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Date:  
June 4, 2014

**LEGEND**

Distributing 1 =

Distributing 2 =

Distributing 3 =

Distributing 4 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FDRE 1 =

FDRE 2 =

FDRE 3 =

FDRE 4 =

FDRE 5 =

DRE 1 =

DRE 2 =

Merger Partner =

Merger Partner Sub =

Merger Partner  
Shareholder 1 =

Merger Partner  
Shareholder 2 =

Holding Partnership =

State A =

State B =

Country A =

Country B =

Country C =

Country D =

Business A =

Business B =

Business C =

Business D =

Restructuring =

GRA 1 =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

jj =

kk =

Additional Payment =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Dear :

This letter responds to your letter dated August 23, 2013, requesting rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements 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 any of the Proposed Transactions: (i) satisfies the business purpose

requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of a distributing corporation or controlled corporation, or both (see § 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or controlled corporation (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

## SUMMARY OF FACTS

Distributing 4, a State A corporation, has a single class of common stock outstanding that is widely held and publicly traded. Distributing 4 is the parent of a worldwide group that includes both domestic and foreign entities (the “Distributing 4 Worldwide Group”), and is also the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the “Distributing 4 Consolidated Group”). The Distributing 4 Worldwide Group conducts multiple lines of business, including Business A, Business B, Business C, and Business D. Distributing 4 intends to separate Business A from its other business lines, including Business B, Business C, and Business D (collectively, the “Retained Businesses”) through a series of transactions described below.

Distributing 4 wholly owns Distributing 3, Sub 1, and Sub 2, each a State B corporation and a member of the Distributing 4 Consolidated Group. Sub 2 was acquired by Distributing 4 in Year 1 (the “Sub 2 Acquisition”).

Distributing 3 wholly owns Distributing 2, a Country A entity classified as a corporation for U.S. federal income tax purposes. Distributing 2 wholly owns Distributing 1, a Country A entity classified as a corporation for U.S. federal income tax purposes. Distributing 2 and Distributing 1 are controlled foreign corporations within the meaning of section 957(a).

In Year 1, after the Sub 2 Acquisition, in order to integrate Sub 2’s Retained Businesses with Distributing 4’s and Distributing 1’s Retained Businesses, Distributing 4 undertook the Restructuring.

Distributing 1 wholly owns FDRE 1, a Country B entity, and FDRE 2, a Country A entity, each of which is disregarded as separate from Distributing 1 for U.S. federal income tax purposes.

FDRE 2 owns aa percent of the equity interests in FDRE 3, a Country C entity that is disregarded from Distributing 1 for U.S. federal income tax purposes. The remaining bb percent of FDRE 3 is held by Distributing 4 as a nominee for FDRE 2.

Each of FSub 1, FSub 2, and FSub 3 (collectively, the “Business A FSubs”) is a

Country C entity classified as a corporation for U.S. federal income tax purposes. FDRE 2 holds an equity interest as a nominee for FDRE 3 in each of the Business A FSubs, and FDRE 3 owns all the remaining equity interests in each of the Business A FSubs. FDRE 3 also wholly owns FSub 4, a Country C entity classified as a corporation for U.S. federal income tax purposes. Each of FSub 1, FSub 2, FSub 3, and FSub 4 is a controlled foreign corporation within the meaning of section 957(a).

Distributing 4 directly conducts Business A in Country D and indirectly conducts Business A outside of Country D, primarily in Country C. Distributing 4 also directly conducts the Retained Businesses in Country D and indirectly, through various subsidiaries, outside of Country D. Each of Distributing 3, Distributing 2, and Distributing 1 is a holding company that indirectly conducts Business A in Country C and certain of the Retained Businesses in Country C. Distributing 1 also indirectly conducts Retained Businesses in other countries. FDRE 1 directly engages in Business A and certain of the Retained Businesses in Country B. FDRE 1 also directly conducts Business A in other countries. The Business A FSubs directly engage in Business A in Country C. FSub 4 directly engages in certain of the Retained Businesses in Country C.

Holding Partnership, a State B limited liability company classified as a partnership for U.S. federal income tax purposes, owns all of the outstanding stock in Merger Partner, a State B corporation that is unrelated to the Distributing 4 Worldwide Group. Merger Partner is a holding company and is the parent of a worldwide group that includes both domestic and foreign entities (the "Merger Partner Worldwide Group") and is also the common parent of an affiliated group that files a consolidated U.S. federal income tax return (the "Merger Partner Consolidated Group"). Merger Partner owns all of the outstanding stock of Merger Partner Sub, a State B corporation. On Date 3, Merger Partner Shareholder 1, affiliates of Merger Partner Shareholder 2, and all other individuals owning stock in Merger Partner transferred all of the stock in Merger Partner to newly formed Holding Partnership.

Distributing 4 plans to undertake the Proposed Transactions to facilitate the strategic combination of Distributing 4's Business A operations with the business operations of Merger Partner, which is intended to leverage synergies, permit geographic expansion of the combined Business A, and result in considerable operational and administrative cost savings.

## PROPOSED TRANSACTIONS

Distributing 4 proposes to undertake (or has already undertaken) the following steps (collectively, the "Proposed Transactions"):

Internal Distributions:

- (i) FDRE 3 will form Controlled 1, a Country A entity that will be classified as a corporation for U.S. federal income tax purposes.
- (ii) FDRE 3 will form FDRE 4, a Country A entity that will be disregarded as separate from Distributing 1 for U.S. federal income tax purposes, with a nominal amount of money (the “Nominal Cash”).
- (iii) FDRE 4 will acquire the shares of each of the Business A FSubs held by FDRE 2 (the “Nominal Shares”) in exchange for the Nominal Cash, and will hold the Nominal Shares on behalf of Controlled 1.
- (iv) FDRE 3 will contribute to Controlled 1 all of its interests in FDRE 4 and the outstanding stock of the Business A FSubs in exchange for stock of Controlled 1.
- (v) FDRE 3 will transfer the stock of Controlled 1 to Distributing 1 in exchange for cash.
- (vi) In connection with the Proposed Transactions, Distributing 1 formed FDRE 5, a Country B entity disregarded as separate from Distributing 1 for U.S. federal income tax purposes, with cash. FDRE 5 used the cash to purchase the Country B non-Business A assets from FDRE 1.
- (vii) Distributing 1 will transfer all of its interests in FDRE 1 to Controlled 1 in exchange for stock of Controlled 1 (together with Step (iv), the “Controlled 1 Contribution”).
- (viii) Distributing 1 will distribute all the stock of Controlled 1 to Distributing 2 (alternatively, Distributing 2 may form a Country A entity that will be disregarded as separate from Distributing 2 for U.S. federal income tax purposes (“FDRE 6”), and, if so, Distributing 2 will transfer the stock of Distributing 1 to FDRE 6, Distributing 1 will distribute all the stock of Controlled 1 to FDRE 6, and FDRE 6 will distribute all the stock of Controlled 1 to Distributing 2) (the “First Internal Distribution”).
- (ix) Distributing 2 will distribute all the stock of Controlled 1 to Distributing 3 (the “Second Internal Distribution”).
- (x) Distributing 3 will distribute all the stock of Controlled 1 to Distributing 4 (the “Third Internal Distribution” and together with the First Internal Distribution and the Second Internal Distribution, the “Internal Distributions”).

External Distribution and Combination:



- (xi) Distributing 4 (a) formed Controlled 2, a State B corporation, and two new limited liability companies in State B and State A, respectively (“DRE 1” and “DRE 2”), each of which is disregarded as separate from Distributing 4 for U.S. federal income tax purposes, (b) will contribute certain Country D Business A assets to DRE 1, and (c) will contribute all the stock of Controlled 1, all of the stock of Sub 1, and the remaining Country D Business A assets to DRE 2.
- (xii) Distributing 4 will (a) contribute all of its interests in DRE 2 to DRE 1 and (b) contribute all of its interests in DRE 1 to Controlled 2.
- (xiii) DRE 2 will borrow from one or more unrelated third party lenders under a debt facility (the “Debt Facility”) and will distribute cash to DRE 1, which will then distribute the cash to Controlled 2. The Debt Facility may exceed the Base Cash Payment to be made to Distributing 4 in Step (xiv), with the excess proceeds to be used to repay existing debt owed by Merger Partner after the Combination in Step (xvii) or for general corporate purposes.
- (xiv) In exchange for the transfer of DRE 1 in Step (xii), Controlled 2 will: (a) issue stock of Controlled 2 to Distributing 4; (b) assume (or be treated for U.S. federal income tax purposes as assuming) liabilities associated with Business A in Country D; (c) distribute cash in the amount of \$ff (the “Base Cash Payment”), and (d) agree to make the Additional Payment (together with the Base Cash Payment, the “Cash Distribution”) (with Step (xii), the “Controlled 2 Contribution”). The Additional Payment is a contractual right, is not represented by any form of certificate or instrument, conveys no voting, liquidation or preemptive rights, is non-interest bearing, and is non-transferrable.

During the kk month period following the External Distribution, and pursuant to the plan of reorganization, Distributing 4 will expend cash in the amount of the Base Cash Payment to (1) make distributions to its shareholders (which distributions could include regular quarterly dividends to its shareholders); (2) repurchase its outstanding common stock (which repurchases could be made pursuant to its existing or amended stock repurchase plans); (3) pay its creditors (which payments could include certain long-term indebtedness previously incurred by Distributing 4 (including interest and associated fees, such as consent fees, as well as principal) and ordinary course liabilities (whenever incurred)); or (4) a combination of (1) through (3). The aggregate amount of the cash used pursuant to (1) through (4) will not be less than the amount of the Base Cash Payment.

Pursuant to a declaration by Distributing 4's Board of Directors on Date 5, and pursuant to the plan of reorganization, Distributing 4 will, within gg months following its receipt, if any, of the Additional Payment, use an amount of cash equal to the Additional Payment to repay creditors to whom Distributing 4 had existing debt obligations at the time of the External Distribution. Distributing 4 will establish a separate bank account to deposit any Additional Payment received.

- (xv) Distributing 4 will distribute, on a pro rata basis, the stock of Controlled 2 to Distributing 4's shareholders (the "External Distribution," and together with the Internal Distributions, the "Distributions").

Distributing 4's shareholders that otherwise would be entitled to receive fractional shares will receive cash in lieu thereof. Fractional share interests will be aggregated. An exchange agent will sell shares encompassing such interests in the open market and distribute the proceeds to Distributing 4's shareholders otherwise entitled to such interests. If taken into account for purposes of section 355(e), the sale of fractional shares could cause the External Distribution to be treated as a distribution to which section 355(e) applies, and this fact has been specifically considered in issuing Ruling 29.

- (xvi) Following the External Distribution and pursuant to a merger agreement entered into prior to the External Distribution, Merger Partner will merge with and into Controlled 2 (the "Combination"). In exchange for its Merger Partner shares, Holding Partnership will (a) receive shares of Controlled 2 representing cc (less than 50) percent of the stock of Controlled 2, (b) enter into a tax receivables agreement ("TRA"), pursuant to which Holding Partnership will be entitled to a payment equal to ee percent of the net tax savings that result from Controlled 2's use of Merger Partner Worldwide Group's net operating losses in a taxable year (or portion thereof) beginning after the closing date, and (c) if the working capital, net debt or transaction expenses of Merger Partner differs from agreed-upon amounts, receive a payment of cash from Controlled 2 (the "Combination Consideration").

Immediately after the Combination, Distributing 4's shareholders will own dd percent, and Holding Partnership will own cc percent, of the stock of Controlled 2.

- (xvii) Following the Combination, DRE 1 will merge with and into Merger Partner Sub with Merger Partner Sub surviving the merger (the "Merger Partner Sub Contribution"). Subsequently, Merger Partner Sub will repay certain of

its existing creditors with the proceeds of borrowing under the Debt Facility, to which Merger Partner Sub will be added as a co-borrower.

In connection with the Proposed Transactions, the parties to the Proposed Transactions entered into various agreements on Date 4. Distributing 4 and Controlled 2 and certain other parties have entered or will enter into a Tax Matters Agreement, a Contribution and Distribution Agreement, and an Employee Matters Agreement. In addition, Controlled 2 will enter into lease agreements with Distributing 4, a Supply Agreement with Distributing 4, and a Transition Services Agreement with Distributing 4. All agreements except for the lease agreements and the Supply Agreement are the “Related Arrangements.”

The initial Board of Directors of Controlled 2 as of the time of the External Distribution will consist of hh Directors. Distributing 4 will designate Controlled 2’s initial Chief Executive Officer, who will also be Chairman of the Board. Distributing 4 and Merger Partner will jointly designate ij of the Directors. Merger Partner will appoint the remaining Directors, one of whom is currently an employee of Merger Partner and one of whom is an employee of Merger Partner Shareholder 2 (together, the “Merger Partner Employee Directors”). All members of Controlled 2’s Board will be required to stand for election in the normal course following the Combination. For jj years, to compensate the Directors for their service on the Board, the Directors will receive cash payments, at least some amount of which will be tied to the value of the stock of Controlled 2, but will not receive stock or rights to stock in Controlled 2 in their capacity as members of the Board. If taken into account for purposes of section 355(e), the initial Board of Directors appointments could cause the External Distribution to be treated as a distribution to which section 355(e) applies, and this fact has been specifically considered in issuing Ruling 29.

Distributing 4 has granted equity-based awards under various stock-based compensation plans to officers and employees of the Distributing 4 Worldwide Group. Distributing 4 has various types of share-based compensation arrangements, including stock options, restricted stock, restricted stock units, and a performance share plan pursuant to which an employee is granted units that are paid in Distributing 4 equity at specified periods. Employees of Distributing 4 who become employees of Controlled 2 will receive their benefits under the Distributing 4 plans attributable to the period during which they were employees of Distributing 4. Equity-based incentive compensation plans are expected to be adopted for management of Controlled 2 after the Proposed Transactions (the “Controlled 2 Post-Distribution Compensatory Plans”). If the participants in the Controlled 2 Post-Distribution Compensatory Plans are treated as part of a “coordinating group” under Treas. Reg. § 1.355-7(h)(4) and any issuances of Controlled 2 stock pursuant to the plan are taken into account for purposes of section 355(e), such issuances could cause the External Distribution to be treated as a distribution to which section 355(e) applies, and these facts have been specifically considered in issuing Ruling 29.

Distributing 4 also sponsors and maintains a defined contribution pension plan that is qualified under section 401(a) that includes cash or deferred arrangements under section 401(k) and a related trust qualified under section 501(a) (collectively, the “Distributing 4 Section 401(k) Plan”). Participants in the Distributing 4 Section 401(k) Plan include Distributing 4 employees who will be transferred to Controlled 2 as part of the Proposed Transactions. One of the investment alternatives available under the Distributing 4 Section 401(k) Plan is a Distributing 4 common stock fund (the “Distributing 4 Stock Fund”). As a result of the Proposed Transactions, Distributing 4 will distribute shares of Controlled 2 stock to the Distributing 4 Stock Fund. Under the terms of the Distributing 4 Section 401(k) Plan, the Controlled 2 stock is not a permitted investment alternative. Therefore, the trustee of the Distributing 4 Section 401(k) Plan will sell all of the shares of Controlled 2 stock that will be distributed to the Distributing 4 Stock Fund in the External Distribution in one or more orderly open market sales within ii months following the Proposed Transactions. The cash received from those sales will likely be reinvested in Distributing 4 stock, but plan participants would be able to direct such funds into other investment options available under the Distributing 4 Section 401(k) Plan. If the aggregation rule of section 355(e)(4)(C)(i) were to apply for purposes of determining whether the Distributing 4 Stock Fund, with respect to any sales of Controlled 2 stock it makes, “actively participates in the management operation” of any corporation for purposes of the definition of “controlling shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3), such sales could cause the External Distribution to be treated as a distribution to which section 355(e) applies if those sales were regarded as part of a plan including the External Distribution, and this fact has been specifically considered in issuing Ruling 29.

## REPRESENTATIONS

### The Controlled 1 Contribution and the First Internal Distribution

- (1a) No part of the consideration to be distributed in the First Internal Distribution will be received by any shareholder of Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (1b) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 1 will treat all members of its separate affiliated group (the “Distributing 1 SAG”) as defined in section 355(b)(3)(B), as one corporation.
- (1c) The five years of financial information submitted on behalf of the Retained Businesses in Country C conducted by the Distributing 1 SAG is representative of its present business operations, and with regard to such businesses, there have been no substantial operational changes since the

date of the last financial statements submitted.

- (1d) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 1 will treat all members of its separate affiliated group (the “Controlled 1 SAG”) as defined in section 355(b)(3)(B), as one corporation.
- (1e) The five years of financial information submitted on behalf of Business A in Country C currently conducted by the Distributing 1 SAG is representative of its present business operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (1f) The Distributing 1 SAG will have neither acquired Business A in Country C nor (except in the Restructuring) acquired control of an entity conducting Business A in Country C during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (1g) The Distributing 1 SAG will have neither acquired the Retained Businesses in Country C nor (except in the Restructuring) acquired control of an entity conducting the Retained Businesses in Country C during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (1h) Following the First Internal Distribution, the Distributing 1 SAG will continue the active conduct of the Retained Businesses in Country C and the Controlled 1 SAG will continue the active conduct of Business A in Country C, independently and with their separate employees (except as otherwise provided pursuant to the Related Arrangements).
- (1i) The First Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution. The First Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (1j) The First Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (1k) There is no plan or intention to liquidate Distributing 1 or Controlled 1, to merge Distributing 1 or Controlled 1, or to sell or otherwise dispose of the

assets of Distributing 1 or Controlled 1 (except in the ordinary course of business) after the First Internal Distribution, except to integrate Business A in Country C with Merger Partner's business, or pursuant to the Proposed Transactions.

- (1l) Other than pursuant to the Proposed Transactions, there is no plan or intention by Distributing 1 or Controlled 1, or any party related to Distributing 1 or Controlled 1, to purchase or acquire any of the outstanding stock of Distributing 1 or Controlled 1 after the First Internal Distribution.
- (1m) For purposes of section 355(d), immediately after the First Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Internal Distribution.
- (1n) For purposes of section 355(d), immediately after the First Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Internal Distribution.
- (1o) Treating (i) the aggregation rule of section 355(e)(4)(C)(i) as not applying for purposes of determining whether the Distributing 4 Section 401(k) Plan "actively participates in the management or operation" of any corporation for purposes of the definition of "controlling shareholder" within the meaning of Treas. Reg. § 1.355-7(h)(3), and (ii) the initial composition of Controlled 2's Board of Directors, the sale of fractional shares, and the exercise or fulfillment of any Distributing 4 compensatory arrangement or Controlled 2 Compensatory Post-Distribution Compensation Plans as not resulting in any "acquisitions" for purposes of section 355(e), the External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons

will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any corporation). The determination of whether a person is a “Five-percent shareholder” or “Ten-percent shareholder” is made solely by reference to the Filings and Actual Knowledge. For purposes of this letter: (A) the Filings are the latest Schedules 13D or 13G filed with respect to the issuing company with the U.S. Securities and Exchange Commission on or prior to the date of the particular sale or disposition with respect to which it is being determined whether the seller or acquirer is a “Five-percent shareholder” or “Ten-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(8) and (14); and (B) Actual Knowledge is, with respect to any particular sale or disposition, limited to actual knowledge of (i) those persons whose ownership of stock and/or options is listed in a Form 3, 4 or 10-K filed by the issuing company with the U.S. Securities and Exchange Commission, and (ii) with respect to the persons listed in (i), the ownership of such stock or options listed in the latest relevant Form 3, 4 or 10-K made on or prior to the date of such sale or disposition.

- (1p) Immediately after the First Internal Distribution (taking into account section 355(g)(4)), neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (1q) The total fair market value of the assets transferred by Distributing 1 to Controlled 1 in the Controlled 1 Contribution will exceed the sum of: (i) the total amount of liabilities (if any) assumed (within the meaning of section 357(d)) by Controlled 1 in the exchange, (ii) the amount of liabilities (if any) owed by Distributing 1 to Controlled 1 that are discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of any other property (if any) (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) to be received by Distributing 1 from Controlled 1 in the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.
- (1r) The aggregate adjusted basis and the aggregate fair market value of the assets to be transferred to Controlled 1 by Distributing 1 in the Controlled 1 Contribution will each equal or exceed the sum of (i) the liabilities assumed (as determined under section 357(d)) by Controlled 1 plus any liabilities to which the transferred assets are subject, and (ii) the fair market value of any other property (within the meaning of section 361(b)) and the amount of money transferred by Controlled 1 to Distributing 1 in the exchange.

- (1s) The total fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will equal or exceed the aggregate adjusted basis of the assets transferred.
- (1t) The liabilities, if any, that will be assumed (within the meaning of section 357(d)) by Controlled 1 and the liabilities, if any, to which the transferred assets are subject will have been incurred in the ordinary course of business and will be associated with the assets being transferred.
- (1u) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transactions, Distributing 1 will have neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the First Internal Distribution.
- (1v) Except for indebtedness that may be created in the ordinary course of business or in connection with the Related Arrangements, no indebtedness will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the First Internal Distribution.
- (1w) Except with respect to certain payments made pursuant to the Related Arrangements, payments made in connection with continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (1x) Any indebtedness owed by Controlled 1 to Distributing 1 after the Controlled 1 Contribution and the First Internal Distribution will not constitute stock or securities.
- (1y) No two parties to the First Internal Distribution will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (1z) Distributing 1 and Controlled 1, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the First Internal Distribution.
- (1aa) No party to the Controlled 1 Contribution or the First Internal Distribution is under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (1bb) Immediately before and after the First Internal Distribution, Distributing 1 and Controlled 1 will each be a controlled foreign corporation (within the meaning of section 957(a)) with respect to which Distributing 3 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-



2(b)).

- (1cc) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied for the Controlled 1 Contribution and the First Internal Distribution.
- (1dd) Distributing 1 will not transfer any United States real property interests (as defined in Treas. Reg. § 1.897-1(c)) during the Controlled 1 Contribution.
- (1ee) At all times before and immediately after the Controlled 1 Contribution and the First Internal Distribution, neither Distributing 1 nor Controlled 1 has been or will be a passive foreign investment company (“PFIC”) as defined in section 1297(a).
- (1ff) The Controlled 1 Contribution and the First Internal Distribution will not include an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), Treas. Reg. § 1.367(b)-4(b)(2)(i), or Treas. Reg. § 1.367(b)-4(b)(3).
- (1gg) With respect to GRA 1 previously entered into by Distributing 4, as parent of the Distributing 4 Consolidated Group, in connection with a prior transfer of stock or securities, Distributing 4 will, to the extent required under Treas. Reg. §§ 1.367(a)-8(k) and 1.367(a)-8(c)(5), enter into a new gain recognition agreement (“GRA”) (i) identifying all triggering events and exceptions thereto resulting from the Proposed Transactions, (ii) designating a successor transferor corporation, transferee corporation, and/or transferred corporation, as applicable, and (iii) complying with all other requirements for GRAs under Treas. Reg. § 1.367(a)-8 (the “New GRA”). Additionally, Distributing 4 will comply with the notification requirements of Treas. Reg. § 1.367(a)-8 with respect to the New GRA.

#### The Second Internal Distribution

- (2a) No part of the consideration to be distributed in the Second Internal Distribution will be received by any shareholder of Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (2b) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 2 will treat all members of its separate affiliated group (the “Distributing 2 SAG”) as defined in section 355(b)(3), as one corporation.
- (2c) The five years of financial information submitted on behalf of the Retained Businesses in Country C conducted by the Distributing 2 SAG is representative of its present business operations, and with regard to such

business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (2d) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 1 will treat all members of its separate affiliated group (i.e., the Controlled 1 SAG) as defined in section 355(b)(3)(B), as one corporation.
- (2e) The five years of financial information submitted on behalf of Business A in Country C currently conducted by the Distributing 2 SAG is representative of its present business operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (2f) The Distributing 2 SAG will have neither acquired the Retained Businesses in Country C nor (except in the Restructuring) acquired control of an entity conducting the Retained Businesses in Country C during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (2g) The Distributing 2 SAG will have neither acquired Business A in Country C nor (except in the Restructuring) acquired control of an entity conducting Business A in Country C during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (2h) Following the Second Internal Distribution, the Distributing 2 SAG will continue the active conduct of the Retained Businesses in Country C and the Controlled 1 SAG will continue the active conduct of Business A in Country C, independently and with their separate employees (except as otherwise provided pursuant to the Related Arrangements).
- (2i) The Second Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution. The Second Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (2j) The Second Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 1 or both.
- (2k) There is no plan or intention to liquidate Distributing 2 or Controlled 1, to

merge Distributing 2 or Controlled 1, or to sell or otherwise dispose of the assets of Distributing 2 or Controlled 1 (except in the ordinary course of business) after the Second Internal Distribution, except to integrate Business A in Country C with Merger Partner's business, or pursuant to the Proposed Transactions.

- (2l) Other than pursuant to the Proposed Transactions, there is no plan or intention by Distributing 2 or Controlled 1, or any party related to Distributing 2 or Controlled 1, to purchase or acquire any of the outstanding stock of Distributing 2 or Controlled 1 after the Second Internal Distribution.
- (2m) For purposes of section 355(d), immediately after the Second Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Internal Distribution.
- (2n) For purposes of section 355(d), immediately after the Second Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Internal Distribution or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Internal Distribution.
- (2o) Treating (i) the aggregation rule of section 355(e)(4)(C)(i) as not applying for purposes of determining whether the Distributing 4 Section 401(k) Plan "actively participates in the management or operation" of any corporation for purposes of the definition of "controlling shareholder" within the meaning of Treas. Reg. § 1.355-7(h)(3), and (ii) the initial composition of Controlled 2's Board of Directors, the sale of fractional shares, and the exercise or fulfillment of any Distributing 4 compensatory arrangement or Controlled 2 Compensatory Post-Distribution Compensation Plans as not resulting in any "acquisitions" for purposes of section 355(e), the External Distribution is not part of a plan or series of related transactions (within the

meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Controlled 1 (including any predecessor or successor of any such corporation). The determination of whether a person is a “Five-percent shareholder” or “Ten-percent shareholder” is made solely by reference to the Filings and Actual Knowledge. For purposes of this letter: (A) the Filings are the latest Schedules 13D or 13G filed with respect to the issuing company with the U.S. Securities and Exchange Commission on or prior to the date of the particular sale or disposition with respect to which it is being determined whether the seller or acquirer is a “Five-percent shareholder” or “Ten-percent shareholder” within the meaning of Treas. Reg. §1.355-7(h)(8) and (14); and (B) Actual Knowledge is, with respect to any particular sale or disposition, limited to actual knowledge of, (i) those persons whose ownership of stock and/or options is listed in a Form 3, 4 or 10-K filed by the issuing company with the U.S. Securities and Exchange Commission, and (ii) with respect to the persons listed in (i), the ownership of such stock or options listed in the latest relevant Form 3, 4 or 10-K made on or prior to the date of such sale or disposition.

- (2p) Immediately after the Second Internal Distribution (taking into account section 355(g)(4)), neither Distributing 2 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (2q) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transactions, Distributing 2 will have neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Second Internal Distribution.
- (2r) Except for indebtedness that may be created in the ordinary course of business or in connection with the Related Arrangements, no indebtedness will exist between Distributing 2 and Controlled 1 at the time of, or subsequent to, the Second Internal Distribution.
- (2s) Except with respect to certain payments made pursuant to the Related Arrangements, payments made in connection with continuing transactions between Distributing 2 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.
- (2t) Any indebtedness owed by Controlled 1 to Distributing 2 after the Second Internal Distribution will not constitute stock or securities.

- (2u) No two parties to the Second Internal Distribution will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (2v) Distributing 2 and Controlled 1, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Second Internal Distribution.
- (2w) Immediately before and after the Second Internal Distribution, Distributing 2 and Controlled 1 will each be a controlled foreign corporation, within the meaning of section 957(a), with respect to which Distributing 3 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).
- (2x) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied for the Second Internal Distribution.
- (2y) At all times before and immediately after the Second Internal Distribution, neither Distributing 2 nor Controlled 1 has been or will be a passive foreign investment company (“PFIC”) as defined in section 1297(a).

#### The Third Internal Distribution

- (3a) No part of the consideration to be distributed in the Third Internal Distribution will be received by any shareholder of Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.
- (3b) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 3 will treat all members of its separate affiliated group (the “Distributing 3 SAG”) as defined in section 355(b)(3)(B), as one corporation.
- (3c) The five years of financial information submitted on behalf of the Retained Businesses in Country C conducted by the Distributing 3 SAG is representative of its present business operations, and with regard to such business, there has been no substantial operational changes since the date of the last financial statements submitted.
- (3d) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 1 will treat all members of its separate affiliated group (i.e., the Controlled 1 SAG) as defined in section 355(b)(3)(B), as one corporation.
- (3e) The five years of financial information submitted on behalf of Business A

in Country C currently conducted by the Distributing 3 SAG is representative of its present business operations, and with regard to such business, there has been no substantial operational changes since the date of the last financial statements submitted.

- (3f) The Distributing 3 SAG will have neither acquired the Retained Businesses in Country C nor (except in the Restructuring) acquired control of an entity conducting the Retained Businesses in Country C during the five-year period ending on the date of the Third Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (3g) The Distributing 3 SAG will have neither acquired Business A in Country C nor (except in the Restructuring) acquired control of an entity conducting Business A in Country C during the five-year period ending on the date of the Third Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (3h) Following the Third Internal Distribution, the Distributing 3 SAG will continue the active conduct of the Retained Businesses in Country C and the Controlled 1 SAG will continue the active conduct of Business A in Country C, independently and with their separate employees (except as otherwise provided pursuant to the Related Arrangements).
- (3i) The Third Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution. The Third Internal Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (3j) The Third Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 1 or both.
- (3k) There is no plan or intention to liquidate Distributing 3 or Controlled 1, to merge Distributing 3 or Controlled 1, or to sell or otherwise dispose of the assets of Distributing 3 or Controlled 1 (except in the ordinary course of business) after the Third Internal Distribution, except to integrate Business A in Country C with Merger Partner's business, or pursuant to the Proposed Transactions.
- (3l) Other than pursuant to the Proposed Transactions, there is no plan or intention by Distributing 3 or Controlled 1, or any party related to Distributing 3 or Controlled 1, to purchase or acquire any of the

outstanding stock of Distributing 3 or Controlled 1 after the Third Internal Distribution.

- (3m) For purposes of section 355(d), immediately after the Third Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50 percent or more of the total value of the shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Internal Distribution.
- (3n) For purposes of section 355(d), immediately after the Third Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Internal Distribution or (ii) attributable to distributions on Distributing 3 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Internal Distribution.
- (3o) Treating (i) the aggregation rule of section 355(e)(4)(C)(i) as not applying for purposes of determining whether the Distributing 4 Section 401(k) Plan “actively participates in the management or operation” of any corporation for purposes of the definition of “controlling shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3), and (ii) the initial composition of Controlled 2’s Board of Directors, the sale of fractional shares, and the exercise or fulfillment of any Distributing 4 compensatory arrangement or Controlled 2 Compensatory Post-Distribution Compensation Plans as not resulting in any “acquisitions” for purposes of section 355(e), the External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 3 or Controlled 1 (including any predecessor or successor of any such corporation). The determination of whether a person is a “Five-percent shareholder” or “Ten-percent shareholder” is made solely by reference to the Filings and Actual Knowledge. For purposes of this letter: (A) the Filings are the latest Schedules 13D or 13G filed with respect to the issuing company with the U.S. Securities and Exchange Commission on

or prior to the date of the particular sale or disposition with respect to which it is being determined whether the seller or acquirer is a “Five-percent shareholder” or “Ten-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(8) and (14); and (B) Actual Knowledge is, with respect to any particular sale or disposition, limited to actual knowledge of (i) those persons whose ownership of stock and/or options is listed in a Form 3, 4, or 10-K filed by the issuing company with the U.S. Securities and Exchange Commission, and (ii) with respect to the persons listed in (i), the ownership of such stock or options listed in the latest relevant Form 3, 4 or 10-K made on or prior to the date of such sale or disposition.

- (3p) Immediately after the Third Internal Distribution (taking into account section 355(g)(4)), neither Distributing 3 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (3q) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transactions, Distributing 3 will have neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Third Internal Distribution.
- (3r) Except for indebtedness that may be created in the ordinary course of business or in connection with the Related Arrangements, no indebtedness will exist between Distributing 3 and Controlled 1 at the time of, or subsequent to, the Third Internal Distribution.
- (3s) Except with respect to certain payments made pursuant to the Related Arrangements, payments made in connection with continuing transactions between Distributing 3 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.
- (3t) Any indebtedness owed by Controlled 1 to Distributing 3 after the Third Internal Distribution will not constitute stock or securities.
- (3u) No two parties to the Third Internal Distribution will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (3v) Distributing 3 and Controlled 1, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Third Internal Distribution.
- (3w) Immediately before the Third Internal Distribution, Controlled 1 will be a controlled foreign corporation, within the meaning of section 957(a), with



respect to which Distributing 3 will be a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)).

- (3x) Distributing 4 will be a section 1248 shareholder (as defined in Reg. § 1.1248(f)-1(c)(12)) with respect to Controlled 1 immediately after the Third Internal Distribution (Treas. Reg. § 1.1248(f)-2(b)).
- (3y) The Third Internal Distribution will be an existing stock distribution (as defined in Treas. Reg. § 1.1248(f)-1(b)(2)) to which Distributing 3 and Distributing 4 will elect to apply the provisions of Treas. Reg. § 1.1248(f)-2(b) in accordance with Treas. Reg. § 1.1248(f)-2(b)(1).
- (3z) Immediately after the Third Internal Distribution, Distributing 4 will, for purposes of section 1248 and in accordance with Reg. § 1.1248(f)-2(b)(2), adjust its holding period in each share of stock of Controlled 1 received in the Third Internal Distribution such that Distributing 4's holding period in each share is equal to Distributing 3's holding period in the share at the time of the Third Internal Distribution. Distributing 4 will, in accordance with Treas. Reg. § 1.1248(f)-2(b)(3), reduce its section 358 basis (as defined in Treas. Reg. § 1.1248(f)-1(c)(7)) in each share of stock of Controlled 1 received in the Third Internal Distribution to the extent that Distributing 3's section 1248 amount (as defined in Treas. Reg. § 1.1248(f)-1(c)(9)) with respect to the share exceeds Distributing 4's postdistribution amount (as defined in Treas. Reg. § 1.1248(f)-1(c)(6)) with respect to the share.
- (3aa) Immediately before the Third Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).

#### The Controlled 2 Contribution and the External Distribution

- (4a) Any indebtedness owed by Controlled 2 to Distributing 4 after the Controlled 2 Contribution and the External Distribution will not constitute stock or securities.
- (4b) No part of the consideration to be distributed in the External Distribution will be received by any shareholder of Distributing 4 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

- (4c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 4 will treat all members of its separate affiliated group (the "Distributing 4 SAG") as defined in section 355(b)(3)(B), as one corporation.
- (4d) The five years of financial information submitted on behalf of the Retained Businesses conducted by the Distributing 4 SAG is representative of their present business operations, and with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4e) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 2 will treat all members of its separate affiliated group (the "Controlled 2 SAG") as defined in section 355(b)(3)(B), as one corporation.
- (4f) The five years of financial information submitted on behalf of Business A currently conducted by the Distributing 4 SAG is representative of its present business operations, and with regard to such business, there has been no substantial operational changes since the date of the last financial statements submitted.
- (4g) The Distributing 4 SAG will have neither acquired the Retained Businesses nor (except for the acquisition of Sub 2) acquired control of an entity conducting the Retained Businesses during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (4h) The Distributing 4 SAG will have neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (4i) Following the External Distribution, the Distributing 4 SAG will continue the active conduct of the Retained Businesses and the Controlled 2 SAG (including Merger Partner Sub) will continue the active conduct of Business A, independently and with their separate employees (except as otherwise provided pursuant to the Related Arrangements).
- (4j) The External Distribution will be carried out to facilitate the strategic combination of Distributing 4's Business A with the business of Merger Partner. The External Distribution is motivated, in whole or substantial

part, by this corporate business purpose.

- (4k) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 4 or Controlled 2 or both.
- (4l) There is no plan or intention to liquidate Distributing 4 or Controlled 2, to merge Distributing 4 or Controlled 2, or to sell or otherwise dispose of the assets of Distributing 4 or Controlled 2 (except in the ordinary course of business) after the External Distribution, except to integrate Business A with Merger Partner's business, or pursuant to the Proposed Transactions.
- (4m) Other than pursuant to the Proposed Transactions, there is no plan or intention by Distributing 4 or Controlled 2, or any party related to Distributing 4 or Controlled 2, to purchase or acquire any of the outstanding stock of Distributing 4 or Controlled 2 after the External Distribution.
- (4n) The payment of cash in lieu of fractional shares of Controlled 2 stock is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. No Distributing 4 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 common stock.
- (4o) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 4 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (4p) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 4 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying

section 355(d)(6)) ending on the date of the External Distribution.

- (4q) Treating (i) the aggregation rule of section 355(e)(4)(C)(i) as not applying for purposes of determining whether the Distributing 4 Section 401(k) Plan “actively participates in the management or operation” of any corporation for purposes of the definition of “controlling shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3), and (ii) the initial composition of Controlled 2’s Board of Directors, the sale of fractional shares, and the exercise or fulfillment of any Distributing 4 compensatory arrangement or Controlled 2 Compensatory Post-Distribution Compensation Plans as not resulting in any “acquisitions” for purposes of section 355(e), the External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 4 or Controlled 2 (including any predecessor or successor of any such corporation). The determination of whether a person is a “Five-percent shareholder” or “Ten-percent shareholder” is made solely by reference to the Filings and Actual Knowledge. For purposes of this letter: (A) the Filings are the latest Schedules 13D or 13G filed with respect to the issuing company with the U.S. Securities and Exchange Commission on or prior to the date of the particular sale or disposition with respect to which it is being determined whether the seller or acquirer is a “Five-percent shareholder” or “Ten-percent shareholder” within the meaning of Treas. Reg. §1.355-7(h)(8) and (14); and (B) Actual Knowledge is, with respect to any particular sale or disposition, limited to actual knowledge of (i) those persons whose ownership of stock and/or options is listed in a Form 3, 4 or 10-K filed by the issuing company with the U.S. Securities and Exchange Commission, and (ii) with respect to the persons listed in (i), the ownership of such stock or options listed in the latest relevant Form 3, 4 or 10-K made on or prior to the date of such sale or disposition.
- (4r) Immediately after the External Distribution (taking into account section 355(g)(4)), neither Distributing 4 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (4s) The total fair market value of the assets to be transferred by Distributing 4 to Controlled 2 in the Controlled 2 Contribution will exceed the sum of: (i) the total amount of liabilities (if any) assumed (within the meaning of section 357(d)) by Controlled 2 in the exchange, (ii) the amount of liabilities (if any) owed by Distributing 4 to Controlled 2 that will be discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of any other property (if any) (other than stock and securities permitted to be received under section 361(a) without the

recognition of gain) to be received by Distributing 4 from Controlled 2 in the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

- (4t) The aggregate adjusted basis and the aggregate fair market value of the assets to be transferred by Distributing 4 to Controlled 2 in the Controlled 2 Contribution will each equal or exceed the sum of: (i) the liabilities assumed (as determined under section 357(d)) by Controlled 2, plus any liabilities to which the transferred assets are subject, and (ii) the fair market value of any other property (within the meaning of section 361(b)) and the amount of any money transferred by Controlled 2 to Distributing 4.
- (4u) The total fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will equal or exceed the aggregate adjusted basis of the assets transferred.
- (4v) The liabilities, if any, that will be assumed (within the meaning of section 357(d)) by Controlled 2 and the liabilities, if any, to which the transferred assets are subject will have been incurred in the ordinary course of business and will be associated with the assets being transferred.
- (4w) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transactions, Distributing 4 will have neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Distribution.
- (4x) Except for indebtedness that may be created in the ordinary course of business or in connection with the Related Arrangements, no indebtedness will exist between Distributing 4 and Controlled 2 at the time of, or subsequent to, the External Distribution.
- (4y) Except with respect to certain payments made pursuant to the Related Arrangements, payments made in connection with continuing transactions between Distributing 4 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (4z) No two parties to the Controlled 2 Contribution will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (4aa) Distributing 4 and Controlled 2, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the External Distribution.

- (4bb) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19 will be included in income, as appropriate.
- (4cc) No party to the Controlled 2 Contribution is under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (4dd) With respect to the New GRA to be entered into by Distributing 4, as parent of the Distributing 4 Consolidated Group, in connection with the Proposed Transactions, Controlled 2 will, to the extent required under Treas. Reg. §§ 1.367(a)-8(k) and 1.367(a)-8(c)(5), enter into a new GRA (the “Controlled 2 GRA”) (i) identifying all triggering events and exceptions thereto resulting from the Proposed Transactions, (ii) designating a successor transferor corporation, transferee corporation, and/or transferred corporation, as applicable, and (iii) complying with all other requirements for GRAs under Treas. Reg. § 1.367(a)-8. Additionally, Controlled 2 will comply with the notification requirements of Treas. Reg. § 1.367(a)-8 with respect to any such Controlled 2 GRA.
- (4ee) Distributing 4 has not been and will not be a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the External Distribution.

### The Combination

- (5a) The Combination will be effected pursuant to the laws of State B and will qualify as a statutory merger under applicable State B law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously at the effective time of the Combination: (i) all of the assets and liabilities of Merger Partner immediately before the Combination will become the assets and liabilities of Controlled 2; and (ii) Merger Partner will cease its separate legal existence for all purposes.
- (5b) The fair market value of the Combination Consideration will be approximately equal to the fair market value of the Merger Partner stock surrendered by Holding Partnership in the exchange.
- (5c) At least 40 percent of the proprietary interests in Merger Partner will be exchanged for shares of Controlled 2 common stock and will be preserved

within the meaning of Treas. Reg. § 1.368-1(e)(1).

- (5d) There is no plan or intention for Controlled 2 or any person related (within the meaning of Treas. Reg. § 1.368-1(e)(3)) to Controlled 2 to redeem or otherwise acquire, directly or indirectly, any Controlled 2 common stock issued in the Combination.
- (5e) There is no plan or intention to sell or otherwise dispose of any of the Merger Partner assets acquired in the Combination, except for dispositions made in the ordinary course of business or transfers of assets to which section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k) applies.
- (5f) The liabilities of Merger Partner to be assumed (as determined under section 357(d)) by Controlled 2 and the liabilities to which the transferred assets of Merger Partner are subject were incurred by Merger Partner in the ordinary course of its business and are associated with the assets transferred.
- (5g) Following the Combination, Controlled 2, either directly or through one or more members of its qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)), will continue the historic business of Merger Partner or use a significant portion of Merger Partner's historic assets in a business.
- (5h) There will be no intercorporate indebtedness existing between Merger Partner and Controlled 2 that will be issued, acquired, or settled at a discount.
- (5i) Immediately before the Combination, the total fair market value of the assets of Merger Partner to be transferred to Controlled 2 will exceed the sum of: (i) the total amount of liabilities (if any) to be assumed (as determined under section 357(d)) by Controlled 2, plus any liabilities to which the transferred assets will be subject, (ii) the total amount of liabilities (if any) owed by Merger Partner to Controlled 2 that will be discharged or extinguished in connection with the Combination, and (iii) the amount of cash, the fair market value of the TRA, and the fair market value of any other property (other than property permitted to be received under section 361(a) without the recognition of gain) to be received by Holding Partnership from Controlled 2 in connection with the Combination.
- (5j) Immediately after the Combination, the aggregate fair market value of the assets of Controlled 2 will exceed the sum of liabilities of Controlled 2, plus the other liabilities, if any, to which the assets of Controlled 2 will be subject.

- (5k) No two parties to the Combination will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (5l) At the time of the Combination, neither Merger Partner nor Controlled 2 will be under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (5m) The Combination will be undertaken to facilitate the strategic combination of Distributing 4's Business A (to be conducted by the Controlled 2 SAG) with the business of Merger Partner.
- (5n) Controlled 2, Merger Partner, and Holding Partnership will each pay their own expenses incurred in connection with the Combination.
- (5o) The receipt of cash in lieu of fractional shares, if any, of Controlled 2 stock will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash consideration that will be received in connection with the Combination in lieu of fractional shares of Controlled 2 stock will not exceed one percent of the total consideration that will be distributed to holders of Merger Partner stock in the Combination. Any fractional share interests will be aggregated, and no holder of Merger Partner stock will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Merger Partner stock.

#### The Merger Partner Sub Contribution

- (6a) The Merger Partner Sub Contribution will be undertaken to integrate Controlled 2's Business A with Merger Partner's Business A.
- (6b) At the time of the Merger Partner Sub Contribution, Controlled 2 will directly own 100 percent of the outstanding equity interests in DRE 1, DRE 1 will own 100 percent of the outstanding equity interests in DRE 2, and DRE 1 and DRE 2 will be disregarded as separate from Controlled 2.
- (6c) No actions will be taken (e.g., an entity classification election to be treated as an association taxable as a corporation for U.S. federal income tax purposes under Treas. Reg. §§ 301.7701-2(b) and 301.7701-3(c), admission of a second member that is not disregarded as separate from Controlled 2, etc.), and no other circumstances will exist that will prevent DRE 1 and DRE 2 from being disregarded as separate from Controlled 2, under Treas. Reg. §§ 301.7701-2(c) and 301.7701-3(b) at the time of the Merger Partner Sub Contribution.



- (6d) No Merger Partner Sub stock or securities will be issued (or deemed issued) for services rendered to or for the benefit of Merger Partner Sub in connection with the Merger Partner Sub Contribution.
- (6e) No Merger Partner Sub stock or securities will be issued (or deemed issued) for indebtedness of Merger Partner Sub that is not evidenced by a security or for interest on indebtedness of Merger Partner Sub which accrued on or after the beginning of the holding period of Controlled 2 for the indebtedness.
- (6f) None of the stock to be transferred in the Merger Partner Sub Contribution is “section 306 stock” within the meaning of section 306(c) of the Code.
- (6g) The Merger Partner Sub Contribution is not the result of a solicitation by a promoter, broker, or investment house.
- (6h) Controlled 2 will not retain any rights in the property transferred to Merger Partner Sub.
- (6i) The aggregate adjusted basis and the aggregate fair market value of the assets to be transferred by Controlled 2 to Merger Partner Sub will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Merger Partner Sub plus any liabilities to which the transferred assets are subject.
- (6j) Except for the Debt Facility, the liabilities of Controlled 2 to be assumed by Merger Partner Sub were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (6k) There is no indebtedness between Controlled 2 and Merger Partner Sub and there will be no indebtedness created in favor of Controlled 2 as a result of the Merger Partner Sub Contribution.
- (6l) The Merger Partner Sub Contribution will occur pursuant to a plan agreed upon before the Merger Partner Sub Contribution in which the rights of the parties are defined.
- (6m) All exchanges pursuant to the Merger Partner Sub Contribution will occur on approximately the same date.
- (6n) There is no plan or intention on the part of Merger Partner Sub to redeem or otherwise acquire any stock issued (or deemed to be issued) in the Merger Partner Sub Contribution.

- (6o) Taking into account all issuances of shares of Merger Partner Sub stock in connection with the Merger Partner Sub Contribution, any issuance of stock for services, the exercise of any Merger Partner Sub stock right, warrant, or subscription, any public offering of Merger Partner Sub stock, and all sales, exchanges, transfers by gift, or other dispositions of any Merger Partner Sub stock to be received in the Merger Partner Sub Contribution, Controlled 2 is and will remain the sole shareholder of Merger Partner Sub, and therefore will be in “control” of Merger Partner Sub within the meaning of section 368(c), after the Merger Partner Sub Contribution.
- (6p) Controlled 2 will be deemed to receive stock of Merger Partner Sub approximately equal to the fair market value of the property transferred in the Merger Partner Sub Contribution.
- (6q) Merger Partner Sub will remain in existence and retain and use the property transferred to it in a trade or business.
- (6r) There is no plan or intention by Merger Partner Sub to dispose of the property transferred to it except in the normal course of its business operations.
- (6s) Each of Controlled 2 and Merger Partner Sub will pay its own expenses, if any, incurred in connection with the Merger Partner Sub Contribution.
- (6t) Merger Partner Sub will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (6u) Controlled 2 is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the Merger Partner Sub Contribution will not be used to satisfy indebtedness of Controlled 2.
- (6v) Merger Partner Sub will not be a “personal services corporation” within the meaning of section 269A of the Code.
- (6w) The total fair market value of the property transferred by Controlled 2 to Merger Partner Sub will exceed the sum of (i) the amount of liabilities assumed (as determined under section 357(d)) by Merger Partner Sub in connection with the Merger Partner Sub Contribution, (ii) the amount of liabilities owed to Merger Partner Sub by Controlled 2 that were discharged or extinguished in connection with the Merger Partner Sub Contribution, and (iii) the amount of any money and the fair market value

of any other property (other than stock permitted to be received under section 351(a) without the recognition of gain) received by Controlled 2 in connection with the Merger Partner Sub Contribution.

- (6x) Immediately after the Merger Partner Sub Contribution, the aggregate fair market value of the assets of Merger Partner Sub will exceed the sum of its liabilities (whether indebtedness or other forms of obligations, including contingent obligations), plus the liabilities, if any, to which the assets of Merger Partner Sub are subject.
- (6y) Controlled 2's adjusted basis in the property transferred pursuant to the Merger Partner Sub Contribution will not exceed the fair market value of the transferred property.
- (6z) All transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Merger Partner Sub Contribution have been fully disclosed.
- (6aa) Controlled 2, and all other members of the Controlled 2 affiliated group (including the subsidiaries of Merger Partner), will effect an election to file a consolidated return for U.S. federal income tax purposes, effective immediately after the External Distribution, with Controlled 2 as the common parent (the "Controlled 2 Consolidated Group").
- (6bb) No member of the Controlled 2 Consolidated Group is described in, or will engage in a transaction (during the relevant time period) that is described in, any of the paragraphs of Treas. Reg. § 1.1502-13(g)(3)(i)(B)(1)(i) – (vi).

## RULINGS

### The Controlled 1 Contribution and the First Internal Distribution

1. The Controlled 1 Contribution, together with the First Internal Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be a "party to a reorganization" within the meaning of Section 368(b).
2. Distributing 1 will not recognize any gain or loss upon its transfer of assets to Controlled 1 in exchange for Controlled 1 stock and Controlled 1's assumption of liabilities in the Controlled 1 Contribution. Sections 361(a) and 357(a).
3. Controlled 1 will not recognize any gain or loss upon its receipt of assets from Distributing 1 in the Controlled 1 Contribution. Section 1032(a).

4. Controlled 1's basis in each asset received from Distributing 1 in the Controlled 1 Contribution will equal the basis of the asset in the hands of Distributing 1 immediately before the Controlled 1 Contribution. Section 362(b).
5. Controlled 1's holding period in each asset received from Distributing 1 in the Controlled 1 Contribution will include the period during which Distributing 1 held that asset. Section 1223(2).
6. Distributing 1 will not recognize any gain or loss upon its distribution of the stock of Controlled 1 to Distributing 2 in the First Internal Distribution. Section 361(c).
7. Distributing 2 will not recognize any gain or loss (and no amount will be includible in its income) upon its receipt of the stock of Controlled 1 in the First Internal Distribution. Section 355(a)(1).
8. Distributing 2's basis in its Distributing 1 stock and Controlled 1 stock immediately after the First Internal Distribution will be the same as its basis in the Distributing 1 stock immediately before the First Internal Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each immediately following the First Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(iv). Section 358(a), (b) and (c).
9. Distributing 2's holding period in the Controlled 1 stock it received in the First Internal Distribution will include the holding period of the Distributing 1 stock with respect to which the First Internal Distribution is made, provided that the Distributing 1 stock is held as a capital asset on the date of the First Internal Distribution. Section 1223(1).
10. Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
11. The First Internal Distribution will be an exchange to which Treas. Reg. § 1.367(b)-1(c), Treas. Reg. § 1.367(b)-5(a), Treas. Reg. § 1.367(b)-5(c), and Treas. Reg. § 1.367(b)-5(f) apply. If the Distributing 1 shareholder's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to such corporation, the shareholder's basis in such stock immediately after the First Internal Distribution must be reduced by the amount of the difference. However, the

Distributing 1 shareholder's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, the shareholder must instead include such amount in income as a deemed dividend from such corporation. If the shareholder reduces the basis in the stock of Distributing 1 or Controlled 1 (or has an inclusion with respect to such stock), such shareholder must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

### The Second Internal Distribution

12. Distributing 3 will not recognize any gain or loss (and no amount will be includible in its income) upon the receipt of the stock of Controlled 1 in the Second Internal Distribution. Section 355(a)(1); Rev. Rul. 62-138.
13. Distributing 2 will not recognize any gain or loss upon its distribution of the stock of Controlled 1 to Distributing 3 in the Second Internal Distribution. Section 355(c).
14. Distributing 3's basis in its Distributing 2 stock and Controlled 1 stock immediately after the Second Internal Distribution will be the same as its basis in the Distributing 2 stock immediately before the Second Internal Distribution, allocated between the stock of Distributing 2 and Controlled 1 in proportion to the fair market value of each immediately following the Second Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(iv). Sections 358(a), (b) and (c).
15. Distributing 3's holding period in the Controlled 1 stock it received in the Second Internal Distribution will include the holding period of the Distributing 2 stock with respect to which the Second Internal Distribution is made, provided that the Distributing 2 stock is held as a capital asset on the date of the Second Internal Distribution. Section 1223(1).
16. Distributing 2's earnings and profits, if any, will be adjusted and Controlled 1's earnings and profits will be determined in accordance with section 312(h) and Treas. Reg. § 1.312-10(b).
17. The Second Internal Distribution will be distribution to which Treas. Reg. § 1.367(b)-1(c), Treas. Reg. § 1.367(b)-5(a), Treas. Reg. § 1.367(b)-5(c), and Treas. Reg. § 1.367(b)-5(f) apply. If Distributing 3's post-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 2 or Controlled 1 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to such corporation, Distributing 3's basis in such stock immediately after the Second Internal Distribution must be reduced by the amount of the difference. However, Distributing 3's basis in

such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing 3 must instead include such amount in income as a deemed dividend from such corporation. If Distributing 3 reduces the basis in the stock of Distributing 2 or Controlled 1 (or has an inclusion with respect to such stock), Distributing 3 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

### The Third Internal Distribution

18. Distributing 4 will not recognize any gain or loss (and no amount will be includible in its income) upon its receipt of the stock of Controlled 1 in the Third Internal Distribution. Section 355(a)(1); Rev. Rul. 62-138.
19. Distributing 3 will not recognize any gain or loss upon its distribution of Controlled 1 stock to Distributing 4 in the Third Internal Distribution. Section 355(c).
20. Distributing 4's basis in its Distributing 3 stock and Controlled 1 stock immediately after the Third Internal Distribution will be the same as its basis in the Distributing 3 stock immediately before the Third Internal Distribution, allocated between the stock of Distributing 3 and Controlled 1 in proportion to the fair market value of each immediately following the Third Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(iv). Sections 358(a), (b) and (c).
21. Distributing 4's holding period in the Controlled 1 stock it received in the Third Internal Distribution will include the holding period of the Distributing 3 stock with respect to which the Third Internal Distribution is made, provided that the Distributing 3 stock is held as a capital asset on the date of the Third Internal Distribution. Section 1223(1).
22. Distributing 3's earnings and profits, if any, will be adjusted and Controlled 1's earnings and profits will be determined in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).
23. Provided that Distributing 3 and Distributing 4 elect to apply the provisions of Treas. Reg. § 1.1248(f)-2(b) in accordance with Treas. Reg. § 1.1248(f)-2(b)(1), Distributing 3 will not be required under Treas. Reg. § 1.1248(f)-1(b)(2) to include in gross income as a dividend the section 1248 amount with respect to the stock of Controlled 1 distributed to Distributing 4. Treas. Reg. § 1.1248(f)-2(b).

### The Controlled 2 Contribution and the External Distribution

24. The Controlled 2 Contribution, together with the External Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing 4 and Controlled 2 each will be a “party to a reorganization” within the meaning of Section 368(b).
25. Distributing 4 will not recognize any gain or loss upon its transfer of assets to Controlled 2 in exchange for Controlled 2 stock, Controlled 2’s assumption of liabilities, and the Base Cash Payment in the Controlled 2 Contribution. Sections 361(a), 361(b), 357(a).
26. Controlled 2 will not recognize any gain or loss upon its receipt of assets from Distributing 4 in the Controlled 2 Contribution. Section 1032(a).
27. Controlled 2’s basis in each asset received from Distributing 4 in the Controlled 2 Contribution will equal the basis of the asset in the hands of Distributing 4 immediately before the Controlled Contribution, increased by the amount of gain, if any, recognized by Distributing 4 on such transfer. Section 362(b).
28. Controlled 2’s holding period in each asset received from Distributing 4 in the Controlled 2 Contribution will include the period during which such asset was held by Distributing 4. Section 1223(2).
29. Distributing 4 will not recognize any gain or loss upon its distribution of the stock of Controlled 2 in the External Distribution. Section 361(c).
30. Distributing 4’s shareholders will not recognize any gain or loss (and no amount will be includible in their income) upon the receipt of Controlled 2 stock in the External Distribution. Section 355(a)(1).
31. Each Distributing 4 shareholder’s basis in the Distributing 4 stock and Controlled 2 stock immediately after the External Distribution (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) will equal the basis of the Distributing 4 stock that the shareholder held immediately before the External Distribution, allocated between the stock of Distributing 4 and Controlled 2 in proportion to the fair market value of each immediately following the External Distribution in accordance with Treas. Reg. §1.358-2(a)(2)(iv). Section 358(a), (b) and (c).
32. Each Distributing 4 shareholder’s holding period in the Controlled 2 stock received in the External Distribution (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) will include the holding period of the Distributing 4 stock with respect to which the External

Distribution is made, provided that the shareholder holds such Distributing 4 stock as a capital asset on the date of the External Distribution. Section 1223(1).

33. The receipt by Distributing 4 shareholders of cash in lieu of fractional shares of Controlled 2 common stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to the Distributing 4 shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized, if any, will be measured by the difference between the basis of the fractional share received (determined using the bases allocated to the fractional shares in ruling (31)), and the amount of cash received. Section 1001. Any gain or loss will be treated as a capital gain or loss, provided that such fractional share would be held as a capital asset on the date of the External Distribution by the selling shareholder. Sections 1221 and 1222. Such gain or loss will be short-term or long-term capital gain (or loss) (determined using the holding period provided in ruling (32)).
34. Proper allocation of earnings and profits, if any, between Distributing 4 and Controlled 2 will be made in accordance with section 312(h) and Treas. Reg. §§1.312-10(a) and 1.1502-33(e)(3).
35. The earnings and profits, if any, of Controlled 1, to the extent attributable to Distributing 4 under Treas. Reg. §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period in which such corporation was a controlled foreign corporation, will be attributable to such stock held by Controlled 2. Treas. Reg. § 1.1248-1(a)(1).
36. Following the External Distribution, Controlled 2 will not be a successor of Distributing 4 for purposes of section 1504(a)(3). Therefore, Controlled 2 and its direct and indirect subsidiaries that are “includible corporations” under section 1504(b) and satisfy the ownership requirements of section 1504(a)(4) will be members of an affiliated group of corporations entitled to file a consolidated U.S. federal income tax return with Controlled 2 as the common parent.
37. Except for purposes of section 355(g), any post-External Distribution payments made by Distributing 4 to Controlled 2, or vice versa, pursuant to the Related Arrangements that (i) have arisen or will arise with respect to a taxable period ending on or before the External Distribution or for a taxable period beginning on or before and ending after the External Distribution and (ii) will not have become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External



Distribution. See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

### The Combination

38. Provided that the Combination qualifies as a statutory merger under applicable law, for U.S. federal income tax purposes the Combination will be treated as a transfer by Merger Partner of its assets to Controlled 2 in exchange for Controlled 2 stock, Controlled 2's assumption of Merger Partner's liabilities, and the TRA, followed by Merger Partner's distribution to Holding Partnership of the Controlled 2 stock, the TRA, and any cash pursuant to the Merger Partner working capital adjustment, pursuant to a plan of reorganization, in cancellation of Holding Partnership' stock in Merger Partner. The Combination will constitute a reorganization within the meaning of section 368(a)(1)(A). Merger Partner and Controlled 2 will each be a "party to a reorganization" within the meaning of section 368(b).
39. Merger Partner will not recognize any gain or loss upon the transfer of its assets to Controlled 2 in exchange for Controlled 2 common stock, the TRA, and the assumption of its liabilities in the Combination. Sections 357(a) and 361(b).
40. Merger Partner will not recognize any gain or loss on the distribution of Controlled 2 stock and the TRA to Holding Partnership in the Combination. Section 361(c).
41. Holding Partnership will recognize gain, if any, in the stock of Merger Partner in an amount not in excess of the sum of the fair market value of the TRA and any cash distributed to it or on its behalf pursuant to the Merger Partner working capital adjustment. Section 356(a)(1). If the exchange has the effect of the distribution of a dividend (determined with the application of section 318(a)), then the amount of the gain recognized that is not in excess of Holding Partnership's ratable share of undistributed earnings and profits of Merger Partner will be treated as a dividend. Section 356(a)(2). The determination of whether the exchange has the effect of a distribution of a dividend will be made in accordance with the principles set forth in Commissioner v. Clark, 489 U.S. 726 (1989). The remainder, if any, of the gain recognized will be treated as gain from the exchange of property. No loss will be recognized on the exchange (§ 356(c)).
42. Holding Partnership's basis in the Controlled 2 stock received in the Combination (including any fractional share interest deemed received) will be the same as its basis in the Merger Partner stock surrendered in exchange therefore, decreased by the fair market value of the TRA received and the

- amount of any cash distributed pursuant to the Merger Partner working capital adjustment, and increased by the amount of gain recognized and the amount, if any, treated as a dividend. Section 358(a).
43. Holding Partnership's holding period in the Controlled 2 stock received in the Combination (including any fractional share interest deemed received) will include the holding period of the Merger Partner stock surrendered in exchange therefore, provided that the Merger Partner stock is held as a capital asset on the date of the Combination. Section 1223(1).
  44. Holding Partnership's receipt of cash in lieu of a fractional share of Controlled 2 stock will be treated for federal income tax purposes as if the fractional share had been distributed to Holding Partnership as part of the Combination and then had been disposed of by Holding Partnership for the amount of cash in a sale or exchange pursuant to which gain or loss is recognized under section 1001.
  45. Controlled 2 will recognize no gain or loss on its receipt of Merger Partner's assets in exchange for Controlled 2 stock and the TRA. Section 1032(a).
  46. Controlled 2's basis in each asset received from Merger Partner in the Combination will equal the basis of such asset in the hands of Merger Partner immediately before the Combination. Section 362(b).
  47. Controlled 2's holding period in each asset received from Merger Partner in the Combination will include the period during which such asset was held by Merger Partner. Section 1223(2).
  48. Controlled 2 will succeed to and take into account the items of Merger Partner described in section 381(c), subject to the provisions and limitations of sections 381, 382, 383, 384, and 1502, and the regulations thereunder.

#### The Merger Partner Sub Contribution

49. The Merger Partner Sub Contribution will be treated for U.S. Federal income tax purposes as though Controlled 2 had transferred assets (*via* DRE 1 and DRE 2) to Merger Partner Sub in exchange for stock in Merger Partner Sub and the assumption by Merger Partner Sub of certain of Controlled 2's liabilities (*via* DRE 1 and DRE 2), in an exchange described in section 351(a). Section 304(a) will not apply to the exchange. Treas. Reg. § 1.1502-76(b)(1)(ii)(B); Treas. Reg. § 1.1502-80(b).

50. Controlled 2 will not recognize any gain or loss on its transfer of assets to Merger Partner Sub solely in exchange for the deemed issuance of shares of Merger Partner Sub stock and Merger Partner Sub's assumption of Controlled 2's liabilities (including the Debt Facility), pursuant to the Merger Partner Sub Contribution. Sections 351(a) and 357(a) and Treas. Reg. § 1.1502-13(g)(3)(i)(B)(1).
51. Merger Partner Sub will not recognize any gain or loss on its receipt of assets and liabilities in exchange for the deemed issuance of shares of its stock and its assumption of liabilities, pursuant to the Merger Partner Sub Contribution. Section 1032(a).
52. Controlled 2's basis in its Merger Partner Sub stock following the Merger Partner Sub Contribution will be adjusted based on its basis in the property transferred to Merger Partner Sub, and on the amount of its liabilities (other than liabilities excluded under section 357(c)(3)) assumed by Merger Partner Sub. Section 358(a) and (d)(1) and Treas. Reg. § 1.1502-80(h).
53. Merger Partner Sub's basis in the property received in the Merger Partner Sub Contribution will equal Controlled 2's basis in such property immediately before the Merger Partner Sub Contribution. Section 362(a) and Treas. Reg. § 1.1502-80(h).
54. Controlled 2 will adjust its holding period in its Merger Partner Sub stock following the Merger Partner Sub Contribution to include Controlled 2's holding period in the transferred property, provided that the property is held by Controlled 2 as a capital asset on the date of the Merger Partner Sub Contribution. Section 1223(1) and Treas. Reg. § 1.1502-13(c)(1)(ii).
55. Merger Partner Sub's holding period in the property received pursuant to the Merger Partner Sub Contribution will include Controlled 2's holding period immediately before the Merger Partner Sub Contribution. Section 1223(2) and Treas. Reg. § 1.1502-13.
56. The earnings and profits, if any, of Controlled 1, to the extent attributable to Controlled 2 under Treas. Reg. §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period in which such corporation was a controlled foreign corporation, will be attributable to such stock held by Merger Partner Sub. Treas. Reg. § 1.1248-1(a)(1).

## CAVEATS

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

- (i) Whether any of the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any of the Distributions are used principally as a device for the distribution of the earnings and profits of the distributing corporation or controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any of the Distributions are part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing 50 percent or greater interest in the distributing corporation or the controlled corporation (See section 355(e) and Treas. Reg. §1.355-7).
- (iv) Whether Distributing 4 might be required to recognize gain (but not loss) on the transfer of assets to Controlled 2 in the Controlled 2 Contribution to the extent the consideration received in exchange therefor consists of the Additional Payment, or the extent to which Distributing 4 will be required to include in its gross income amounts treated as interest by reason of section 483.
- (v) The tax consequences of the Restructuring, or of any transactional step that occurred as part of the Restructuring.
- (vi) The tax consequences of the transaction by means of which the Merger Partner Shareholders transferred their interests in Merger Partner to Holding Partnership.

## PROCEDURAL MATTERS

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

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

number (PLR-137376-13) of the letter ruling.

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

Sincerely,

Maury Passman  
Chief, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: