly engaged in Business A1; Sub6 is directly engaged in Business A2; Controlled1 is directly engaged in Business A3; and Distributing2 is directly engaged in Business A4.

Controlled1 does not have any employees of its own. Sub10 has ultimate managerial and supervisory responsibility for the performance of Controlled1’s Business A3 and performs such management services with its own employees.

Distributing3 owes approximately \$a to FSub2 and \$b to FParent (the latter, the “FParent Note”). FParent Note was issued in Date 15 by Distributing3 to FParent as a revolving demand instrument accruing interest at an annual rate of f percent. The current stated principal amount is approximately \$b. FParent Note is debt for U.S. federal income tax purposes. In connection with the Proposed Transactions (defined below), FParent Note may be bifurcated into New FParent Note and Note 4. If so, Note 4 will be reissued for a stated principal amount of \$i, with the remaining amount reissued as New FParent Note. The terms of New FParent Note and Note 4 subsequent to any bifurcation will be otherwise identical to FParent Note prior to such bifurcation. Any accrued and unpaid interest with respect to FParent Note will be paid in cash prior to any bifurcation or reissuance, and any accrued and unpaid interest with respect to FParent Note and/or Note 4 will be paid in cash prior to any actual or deemed transfer or assumption of such notes in connection with the Proposed Transactions. Such New FParent Note and Note 4 will be debt for U.S. federal income tax purposes.

FSub2 holds two notes receivable from Distributing3, the first (“Original Note 1”) is a 10-year note (due on Date 17) issued on Date 8 with a stated principal amount of approximately \$c, accruing interest at an annual rate of d percent, and the second (“Original Note 2”) is a 10-year note (due on Date 18) issued on Date 16 with a stated principal amount of approximately \$e, also accruing interest at an annual rate of d percent. In connection with the Proposed Transactions, Original Note 1 will be bifurcated into Note 1, having a stated principal amount of approximately \$tt, and Note 5, having a stated principal amount of approximately \$uu, each due on Date 17. The exact principal amount of Note 5 will be equal to the fair market value of the Controlled2

stock redeemed in the Distributing³ Redemption (defined below). The terms of Note 1 and Note 5 are otherwise identical to those of Original Note 1. Also in connection with the Proposed Transactions, Original Note 2 will be bifurcated into Note 2, having a stated principal amount of \$g, and Note 3, having a stated principal amount of approximately \$h, each accruing interest at prevailing rates and due on Date 18. The terms of Note 2 and Note 3 are otherwise identical to those of Original Note 2. Any accrued and unpaid interest with respect to Original Note 1 and Original Note 2 will be paid in cash prior to their respective bifurcations, and any accrued and unpaid interest with respect to Note 1 and/or Note 5 and Note 2 and/or Note 3 will be paid in cash prior to any actual or deemed transfer or assumption of such notes in connection with the Proposed Transactions. Original Note 1 and Original Note 2 are, and Note 1, Note 2, Note 3 and Note 5 will be, debt for U.S. federal income tax purposes.

Prior Transactions Involving Controlled² Stock

Before the Proposed Transactions, members of the Distributing³ Consolidated Group sold or distributed shares of Controlled² Common Stock in transactions involving other members of the Distributing³ Consolidated Group, FParent, and third parties. Controlled² also redeemed shares of Controlled² Common Stock and Controlled² Series A and Controlled² Series B preferred stock held by third parties. As a result of the intercompany transactions, gains were recognized by Distributing³ Consolidated Group members that were deferred pursuant to § 1.1502-13 (“DIGs”).

On Date 1, Distributing² distributed w shares of Controlled² Common Stock (the “DIG 1 Stock”) to its immediate parent, Distributing¹ (the “First DIG Transaction”). The First DIG Transaction was treated as a taxable distribution of stock in which Distributing² recognized a \$x gain under § 311(b) (“DIG 1”) that was deferred under § 1.1502-13.

On Date 2, Distributing¹ contributed y shares of the DIG 1 Stock to Distributing² in a transaction treated as a tax-free contribution. Distributing¹’s contribution of those shares of DIG 1 Stock to Distributing² resulted in a portion of Distributing¹’s Distributing² stock being treated as a successor asset (“Successor Asset A”) to the DIG 1 Stock under § 1.1502-13(j)(1).

On Date 3, Distributing² sold z shares of Controlled² Common Stock (the “DIG 3 Stock”) to Distributing¹ (the “Third DIG Transaction”). Distributing² recognized gain under § 1001 in the amount of \$aa (“DIG 3”) that was deferred under § 1.1502-13.

On Date 4, Distributing² sold bb shares of Controlled² Common Stock (the “DIG 4 Stock”) to Distributing³ (the “Fourth DIG Transaction”). Distributing² recognized gain under § 1001 in the amount of \$cc (“DIG 4”) that was deferred under § 1.1502-13.

On Date 5, Sub3 purchased dd shares of Controlled2 Common Stock (the “DIG 5 Stock”) from Distributing1 (the “Fifth DIG Transaction”). Distributing1 recognized gain under § 1001 in the amount of \$ee (“DIG 5”) that was deferred under § 1.1502-13.

On Date 6, Distributing1 sold ff shares of Controlled2 Common Stock (the “DIG 7 Stock”) to Sub5 (the “Seventh DIG Transaction”). Distributing1 recognized gain under § 1001 in the amount of \$gg (“DIG 7”) that was deferred under § 1.1502-13.

During Date 7, Distributing3 purchased the outstanding shares of Controlled2 Common Stock held by unrelated shareholders. As a result, Controlled2 joined the Distributing3 Consolidated Group on Date 8.

On Date 9, Controlled2 redeemed all of its preferred shares outstanding other than the shares of Controlled2 preferred stock held by Sub5 and Sub6 (the “Controlled2 Preferred Stock Redemption”).

On Date 10, Sub6 distributed all the stock of Controlled1 to Controlled2. Controlled2 then transferred the stock of Controlled1 to Distributing1 in exchange for shares of Controlled2 Common Stock held by Distributing1 (the “Controlled1 Split”). Prior to Sub6’s distribution of Controlled1 to Controlled2, Controlled1 distributed to Sub6 its Sub7 and Sub8 common stock in a taxable distribution subject to §§ 301 and 311(b). Controlled1 realized a gain on the Sub7 stock and realized a loss on the Sub8 stock, each of which was deferred under § 1.1502-13. The Controlled1 Split was a tax-free transaction under § 355. The Controlled1 Split resulted in Distributing1’s Controlled1 stock being treated as a successor asset (“Successor Asset B”) to a portion of the DIG 1 Stock under § 1.1502-13(j)(1).

During Date 11, Controlled2 executed a reverse stock split of Controlled2 Common Stock, a transaction that qualified as a recapitalization under § 368(a)(1)(E).

On Date 12 and Date 13, Controlled2 issued hh and ii shares of Controlled2 Common Stock to Distributing3 for cash capital contributions of \$jj and \$kk, respectively, relating to an employee compensation arrangement. FParent and/or its affiliates may engage in similar contributions in the future, which would result in the issuance of additional Controlled2 Common Stock.

On Date 14, Controlled2 redeemed ll of its common shares outstanding held by Sub5 for cash and/or marketable securities.

Proposed Transactions

The following steps are proposed (collectively, the “Proposed Transactions”):

- (i) Sub1 will adopt a plan of liquidation and either (i) distribute all of its assets, subject to its liabilities, to Distributing3 in a complete liquidation and dissolve under applicable state law, or (ii) merge with and into Distributing3 under applicable state law (the “Sub1 Liquidation”). Following the Sub1 Liquidation, Distributing3 will directly own 100 percent of the Distributing1 stock.
- (ii) Controlled2 will redeem all outstanding Controlled2 Series A and Controlled2 Series B preferred stock held by Sub5 and approximately \$mm of the \$nn worth of Controlled2 Common Stock held by Sub5 in exchange for cash and/or marketable securities (the “Sub5 Redemption”).
- (iii) Distributing1 will distribute all of its outstanding stock of Controlled1 to Distributing3 in exchange for a portion of Distributing3’s Distributing1 common stock (“Distribution 1”).
- (iv) Distributing1 will merge with and into Distributing2 with Distributing2 surviving in a transaction in which Distributing2 will issue common and preferred Distributing2 stock such that each Distributing1 shareholder holding common and/or preferred Distributing1 stock receives Distributing2 stock of a like class (the “Downstream Merger”).
- (v) Controlled2 will redeem oo shares of Sub3’s Controlled2 Common Stock in exchange solely for approximately \$pp in cash (the “Sub3 Redemption”).
- (vi) Sub3 will adopt a plan of liquidation and will then redeem Distributing3’s Sub3 stock in exchange for approximately \$qq in cash. Subsequently, Sub3 will either: (i) distribute all of its remaining assets, subject to its liabilities, to Distributing2 in a complete liquidation and dissolve under applicable state law; (ii) convert to a limited liability company (“LLC”) treated as a disregarded entity for U.S. federal tax purposes (“Conversion”); or (iii) merge with and into Distributing2 under applicable state law (any of these, together with the redemption of Distributing3’s Sub3 stock, the “Sub3 Liquidation”).
- (vii) Sub5 will contribute its remaining shares of Controlled2 Common Stock to Distributing2 in exchange for a new class of voting Distributing2 preferred stock (the “Distributing2 Voting Preferred Stock”) (the “Sub5 Contribution”).
- (viii) Controlled2 will redeem a portion of the shares of Controlled2 Common Stock held by Distributing2 in exchange for cash and/or marketable securities equal to the fair market value of the redeemed shares (the “Distributing2 Redemption”). Distributing2 will retain and use the redemption proceeds in its business.

- (ix) Controlled2 will recapitalize by acquiring the Controlled2 Series B preferred stock held by Sub6 in exchange for a new class of voting Controlled2 preferred shares (“New Controlled2 Voting Preferred Stock”) (“Controlled2 Recap”). Aside from the difference in voting rights, there will be no differences between the Controlled2 Series B preferred stock and the New Controlled2 Voting Preferred Stock with regard to dividends, liquidation, or any other rights, preferences, or limitations.
- (x) Controlled2 will redeem approximately yy shares of its Controlled2 Common Stock held by Distributing3 in exchange for Controlled2’s assumption of Note 5 (the “Distributing3 Redemption”).
- (xi) Distributing2 will distribute all of its remaining shares of Controlled2 Common Stock to Distributing3 pro rata solely with respect to the Distributing2 common stock (“Distribution 2”).
- (xii) In a series of transfers occurring outside the U.S. among non-U.S. entities, FSub1 will organize a foreign holding company structure primarily to operate Business A2. It is anticipated that FSub1 will form a holding company organized under the laws of Country A (“Country A HoldCo”), which will subsequently form another new company organized under the laws of Country B (“Country B HoldCo”) to operate as the holding company for Business A2. Thereafter, Country B HoldCo will form a new company organized under the laws of Country C as part of the Proposed Transactions (“Country C NewCo “). Country C NewCo will form another new company organized under the laws of Country B (“Country B HoldCo 2”). To achieve various business objectives, FSub1 will form these entities and contribute capital and/or certain entities to Country C NewCo (the organization of new entities and related transfers collectively, “Foreign Transaction 1”).
- (xiii) Sub6 will sell its non-U.S. operations to Country C NewCo or a wholly owned subsidiary of Country C NewCo pursuant to the Foreign Sale Agreement (the “Foreign Sale”). In addition, Sub6 will enter into various arm’s-length business transactions with Country C NewCo or an affiliate of Country C NewCo, including the Foreign Agreement.
- (xiv) Distributing3 will form a new holding company (“Controlled3”) organized under the laws of State A (the “Controlled3 Formation”). Distributing3 will contribute all of its Controlled2 Common Stock in exchange for Controlled3 common stock, approximately \$rr of Controlled3 debt securities (the “Controlled3 Securities”), and Controlled3’s assumption of obligations under Note 1 and Note 3 (collectively with the Controlled3 Formation, the “Controlled3 Transfer”). Thereafter, Distributing3 will repay approximately \$ss of the FPParent Note in exchange for the Controlled3 Securities (the

- “Distributing3 Debt Exchange”) and Distributing3 will distribute all of the issued and outstanding stock of Controlled3 to FSub1 (collectively, with the Controlled3 Transfer and the Distributing3 Debt Exchange, “Distribution 3”). Distributing3 expects to consummate the Distributing3 Debt Exchange in accordance with an exchange agreement entered into by it and FParent no sooner than 5 days after the latter of the date FParent acquired FParent Note or New FParent Note, pursuant to which the parties will agree to exchange the Controlled3 Securities received by Distributing3 for an amount of either FParent Note or New FParent Note, as applicable, to be determined by the parties bargaining at arm’s-length, with the exchange occurring no sooner than 14 days after the latter of the date FParent acquired the FParent Note or New FParent Note.
- (xv) FParent will contribute the Controlled3 Securities to FSub1 in exchange for shares of FSub1 common stock. FSub1 will form a new company organized under the laws of Country B (“Country B NewCo”). FSub1 will contribute a portion of its shares of FSub2 stock to Country B NewCo in exchange for shares of Country B NewCo stock. Thereafter, FSub2 will distribute Note 2 to Country B NewCo in redemption of the shares of FSub2 stock held by Country B NewCo. FSub1 will contribute the Controlled3 Securities and all of the stock of FSub2 to Country A HoldCo in exchange for shares of Country A HoldCo common stock. Country A HoldCo will contribute the Controlled3 Securities and all of the stock of FSub2 to Country B HoldCo in exchange for shares of Country B HoldCo common stock. Thereafter, FSub2 will redeem a portion of its stock held by Country B HoldCo in exchange for Note 1 and Note 3. Subsequently, Country B HoldCo will contribute in a series of separate transfers the Controlled3 Securities, Note 1, Note 3, and all of the stock of FSub2 to Country C NewCo in exchange for shares of Country C NewCo common stock. Finally, Country C NewCo will contribute all of the stock of FSub2 to Country B HoldCo 2 in exchange for shares of Country B HoldCo 2 common stock. In connection with the transfer of FSub2 to Country B HoldCo 2, FParent will secure licenses and tax rulings to convert FSub2 to a Business A2 company (collectively, “Foreign Transaction 2”).
- (xvi) FSub1 will contribute all the issued and outstanding stock of Controlled3 to Country A HoldCo in exchange for shares of Country A HoldCo common stock. Country A HoldCo will contribute all the issued and outstanding stock of Controlled3 to Country B HoldCo in exchange for shares of Country B HoldCo common stock. Country B HoldCo will contribute all the issued and outstanding stock of Controlled3 to Country C NewCo in exchange for shares of Country C NewCo common stock (collectively, “Foreign Transaction 3”).

Representations

A. The Sub1 Liquidation

- a1 Distributing3, on the date of adoption of the Sub1 plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of 100 percent of the Sub1 stock.
- a2 No shares of Sub1 stock will have been redeemed during the three years preceding the adoption of the Sub1 plan of complete liquidation for the Sub1 Liquidation and no Sub1 stock has been the subject of a prior intercompany recognition transaction under § 1.1502-13.
- a3 All distributions from Sub1 to Distributing3 pursuant to the Sub1 plan of complete liquidation will be made within a single taxable year of Sub1.
- a4 Sub1 will adopt a plan of liquidation specifying that the final liquidating distribution is to be completed within three years from the close of the taxable year of Sub1 in which the first liquidating distribution is made.
- a5 As soon as the first liquidating distribution has been made, Sub1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholder.
- a6 Sub1 will retain no assets following the final liquidating distribution or its merger.
- a7 Sub1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the Sub1 plan of liquidation.
- a8 No assets of Sub1 have been, or will be, disposed of by either Sub1 or Distributing3 except for dispositions in the ordinary course of business or dispositions occurring more than three years prior to adoption of the Sub1 plan of liquidation.
- a9 Except as described in the Proposed Transactions, the liquidation of Sub1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of § 318(a), as modified by § 304(c)(3).

- a10 Prior to adoption of the liquidation plan, no assets of Sub1 will have been distributed in kind, transferred, or sold to Distributing3, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the Sub1 liquidation plan.
- a11 Sub1 will report all earned income represented by assets that will be distributed to its shareholder such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, dividends, etc.
- a12 The fair market value of the assets of Sub1 will exceed its liabilities both at the date of the adoption of its plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- a13 There is no intercorporate debt existing between Distributing3 and Sub1 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the Sub1 plan of complete liquidation.
- a14 Any indebtedness between Sub1 and any other member of the FParent Group is properly characterized as indebtedness for federal income tax purposes.
- a15 All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub1 Liquidation have been fully disclosed.
- a16 Distributing3 is not and will not be an organization exempt from U.S. federal income tax under § 501 or any other provision of the Code.

B. The Sub5 Redemption

- b1 There are no outstanding options or warrants to purchase Controlled2 stock, nor are there any outstanding debentures or other obligations that are convertible into Controlled2 stock or would be considered Controlled2 stock.
- b2 No notes or other obligations of Controlled2 will be distributed to Sub5 in connection with the Sub5 Redemption.
- b3 No shareholder of Controlled2 has been or will be obligated to purchase any of the stock to be redeemed in the Sub5 Redemption.
- b4 Except as described in the Proposed Transactions, the Sub5 Redemption will be an isolated transaction and will not be related to any past or future transaction.

- b5 Except as described in the Proposed Transactions or the Summary of Facts, Controlled2 has no plan or intention to issue, redeem, or exchange additional shares of its stock.
- b6 None of the stock to be redeemed in the Sub5 Redemption is “§ 306 stock” within the meaning of § 306(c).
- b7 There are no declared but unpaid dividends, or funds set apart for dividends, on any of the stock to be redeemed in the Sub5 Redemption. The accrued dividends will be paid according to the terms of the Controlled2 Series A and Controlled2 Series B preferred stock before the Sub5 Redemption.
- b8 There is no plan or intention to completely liquidate Controlled2 or to change its classification to anything other than a corporation for U.S. federal tax purposes.
- b9 At the time of the Sub5 Redemption, the fair market value of the consideration to be received by Sub5 will be approximately equal to the fair market value of the Controlled2 stock to be exchanged therefor.
- b10 No part of the proceeds of the Sub5 Redemption from Controlled2 will be received, directly or indirectly, by Sub5 as a creditor, employee, or in any capacity other than as a redeemed shareholder.
- b11 Controlled2 is not a personal holding company within the meaning of § 542.

C. Distribution 1

- c1 The fair market value of the Controlled1 stock to be received by Distributing3 in Distribution 1 will be approximately equal to the fair market value of the Distributing1 common stock surrendered by Distributing3.
- c2 No part of the consideration to be distributed by Distributing1 in Distribution 1 will be received by Distributing3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing1.
- c3 The five years of financial information submitted on behalf of Business A4 conducted by Distributing2, a member of the Distributing1 separate affiliated group (“SAG”) as defined in § 355(b)(3)(B) (the “Distributing1 SAG”), is representative of the present operations of Business A4, and there have been no substantial operational changes with respect to the business since the date of the last financial statements submitted.

- c4 The five years of financial information submitted on behalf of Business A3 conducted by Controlled1 is representative of the present operations of Business A3 and there have been no substantial operational changes with respect to the business since the date of the last financial statements submitted.
- c5 Following Distribution 1, other than services provided by Sub10, a member of the Distributing3 Consolidated Group, to the Distributing1 SAG pursuant to management services agreements, the Distributing1 SAG, which includes the Distributing2 SAG (defined below), will continue the active conduct of its business, independently and with its separate employees.
- c6 Following Distribution 1, other than services provided by Sub10 to Controlled1 under an intercompany services agreement and a management services agreement, Controlled1 will continue the active conduct of its business, independently and with its separate employees.
- c7 Distribution 1 will be carried out to facilitate the Business Purposes. Distribution 1 is motivated, in whole or substantial part, by those purposes.
- c8 The transaction is not used principally as a device for distributing the earnings and profits ("E&P") of Distributing1 or Controlled1 or both.
- c9 Distributing1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 1.
- c10 No intercorporate debt will exist between Distributing1 (and its subsidiaries) and Controlled1 (and its subsidiaries) at the time of, or subsequent to, Distribution 1.
- c11 Immediately before Distribution 1, 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 by T.D. 8597).
- c12 At the time of Distribution 1, Distributing1 will not have an excess loss account ("ELA") in the stock of Controlled1.
- c13 Payments made in connection with any continuing transactions between Distributing1 (and its subsidiaries) and Controlled1 (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- c14 Immediately after Distribution 1 (taking into account § 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of § 355(g)) in the stock of Distributing1 or Controlled1 who did not hold such an interest immediately before Distribution 1.
- c15 For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing1 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 Distribution 1.
- c16 For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled1 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 Distribution 1 or (ii) attributable to distributions on Distributing1's 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 Distribution 1.
- c17 The Distribution 1 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 (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing1 or Controlled1 (including any predecessor or successor of any such corporation).
- c18 Distributing1 and Controlled1 each will pay its own expenses, if any, incurred in connection with Distribution 1.
- c19 No property will be transferred between Distributing1 and Controlled1 for which an investment credit under § 46 has been or will be claimed.
- c20 The effects of DIG 1 have not previously been reflected on the Distributing3 Consolidated Group's consolidated return.
- c21 The Distributing3 Consolidated Group has not derived, and no taxpayer will derive, any federal income tax benefit from the First DIG Transaction that

gave rise to DIG 1 or the redetermination of the intercompany gain (including any adjustment to basis in member stock under § 1.1502-32).

D. The Downstream Merger

- d1 The Downstream Merger is being effected pursuant to the laws of State A and will qualify as a statutory merger under State A law.
- d2 Pursuant to the plan of merger, and by operation of State A law, the following will occur simultaneously at the effective time of the Downstream Merger: (i) all of the assets held by Distributing1 and all of its liabilities immediately before the merger will become assets and liabilities of Distributing2, and (ii) Distributing1 will cease its separate legal existence for all purposes.
- d3 The fair market value of the Distributing2 stock received by each Distributing1 shareholder in the Downstream Merger will be approximately equal to the fair market value of the Distributing1 stock surrendered in exchange therefor.
- d4 At least 40 percent of the proprietary interest in Distributing1 will be exchanged for Distributing2 stock in the Downstream Merger and that proprietary interest will be preserved within the meaning of § 1.368-1(e).
- d5 Neither Distributing2 nor any person related to Distributing2 (as defined in § 1.368-1(e)(4)) has a plan or intention to reacquire any Distributing2 stock issued in the Downstream Merger for any consideration other than Distributing2 stock, either directly or through any transaction, agreement, or other arrangement with any other person.
- d6 Distributing2 has no plan or intention to sell or otherwise dispose of any of the assets of Distributing1 acquired in the Downstream Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- d7 The liabilities of Distributing1 assumed by Distributing2 (within the meaning of § 357(d)) in the Downstream Merger and the liabilities to which the transferred assets of Distributing1 are subject were incurred by Distributing1 in the ordinary course of its business, and are associated with the assets transferred.
- d8 Following the Downstream Merger, Distributing2, either directly or through members of its qualified group (within the meaning of § 1.368-1(d)(4)(ii)), will continue the historic business of Distributing1 or use a significant portion of Distributing1's historic business assets in a business as required and defined in § 1.368-1(d).

- d9 Distributing2, Distributing1, and the shareholders of Distributing1 will each pay their respective expenses, if any, incurred in connection with the Downstream Merger.
- d10 There is no intercorporate indebtedness existing between Distributing1 and Distributing2 that was issued, acquired, or will be settled at a discount.
- d11 No two parties to the Downstream Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- d12 Distributing1 is not and will not be under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- d13 At the time of the Downstream Merger, the fair market value of the assets of Distributing1 transferred to Distributing2 will exceed the sum of (i) the amount of liabilities assumed (as determined under § 357(d)) by Distributing2 in connection with the Downstream Merger; (ii) the amount of any liabilities owed to Distributing2 by Distributing1 that are discharged or extinguished in connection with the Downstream Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Distributing1 in connection with the Downstream Merger.
- d14 Immediately after the Downstream Merger, the fair market value of Distributing2's assets will exceed the amount of its liabilities.
- d15 The Downstream Merger will be carried out to facilitate the Business Purposes. The Downstream Merger is motivated, in whole or substantial part, by one or more of those purposes.
- d16 The Downstream Merger will be undertaken pursuant to a plan of reorganization.
- d17 Neither the Distributing1 preferred stock nor the Distributing2 preferred stock exchanged therefor will be nonqualified preferred stock within the meaning of § 351(g).

E. The Sub3 Redemption

- e1 There are no outstanding options or warrants to purchase Controlled2 stock, nor are there any outstanding debentures or other obligations that are convertible into Controlled2 stock or would be considered Controlled2 stock.

- e2 No notes or other obligations of Controlled2 will be distributed to Sub3 in connection with the Sub3 Redemption.
- e3 No shareholder of Controlled2 has been or will be obligated to purchase any of the stock to be redeemed in the Sub3 Redemption.
- e4 Except as described in the Proposed Transactions, the Sub3 Redemption will be an isolated transaction and will not be related to any past or future transaction.
- e5 Except as described in the Proposed Transactions or the Summary of Facts, Controlled2 has no plan or intention to issue, redeem, or exchange additional shares of its stock.
- e6 None of the stock to be redeemed in the Sub3 Redemption is “§ 306 stock” within the meaning of § 306(c).
- e7 There are no declared but unpaid dividends, or funds set apart for dividends, on any of the stock to be redeemed in the Sub3 Redemption.
- e8 There is no plan or intention to completely liquidate Controlled2 or to change its classification to anything other than a corporation for U.S. federal tax purposes.
- e9 At the time of the Sub3 Redemption, the fair market value of the consideration to be received by Sub3 will be approximately equal to the fair market value of the Controlled2 stock to be exchanged therefor.
- e10 No part of the proceeds of the Sub3 Redemption from Controlled2 will be received, directly or indirectly, by Sub3 as a creditor, employee, or in any capacity other than as a redeemed shareholder.
- e11 Controlled2 is not a personal holding company within the meaning of § 542.

F. Sub3 Liquidation

- f1 Distributing2, on the date of adoption of the Sub3 plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single class of Sub3 stock.
- f2 The only property to be distributed to Distributing3 in the Sub3 Liquidation will be cash or cash equivalents.

- f3 The fair market value of the consideration received by Distributing2 and Distributing3 for each share of Sub3 stock will approximately equal the fair market value of that stock.
- f4 No shares of Sub3 stock will have been redeemed during the three years preceding the adoption of the Sub3 plan of complete liquidation and no Sub3 stock has been the subject of a prior intercompany recognition transaction under § 1.1502-13.
- f5 If the Sub3 Liquidation is effected by Conversion, following the conversion of Sub3 into a LLC, Sub3 will be disregarded as an entity separate from its owner for federal tax purposes under § 301.7701-3(b)(1)(ii), and the LLC will not elect or claim to be treated as a corporation for federal income tax purposes.
- f6 All distributions from Sub3 to Distributing2 and Distributing3 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub3.
- f7 Sub3 will adopt a plan of liquidation specifying that the final liquidating distribution is to be completed within three years from the close of the taxable year of Sub3 in which the first liquidating distribution is made.
- f8 As soon as its first liquidating distribution has been made, Sub3 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- f9 Sub3 will retain no assets following its final liquidating distribution.
- f10 Sub3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of its plan of liquidation.
- f11 Except as described in the Proposed Transactions, following the Sub3 Liquidation, no assets of Sub3 have been, or will be, disposed of by either Sub3, Distributing2, or Distributing3 except for dispositions in the ordinary course of business or dispositions occurring more than three years prior to adoption of the Sub3 plan of liquidation.
- f12 Except as described in the Proposed Transactions, the liquidation of Sub3 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub3, if persons holding, directly or indirectly, more than 20 percent in value of the Sub3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be

- determined by application of the constructive ownership rule of § 318(a), as modified by § 304(c)(3).
- f13 Prior to the adoption of the liquidation plan, no assets of Sub3 will have been distributed in kind, transferred, or sold to Distributing2 or Distributing3, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- f14 Sub3 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, dividends, etc.
- f15 The fair market value of the assets of Sub3 will exceed its liabilities both at the date of the adoption of its plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- f16 There is no intercorporate debt existing between Distributing2 and Sub3 or between Distributing3 and Sub3 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of Sub3's adoption of the plan of complete liquidation.
- f17 All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub3 Liquidation have been fully disclosed.
- f18 Distributing2 is not and will not be an organization exempt from U.S. federal income tax under § 501 or any other provision of the Code.
- G. The Sub5 Contribution**
- g1 No stock or securities will be issued for services rendered to or for the benefit of Distributing2 in connection with the Sub5 Contribution, and no stock or securities will be issued for indebtedness of Distributing2 that is not evidenced by a security or for interest on indebtedness of Distributing2 that accrued on or after the beginning of the holding period of Sub5 for the debt.
- g2 None of the stock to be transferred in the Sub5 Contribution is "§ 306 stock" within the meaning of § 306(c).
- g3 The Distributing2 Voting Preferred Stock will not be nonqualified preferred stock within the meaning of § 351(g).

- g4 The transfer of assets to Distributing2 in the Sub5 Contribution is not the result of the solicitation by a promoter, broker, or investment house.
- g5 Sub5 will not retain any rights in the Controlled2 Common Stock transferred to Distributing2 in the Sub5 Contribution.
- g6 There is no indebtedness between Distributing2 and Sub5 and there will be no indebtedness created in favor of Sub5 as a result of the Sub5 Contribution.
- g7 The Sub5 Contribution will occur pursuant to a plan agreed upon before the transaction in which the rights of the parties are defined.
- g8 All exchanges in connection with the Sub5 Contribution will occur on approximately the same date.
- g9 There is no plan or intention on the part of Distributing2 to redeem or otherwise reacquire any stock to be issued in the Sub5 Contribution.
- g10 Taking into account any issuance of additional shares of Distributing2 stock; any issuance of stock for services; the exercise of any Distributing2 stock rights, warrants, or subscriptions; a public offering of Distributing2 stock; the sale, exchange, transfer by gift, or other disposition of any of the stock of Distributing2 to be received in the exchange; and the application of § 1.1502-34, Sub5 will be in “control” of Distributing2 immediately after the Sub5 Contribution within the meaning of § 368(c).
- g11 Sub5 will receive Distributing2 Voting Preferred Stock approximately equal to the fair market value of the Controlled2 Common Stock transferred to Distributing2 in the Sub5 Contribution.
- g12 Except as described in the Proposed Transactions, following the Sub5 Contribution, Distributing2 will remain in existence and will retain and use the property transferred to Distributing2 in the Sub5 Contribution in a trade or business.
- g13 Sub5 has no plan or intention to dispose of the Distributing2 Voting Preferred Stock following the Sub5 Contribution.
- g14 Each of Sub5 and Distributing2 will pay its own expenses, if any, incurred in connection with the Sub5 Contribution.
- g15 Distributing2 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

- g16 Sub5 is not and will not be under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)).
- g17 Distributing2 will not be a personal service corporation within the meaning of § 269A.
- g18 Distributing2 will neither assume, nor take any assets subject to, any liabilities in connection with the Sub5 Contribution.
- g19 The aggregate fair market value of the property to be transferred by Sub5 to Distributing2 in the Sub5 Contribution will equal or exceed Sub5's aggregate adjusted basis in such property.
- g20 The total fair market value of the assets transferred to Distributing2 by Sub5 in the Sub5 Contribution will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Distributing2 in connection with the exchange, (ii) the amount of any liabilities owed to Distributing2 by Sub5 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 and securities of Distributing2 permitted to be received under § 351(a) without the recognition of gain) received by Sub5 in connection with the exchange.
- g21 The fair market value of the assets of Distributing2 will exceed the amount of its liabilities immediately after the Sub5 Contribution.

H. The Distributing2 Redemption

- h1 There are no outstanding options or warrants to purchase Controlled2 stock, nor are there any outstanding debentures or other obligations that are convertible into Controlled2 stock or would be considered Controlled2 stock.
- h2 No notes or other obligations of Controlled2 will be distributed to Distributing2 in connection with the Distributing2 Redemption.
- h3 No shareholder of Controlled2 has been or will be obligated to purchase any of the stock to be redeemed in the Distributing2 Redemption.
- h4 Except as described in the Proposed Transactions, the Distributing2 Redemption will be an isolated transaction and will not be related to any past or future transaction.
- h5 Except as described in the Proposed Transactions, Controlled2 has no plan or intention to issue, redeem, or exchange additional shares of its stock.

- h6 None of the Controlled² Common Stock to be redeemed in the Distributing² Redemption is “§ 306 stock” within the meaning of § 306(c).
- h7 There are no declared but unpaid dividends, or funds set apart for dividends, on any of the stock to be redeemed in the Distributing² Redemption.
- h8 There is no plan or intention to completely liquidate Controlled² or to change its classification to anything other than a corporation for U.S. federal tax purposes.
- h9 At the time of the Distributing² Redemption, the fair market value of the consideration to be received by Distributing² will be approximately equal to the fair market value of Controlled²'s stock to be exchanged therefor.
- h10 No part of the proceeds of the Distributing² Redemption from Controlled² will be received, directly or indirectly, by Distributing² as a creditor, employee, or in any capacity other than as a redeemed shareholder.
- h11 Controlled² is not a personal holding company within the meaning of § 542.

I. The Controlled² Recap

- i1 The fair market value of the New Controlled² Voting Preferred Stock held by Sub⁶ immediately after the Controlled² Recap will approximately equal the fair market value of the Controlled² Series B § 1504(a)(4) preferred stock held by Sub⁶ immediately before the Controlled² Recap.
- i2 None of the Controlled² Series B § 1504(a)(4) preferred stock to be exchanged in the Controlled² Recap will be “§ 306 stock” within the meaning of § 306(c).
- i3 The only stock that will be actually exchanged in the Controlled² Recap will be the Controlled² Series B § 1504(a)(4) preferred stock, and the only ownership interests that will be issued by Controlled² in the Controlled² Recap will be New Controlled² Voting Preferred Stock.
- i4 Controlled² will issue no cash or other property in exchange for fractional shares in the Controlled² Recap.
- i5 The exchanges contemplated by the Controlled² Recap will occur on its effective date.

- i6 Controlled2 is not, and will not be, under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- i7 After the Controlled2 Recap, all classes of Controlled2 stock will be entitled to vote, and no shareholder will own Controlled2 stock representing § 368(c) control of Controlled2.
- i8 Except as described in the Proposed Transactions, the Controlled2 Recap will be a single, isolated transaction and not part of a plan to periodically increase the proportionate interest of any shareholder in the assets or E&P of Controlled2.
- i9 Immediately before the Controlled2 Recap, the preferred stock that Sub6 will surrender in the Controlled2 Recap will not entitle Sub6 to any accrued but unpaid dividends. The accrued dividends will be paid according to the terms of the preferred stock before the Controlled2 Recap.
- i10 Except as described in the Proposed Transactions, there is no plan or intention to change the capital structure or the corporate charter of Controlled2 following the Controlled2 Recap, including (i) to exercise any conversion rights, (ii) to change the relative voting power of any shareholder or class of shares of Controlled2, and/or (iii) to affect any other right created in the Controlled2 Recap.
- i11 There is no plan or intention to liquidate Controlled2 or to change its classification to anything other than a corporation for U.S. federal tax purposes.
- i12 The Controlled2 Recap will be carried out to facilitate the Business Purposes. The Controlled2 Recap is motivated, in whole or substantial part, by one or more of those purposes.
- i13 The Controlled2 Recap will be undertaken pursuant to a plan of reorganization.
- i14 Each party will pay its respective expenses, if any, incurred in connection with the Controlled2 Recap.
- i15 At the time of the Controlled2 Recap, Controlled2 will not have outstanding any stock options, warrants, convertible securities, or any other right that is convertible into any class of stock or securities of Controlled2.
- i16 There is no plan or intention on the part of Controlled2 to redeem or otherwise reacquire any stock to be issued in the Controlled2 Recap.

- i17 There is no plan or intention on the part of Sub6 to sell, exchange or otherwise dispose of the New Controlled2 Voting Preferred Stock issued pursuant to the Controlled2 Recap.
- i18 Controlled2 will be the same entity before and after the Controlled2 Recap.
- i19 Sub6 will not have an election to receive cash or other stock or property pursuant to the Controlled2 Recap.
- i20 Sub6 will not retain any rights in the Controlled2 Series B § 1504(a)(4) preferred stock transferred to Controlled2 pursuant to the Controlled2 Recap.
- i21 Neither the terms of Controlled2 Series B § 1504(a)(4) preferred stock nor the terms of the New Controlled2 Voting Preferred Stock have or will include a convertibility feature.
- i22 Other than pursuant to the Controlled2 Recap, there is no plan or intention to amend Controlled2's corporate charter (or certificate of incorporation) to alter the rights of the New Controlled2 Voting Preferred Stock or the Controlled2 Common stock.

J. The Distributing3 Redemption

- j1 There are no outstanding options or warrants to purchase Controlled2 stock, nor are there any outstanding debentures or other obligations that are convertible into Controlled2 stock or would be considered Controlled2 stock.
- j2 No notes or other obligations of Controlled2 will be distributed to Distributing3 in connection with the Distributing3 Redemption.
- j3 No shareholder of Controlled2 has been or will be obligated to purchase any of the stock to be redeemed in the Distributing3 Redemption.
- j4 Except as described in the Proposed Transactions, the Distributing3 Redemption will be an isolated transaction and will not be related to any past or future transaction.
- j5 Except as described in the Proposed Transactions, Controlled2 has no plan or intention to issue, redeem, or exchange additional shares of its stock.
- j6 None of the Controlled2 stock to be redeemed in the Distributing3 Redemption is "§ 306 stock" within the meaning of § 306(c).

- j7 There are no declared but unpaid dividends, or funds set apart for dividends, on any of the stock to be redeemed in the Distributing3 Redemption.
- j8 There is no plan or intention to completely liquidate Controlled2 or to change its classification to anything other than a corporation for U.S. federal tax purposes.
- j9 At the time of the Distributing3 Redemption, the fair market value of the consideration to be received by Distributing3 will be approximately equal to the fair market value of Controlled2's stock to be exchanged therefor.
- j10 No part of the consideration received in the Distributing3 Redemption from Controlled2 will be received, directly or indirectly, by Distributing3 as a creditor, employee, or in any capacity other than as a redeemed shareholder.
- j11 Controlled2 is not a personal holding company within the meaning of § 542.
- j12 Following the Controlled2 Recap and the Distributing3 Redemption, Distributing2 will own Controlled2 stock constituting "control" of Controlled2 as that term is defined under § 368(c).

K. Distribution 2

- k1 No part of the consideration to be distributed by Distributing2 in Distribution 2 will be received by Distributing3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing2.
- k2 The five years of financial information submitted on behalf of Business A4 conducted by Distributing2 is representative of the present operations of Business A4, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- k3 The five years of financial information submitted on behalf of Business A2 conducted by Controlled2 and the members of its SAG ("Controlled2 SAG") is representative of the present operations of Business A2, and with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- k4 Neither Business A4 conducted by Distributing2 nor control of an entity conducting that business was acquired 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) in whole or in part.

- k5 Neither Business A2 conducted by the Controlled2 SAG nor control of an entity conducting that business was acquired 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) in whole or in part, except in connection with the expansion of Business A4.
- k6 Following Distribution 2, other than services provided by Sub10, a member of the Distributing3 Consolidated Group, to Distributing2 under a management services agreement, Distributing2 will continue the active conduct of its business, independently and with its separate employees.
- k7 Following Distribution 2, the Controlled2 SAG will continue the active conduct of its business, independently and with its separate employees.
- k8 Distribution 2 will be carried out to facilitate the Business Purposes. Distribution 2 is motivated, in whole or substantial part, by one or more of those purposes.
- k9 Distribution 2 will not be used principally as a device for distributing the E&P of Distributing2 or Controlled2 or both.
- k10 Distributing2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 2.
- k11 Except for amounts owed in connection with the ordinary course of business, no intercorporate debt will exist between Distributing2 (and its subsidiaries) and Controlled2 (and its subsidiaries) at the time of, or subsequent to, Distribution 2.
- k12 The indebtedness, if any, owed by Controlled2 to Distributing2 after Distribution 2 will not constitute stock or securities.
- k13 Immediately before Distribution 2, 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 by T.D. 8597).
- k14 At the time of Distribution 2, Distributing2 will not have an ELA in the stock of Controlled2 or in the stock of any subsidiary of Controlled2.
- k15 Payments made in connection with any continuing transactions between Distributing2 (and its subsidiaries) and Controlled2 (and its subsidiaries) will

- be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- k16 Immediately after Distribution 2 (taking into account § 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of § 355(g)) in the stock of Distributing2 or Controlled2 who did not hold such an interest immediately before Distribution 2.
- k17 For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing2 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 Distribution 2.
- k18 For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled2 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 Distribution 2, or (ii) attributable to distributions on Distributing2's 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 Distribution 2.
- k19 Distribution 2 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 (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing2 or Controlled2 (including any predecessor or successor of any such corporation).
- k20 Distributing2 and Controlled2 each will pay its own expenses, if any, incurred in connection with Distribution 2.
- k21 No property will be transferred between Distributing2 and Controlled2 in Distribution 2 for which an investment credit under § 46 has been or will be claimed.
- k22 The effects of DIG 3 and DIG 5 have not previously been reflected on the Distributing3 Consolidated Group's consolidated return.

- k23 The Distributing³ Consolidated Group has not derived, and no taxpayer will derive, any federal income tax benefit from the Third or Fifth DIG Transactions that gave rise to DIGs 3 and 5, respectively, or the redetermination of the intercompany gain (including any adjustment to basis in member stock under § 1.1502-32).
- k24 At the time of Distribution 2, there will be no accrued but unpaid dividends on any Distributing² preferred stock. Any accrued dividends will be paid in cash according to the terms of the Distributing² preferred stock before Distribution 2.
- k25 The Distributing² preferred stock will not participate in Distribution 2.

L. The Foreign Sale

- l1 Sub⁶ will transfer full legal title and all economic rights constituting beneficial ownership of the assets transferred solely in exchange for cash and/or marketable securities in the Foreign Sale.

M. Distribution 3

- m1 Except for the Controlled³ Securities, the indebtedness, if any, owed by Controlled³ to Distributing³ after Distribution 3 will not constitute stock or securities.
- m2 No part of the consideration to be distributed by Distributing³ in Distribution 3 will be received by FSub¹ as a creditor, employee, or in any capacity other than that of a shareholder of Distributing³.
- m3 The five years of financial information submitted on behalf of Business A1 conducted by Distributing³ and members of its SAG (“Distributing³ SAG”) is representative of the present operations of Business A1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- m4 The five years of financial information submitted on behalf of Business A2 conducted by Controlled³ and members of its SAG (“Controlled³ SAG”) is representative of the present operations of Business A2, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- m5 Neither Business A1 conducted by the Distributing³ SAG nor control of an entity conducting that business was acquired 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) in whole or in part.
- m6 Neither Business A2 conducted by the Controlled³ SAG nor control of an entity conducting that business was acquired 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) in whole or in part, except in connection with the expansion of Business A1.
- m7 Following Distribution 3, the Distributing³ SAG will continue the active conduct of its business, independently and with its separate employees.
- m8 Following Distribution 3, the Controlled³ SAG will continue the active conduct of its business, independently and with its separate employees.
- m9 Distribution 3 will be carried out for the Business Purposes. Distribution 3 is motivated, in whole or substantial part, by one or more of those purposes.
- m10 Distribution 3 will not be used principally as a device for distributing the E&P of Distributing³ (or its subsidiaries) or Controlled³ (or its subsidiaries) or both.
- m11 The total adjusted bases of the assets transferred to Controlled³ by Distributing³ will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled³ and (ii) the total amount of money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing³ and transferred by it to its creditors and shareholders in connection with the reorganization.
- m12 The liabilities assumed (within the meaning of § 357(d)) by Controlled³ were incurred in the ordinary course of business and were associated with the assets transferred.
- m13 The total fair market value of the assets transferred to Controlled³ in Distribution 3 will exceed the sum of (i) the amount of liabilities assumed (within the meaning of § 357(d)) by Controlled³ in connection with the exchange; (ii) the amount of any liabilities owed to Controlled³ by Distributing³ that are discharged or extinguished in connection with the exchange; 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 Distributing³ in connection with the exchange. The fair market value of the assets of Controlled³ will exceed the amount of its liabilities immediately after Distribution 3.

- m14 Distributing³ neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 3.
- m15 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 Distributing³, and no items of expense will be transferred to Controlled³ if Distributing³ has earned the right to receive the income or could claim a deduction for the expense under the accrual or similar method of accounting.
- m16 Except for the Controlled³ Securities, no intercorporate debt will exist between Distributing³ (and its subsidiaries) and Controlled³ (and its subsidiaries) at the time of, or subsequent to, Distribution 3.
- m17 Immediately before Distribution 3, 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 by T.D. 8597).
- m18 Any ELA that Distributing³ has in the Controlled³ common stock or the stock of any direct or indirect subsidiary of Controlled³ will be included in income immediately before Distribution 3 to the extent required by regulations (see § 1.1502-19).
- m19 Payments made in connection with any continuing transactions between Distributing³ (and its subsidiaries) and Controlled³ (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- m20 No party to Distribution 3 will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- m21 Immediately after Distribution 3 (taking into account § 355(g)(4)), no person will hold a 50-percent or greater interest (within the meaning of § 355(g)) in the stock of Distributing³ or Controlled³ who did not hold such an interest immediately before Distribution 3.
- m22 For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing³ stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing³ 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 Distribution 3.

- m23 For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled3 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled3 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 Distribution 3, or (ii) attributable to distributions on Distributing3's 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 Distribution 3.
- m24 Distribution 3 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 (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing3 or Controlled3 (including any predecessor or successor of any such corporation).
- m25 Distributing3 and Controlled3 each will pay its own expenses, if any, incurred in connection with Distribution 3.
- m26 Distribution 3 will be undertaken pursuant to a plan of reorganization.
- m27 No property will be transferred between Distributing3 and Controlled3 in Distribution 3 for which an investment credit under § 46 has been or will be claimed.
- m28 Neither Distributing3 nor Controlled3 (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the date of Distribution 3, nor (ii) will be a United States real property holding corporation immediately after Distribution 3.
- m29 The Controlled3 Securities constitute securities for purposes of § 361.
- m30 The sum of the aggregate amount of Distributing3's obligations under (i) FParent Note, to the extent that the assumption of the obligations under such note is exchanged for Controlled3 Securities in the Distributing3 Debt Exchange, and (ii) Note 1 and Note 3, assumed by Controlled3 in exchange for Controlled2 Common Stock in the Controlled3 Formation, will not exceed the weighted quarterly average of the Distributing3 debt for the 12-month period ending at the close of business on the last full business day before the

date on which the Distributing3 Board of Directors initially discussed the potential separation of Business A2 from Distributing3.

Rulings

A. The Sub1 Liquidation

1. The Sub1 Liquidation will be treated as a complete liquidation under § 332. Section 332.
2. No gain or loss will be recognized by Distributing3 on the receipt of all the assets and the assumption of the liabilities of Sub1 as a result of the Sub1 Liquidation. Section 332(a).
3. No gain or loss will be recognized by Sub1 on the distribution of its assets to, and the assumption of liabilities by, Distributing3 as a result of the Sub1 Liquidation. Section 337(a).
4. The basis of each asset received by Distributing3 from Sub1 as a result of the Sub1 Liquidation will equal the basis of that asset in the hands of Sub1 immediately before the Sub1 Liquidation. Section 334(b)(1).
5. The holding period of each asset received by Distributing3 from Sub1 as a result of the Sub1 Liquidation will include the period during which Sub1 held that asset. Section 1223(2).
6. Distributing3 will succeed to and take into account the items of Sub1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, 384, and 1502, and the regulations thereunder. Section 381(a)(1); § 1.381(a)-1.
7. Except to the extent Sub1's E&P is reflected in Distributing3's E&P, Distributing3 will succeed to and take into account the E&P, or deficit in E&P, of Sub1 as of the date of the Sub1 Liquidation. Section 381(c)(2)(A); §§ 1.381(c)(2)-1 and 1.1502-33(a)(2). Any deficit in the E&P of Sub1 or Distributing3 will be used only to offset E&P accumulated after the date of the Sub1 Liquidation. Section 381(c)(2)(B).

B. The Sub5 Redemption

8. The Sub5 Redemption will be treated as a distribution of property to which § 301 applies. Sections 301 and 302(d).

9. The Sub5 Redemption distribution will be excluded from Sub5's gross income and the Sub5 Redemption proceeds will reduce Sub5's basis in its remaining shares of Controlled2 Common Stock. Sections 1.1502-13(f)(2), 1.1502-32, and 1.302-2(c).
10. The Sub5 Redemption will not cause Sub5 to recognize gain on its redeemed Controlled2 stock or take into account as income or gain its ELA, if any, in its Controlled2 Common Stock. Section 302(d); § 1.1502-19(a)(2)(ii) and (a)(3).
11. The Sub5 Redemption will not cause Distributing2 to take into account any gain attributable to DIG 7. Section 1.1502-13(c).
12. Controlled2 will recognize gain or loss on each asset, other than cash, furnished as consideration in the Sub5 Redemption, pursuant to § 311(b), and such amounts will be taken into account under the principles of § 1.1502-13, and (with respect to losses) § 267(f).

C. Distribution 1

13. No gain or loss will be recognized by Distributing1 on its distribution of Controlled1 stock to Distributing3 in exchange for a portion of Distributing3's Distributing1 common stock in Distribution 1. Section 355(c).
14. No gain or loss will be recognized by Distributing3 (nor will it otherwise include any amount in income) on the receipt of shares of Controlled1 stock in exchange for a portion of its Distributing1 common stock in Distribution 1. Section 355(a).
15. The basis of the Controlled1 stock in the hands of Distributing3 immediately after Distribution 1 will be the same as Distributing3's basis in the Distributing1 stock surrendered in exchange therefor, determined in the manner described in § 1.358-2(a)(2). Section 358.
16. Distributing3's holding period in the Controlled1 stock received in Distribution 1 will include the holding period of the Distributing1 stock surrendered in exchange therefor, provided that Distributing3 holds such Distributing1 stock as a capital asset on the date of Distribution 1. Section 1223(1).
17. E&P, if any, will be properly allocated between Distributing1 and Controlled1 in accordance with § 312(h) and § 1.312-10(b).
18. As a result of the Downstream Merger, the portion of DIG 1 reflected in Successor Asset B will be redetermined to be excluded from gross income under the Commissioner's Discretionary Rule of § 1.1502-13(c)(6)(ii)(D).

Accordingly, the gain attributable to the portion of the First DIG Transaction that is reflected in Successor Asset B will be excluded from Distributing1's gross income for the Distributing3 Consolidated Group's consolidated return year that includes the date of Distribution 1.

19. The amount of DIG 1 that is redetermined to be excluded from gross income will not be taken into account as E&P of any member and will not be treated as tax-exempt income. Section 1.1502-13(c)(6)(ii)(C)(2).

D. The Downstream Merger

20. The Downstream Merger will qualify as a reorganization within the meaning of § 368(a)(1)(A). Distributing1 and Distributing2 will each be a "party to a reorganization" within the meaning of § 368(b).
21. No gain or loss will be recognized by Distributing1 on its transfer of its assets to Distributing2 in exchange for Distributing2 stock and Distributing2's assumption of Distributing1 liabilities in the Downstream Merger. Sections 361(a) and 357(a).
22. No gain or loss will be recognized by Distributing1 on the transfer of Distributing2 stock to its shareholders in the Downstream Merger. Section 361(c)(1).
23. No gain or loss will be recognized by Distributing2 on its receipt of Distributing1's assets in exchange for Distributing2 common and preferred stock in the Downstream Merger. Section 1032(a).
24. Distributing2's basis in Distributing1's assets will equal Distributing1's basis in its assets immediately before the Downstream Merger. Section 362(b).
25. The holding period of each asset received by Distributing2 from Distributing1 as a result of the Downstream Merger will include the holding period during which Distributing1 held that asset. Section 1223(2).
26. No gain or loss will be recognized by Distributing3, Sub4, or Sub9 on each exchange of Distributing1 common stock solely for Distributing2 common stock or Distributing1 preferred stock solely for Distributing2 preferred stock in the Downstream Merger. Section 354(a)(1).
27. The basis that each of Distributing3, Sub4, and Sub9 has in the Distributing2 common and/or preferred stock received in the Downstream Merger will be equal to the basis of the Distributing1 stock each of Distributing3, Sub4, and Sub9 exchanged in the Downstream Merger. Section 358(a)(1); § 1.358-2(a).

28. The holding period for each of Distributing3, Sub4, and Sub9 in the Distributing2 common and/or preferred stock received in the Downstream Merger will include the holding period of the Distributing1 stock held by each of Distributing3, Sub4, and Sub9, respectively, provided that each held such Distributing1 stock as a capital asset on the date of the Downstream Merger. Section 1223(1).
29. Distributing2 will succeed to and take into account as of the close of the effective date of the Downstream Merger the items of Distributing1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, 384, and 1502, and the regulations thereunder. Section 381(a)(1); § 1.381(a)-1.
30. The Downstream Merger will not cause Distributing1, Distributing2, or Sub5 to take into account any gain attributable to DIGs 1 through 7. Section 1.1502-13(c) and (j).
31. The Downstream Merger will result in Distributing2 becoming a successor person to Distributing1 under § 1.1502-13(j)(2).

E. The Sub3 Redemption

32. The Sub3 Redemption will be treated as a distribution of property to which § 301 applies. Sections 301 and 302(d).
33. The Sub3 Redemption distribution will be excluded from Sub3's gross income and the Sub3 Redemption proceeds will reduce Sub3's basis in its remaining shares of Controlled2 Common Stock. Sections 1.1502-13(f)(2), 1.1502-32, and 1.302-2(c).
34. The Sub3 Redemption will not cause Sub3 to recognize gain on its redeemed Controlled2 Common Stock or take into account as income or gain its ELA, if any, in its Controlled2 Common Stock. Section 302(d); § 1.1502-19(a)(2)(ii) and (a)(3).
35. The Sub3 Redemption will not cause Distributing2 to take into account any gain attributable to DIG 5. Section 1.1502-13(c) and (f)(2).
36. Controlled2 will recognize gain or loss on each asset, other than cash, furnished as consideration in the Sub3 Redemption, pursuant to § 311(b), and such amounts will be taken into account under principles of § 1.1502-13 and (with respect to losses) § 267(f).

F. The Sub3 Liquidation

37. The Sub3 Liquidation will be treated as a complete liquidation under § 332. Section 332.
38. No gain or loss will be recognized by Distributing2 on the receipt of the assets and the assumption of the liabilities of Sub3 as a result of the Sub3 Liquidation. Section 332(a). No gain or loss will be recognized by Distributing3 on the receipt of cash as a result of the Sub3 Liquidation. Section 332(a); § 1.1502-34.
39. No gain or loss will be recognized by Sub3 on the distribution of its assets to, and the assumption of liabilities by, Distributing2 as a result of the Sub3 Liquidation. Sections 336(d)(3) and 337(a).
40. No gain or loss will be recognized by Sub3 on the distribution of cash to Distributing3 in redemption of Distributing3's Sub3 stock. Section 336.
41. The basis of each asset received by Distributing2 from Sub3 as a result of the Sub3 Liquidation will equal the basis of that asset in the hands of Sub3 immediately before the Sub3 Liquidation. Section 334(b)(1).
42. The basis of the cash received by Distributing3 from Sub3 in redemption of Distributing3's Sub3 stock will equal its fair market value at the time of the distribution. Section 334(b)(1)(A).
43. The holding period of each asset received by Distributing2 from Sub3 as a result of the Sub3 Liquidation will include the holding period during which Sub3 held that asset. Section 1223(2).
44. Distributing2 will succeed to and take into account the items of Sub3 described in § 381(c), in accordance with § 1.1502-80(g), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder. Section 381(a)(1); §§ 1.381(a)-1 and 1.1502-80(g).
45. Except to the extent Sub3's E&P is reflected in the E&P of Distributing2 and /or Distributing3, respectively, Distributing 2 and Distributing3 will succeed to and take into account the E&P, or deficit in E&P, of Sub3 as of the date of the Sub3 Liquidation in accordance with § 1.1502-80(g)(3). Section 381(c)(2)(A); §§ 1.381(c)(2)-1, 1.1502-33(a)(2), and § 1.1502-80(g)(3). Any deficit in the E&P of Sub3 or Distributing2 can be used only to offset E&P accumulated after the date of the Sub3 Liquidation. Section 381(c)(2)(B).

46. The Sub3 Liquidation will not cause Distributing2 to take into account any gain attributable to DIG 5. Section 1.1502-13(c) and (j).

G. The Sub5 Contribution

47. No gain or loss will be recognized by Sub5 on its transfer of Controlled2 Common Stock to Distributing2 in the Sub5 Contribution. Sections 351(a) and 357(a).
48. No gain or loss will be recognized by Distributing2 on its issuance of Distributing2 Voting Preferred Stock in exchange for Controlled2 Common Stock in the Sub5 Contribution. Section 1032(a).
49. Sub5's basis or ELA, as the case may be, in its Distributing2 Voting Preferred Stock following the Sub5 Contribution will be the same as Sub5's basis or ELA in the Controlled2 Common Stock surrendered in exchange therefor. Section 358(a).
50. Sub5's holding period in the Distributing2 Voting Preferred Stock received in the Sub5 Contribution will include the holding period of the Controlled2 Common Stock it exchanged, provided that Sub5 holds such Controlled2 Common Stock as a capital asset on the date of the Sub5 Contribution. Section 1223(1).
51. Distributing2's basis or ELA, as the case may be, in the Controlled2 Common Stock to be received from Sub5 in the Sub5 Contribution will equal Sub5's basis in the Controlled2 Common Stock immediately before the Sub5 Contribution. Section 362(a).
52. Distributing2's holding period in the Controlled2 Common Stock to be received from Sub5 in the Sub5 Contribution will include the period during which Sub5 held such stock immediately before the Sub5 Contribution. Section 1223(2).
53. The Distributing2 Voting Preferred Stock to be received by Sub5 in the Sub5 Contribution will be a successor asset to the Controlled2 Common Stock (the DIG 7 Stock) which was held by Sub5. Section 1.1502-13(j)(1).
54. The Sub5 Contribution will not cause Distributing2 to include in income any gain attributable to DIG 7. Section 1.1502-13(c) and (j).

H. The Distributing2 Redemption

55. The Distributing2 Redemption will be treated as a distribution of property to which § 301 applies. Sections 301 and 302(d).
56. The Distributing2 Redemption distribution will be excluded from Distributing2's gross income and the Distributing2 Redemption proceeds will reduce Distributing2's basis in its remaining shares of Controlled2 Common Stock. Sections 1.1502-13(f)(2), 1.1502-32, and 1.302-2(c).
57. The Distributing2 Redemption will not cause Distributing2 to recognize gain on its redeemed Controlled2 Common Stock or take into account as income or gain its ELA, if any, in its Controlled2 Common Stock. Section 302(d); § 1.1502-19(a)(2)(ii) and (a)(3).
58. The Distributing2 Redemption will not cause Distributing2 to take into account any gain attributable to DIG 1, DIG 3, or DIG 7 with respect to Controlled2 Common Stock. Section 1.1502-13(c) and (f)(2).
59. Controlled2 will recognize gain or loss on each asset, other than cash, furnished as consideration in the Distributing2 Redemption, pursuant to § 311(b), and such gains or losses will be taken into account under the principles of § 1.1502-13, and (with respect to losses) § 267(f), until taken into account after Distribution 3.

I. The Controlled2 Recap

60. The Controlled2 Recap will qualify as a recapitalization and, therefore, a reorganization within the meaning of § 368(a)(1)(E). Controlled2 will be "a party to a reorganization" within the meaning of § 368(b).
61. No gain or loss will be recognized by Controlled2 on the receipt of the Controlled2 Series B § 1504(a)(4) preferred stock in exchange for the New Controlled2 Voting Preferred Stock. Section 1032(a).
62. No gain or loss will be recognized by Sub6 upon the exchange of its Controlled2 Series B § 1504(a)(4) preferred stock for the New Controlled2 Voting Preferred Stock. Section 354(a)(1).
63. The basis of the New Controlled2 Voting Preferred Stock received by Sub6 will equal the basis of the Controlled2 Series B § 1504(a)(4) preferred stock surrendered in exchange therefor. Section 358(a)(1).
64. Sub6's holding period in its New Controlled2 Voting Preferred Stock received in the Controlled2 Recap will include the period during which Sub6 held

Controlled2 Series B § 1504(a)(4) preferred stock surrendered in exchange therefor. Section 1223(1).

J. The Distributing3 Redemption

65. The Distributing3 Redemption will be treated as a distribution of property to which § 301 applies. Sections 301 and 302(d).
66. The Distributing3 Redemption distribution will be excluded from Distributing3's gross income and Controlled2's assumption of Note 5 will reduce Distributing3's basis in its remaining shares of Controlled2 Common Stock. Sections 1.1502-13(f)(2), 1.1502-32, and 1.302-2(c).
67. The Distributing3 Redemption will not cause Distributing3 to recognize gain on its redeemed Controlled2 Common Stock or take into account as income or gain its ELA, if any, in its Controlled2 Common Stock. Section 302(d); § 1.1502-19(a)(2)(ii) and (a)(3).
68. The Distributing3 Redemption will not cause Distributing2 to take into account any gain attributable to DIG 4 with respect to Controlled2 Common Stock. Section 1.1502-13(c) and (f)(2).

K. Distribution 2

69. No gain or loss will be recognized by Distributing2 on its distribution of Controlled2 Common Stock in Distribution 2. Section 355(c).
70. No gain or loss will be recognized by Distributing3 (nor will it otherwise include any amount in income) on the receipt of shares of Controlled2 Common Stock in Distribution 2. Section 355(a).
71. The basis of the Distributing2 common stock and Controlled2 Common Stock in the hands of Distributing3 immediately after the Distribution 2 will be the same as Distributing3's basis in the Distributing2 common stock held immediately before Distribution 2, allocated in proportion to the fair market value of Distributing2 and Controlled2 in accordance with § 1.358-2(a)(2). Section 358.
72. Immediately before Distribution 2, in connection with the investment adjustments required under § 1.1502-32, Distributing2 will utilize its basis in shares of Controlled2 Common Stock to reduce or eliminate its ELA, if any, in other shares of Controlled2 Common Stock. Section 1.1502-19(d)(1).

73. Distributing3's holding period in the Controlled2 Common Stock received in Distribution 2 will include the holding period of the Distributing2 common stock with respect to which Distribution 2 is made, provided that Distributing3 holds such Distributing2 common stock as a capital asset on the date of Distribution 2. Section 1223(1).
74. E&P, if any, will be properly allocated between Distributing2 and Controlled2. Section 312(h); § 1.312-10(b).
75. Distributing2 (as a successor to Distributing1 in the First DIG Transaction and the Third DIG Transaction under § 1.1502-13(j)(2)(i)) will take into account the portion of DIG 1 not reflected in Successor Asset B (see Ruling 18) and all of DIG 3 on the distribution of the Controlled2 Common Stock in Distribution 2 (§ 1.1502-13(c)(2)(ii)) and such gain will be redetermined under § 1.1502-13(c)(1)(i) to be excluded from gross income. Section 1.1502-13(c)(6)(ii)(C).
76. Distributing2 (as successor to Sub3 in the Fifth DIG Transaction under § 1.1502-13(j)(2)(i)) will take into account DIG 5 on the distribution of Controlled2 Common Stock in Distribution 2 (§ 1.1502-13(c)(2)(ii)) and such gain will be redetermined under § 1.1502-13(c)(1)(i) to be excluded from gross income. Section 1.1502-13(c)(6)(ii)(C).
77. Except as expressly provided in Rulings 18, 75 and 76, Distributing2's deferred intercompany gains with respect to the stock of Controlled2 will be taken into account under the principles of § 1.1502-13. Section 1.1502-13(c), (f) and (j).

L. The Foreign Sale

78. Sub6 will recognize gain or loss on each asset exchanged in the Foreign Sale equal to the amount realized less Sub6's basis in such assets. Sections 61 and 1001.
79. Any loss recognized by Sub6 on the Foreign Sale will be taken into account under the rules of Section 267(f).

M. Distribution 3

80. The Controlled3 Transfer followed by Distribution 3 will collectively qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing3 and Controlled3 will each be "a party to a reorganization" within the meaning of § 368(b).

81. No gain or loss will be recognized by Distributing3 with respect to the Controlled3 Transfer. Sections 357(a) and 361(a).
82. No gain or loss will be recognized by Controlled3 on the issuance of its stock in exchange for Controlled2 Common Stock in the Controlled3 Transfer. Section 1032(a).
83. Controlled3's basis in each asset received in the Controlled3 Transfer will be the same as the basis of that asset in the hands of Distributing3 immediately before the Controlled3 Transfer. Section 362(b).
84. Controlled3's holding period for each asset received in the Controlled3 Transfer will include the period during which Distributing3 held that asset. Section 1223(2).
85. No gain or loss will be recognized by Distributing3 on its transfer of the Controlled3 stock to FSub1 in Distribution 3. Section 361(c).
86. No gain or loss will be recognized by Distributing3 on its transfer of Controlled3 Securities in repayment of a portion of the FParent Note in the Distributing3 Debt Exchange. Section 361(c)(3).
87. No gain or loss will be recognized by FSub1 (nor will it otherwise include any amount in income) on the receipt of shares of Controlled3 stock in Distribution 3. Section 355(a).
88. The basis of the Distributing3 stock and the Controlled3 stock in the hands of FSub1 immediately after Distribution 3 will be the same as the basis in the Distributing3 stock held by FSub1 immediately before Distribution 3, allocated in proportion to the fair market value of Distributing3 and Controlled3 in accordance with § 1.358-2(a)(2). Section 358.
89. FSub1's holding period in the Controlled3 stock received in Distribution 3 will include the holding period of the Distributing3 stock with respect to which Distribution 3 is made, provided that FSub1 holds such Distributing3 stock as a capital asset on the date of Distribution 3. Section 1223(1).
90. E&P, if any, will be properly allocated between Distributing3 and Controlled3. Section 312(h); §§ 1.312-10(a) and 1.1502-33(e).
91. Except for purposes of § 355(g), payments made between any of Distributing3 and Controlled3 and their respective affiliates under any separation agreement regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before

Distribution 3 and (ii) will not become fixed and ascertainable until after Distribution 3, will be viewed as occurring before Distribution 3. *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, except as so provided, no opinion is expressed or implied regarding:

- (i) whether the Distributions satisfy the business purpose requirement of § 1.355-2(b);
- (ii) whether the Distributions are being used principally as devices for the distribution of the earnings and profits of Distributing1, Distributing 2, Distributing3, Controlled1, Controlled2, Controlled3, or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) whether the Distributions are 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 Distributing1, Distributing2, Distributing3, Controlled1, Controlled2 or Controlled3 (see § 355(e) and § 1.355-7); or
- (iv) the federal income tax consequences, if any, of steps xii, xv, xvi, or the Foreign Agreement.

Procedural Statements

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

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

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

Sincerely,

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

cc: