

Internal Revenue Service

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PLR-136906-13

Date:

July 09, 2014

Parent =

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

LLC 1 =

LLC 2 =

LLC 3 =

Sub 1 =

Sub 2 =

Business X =

Business Y =

Distributing 2 Business =

Controlled 2 Business =

Transition =

Transition Services =

PLR-136906-13

3

Transition Director
Provisions

=

Intercompany Agreements =

\$a =

b =

c =

d =

Dear _____ :

We respond to your August 21, 2013, request for rulings on certain federal income tax consequences of the proposed and partially consummated Transactions (as defined below). The information provided in that request and in later correspondence is summarized below.

Summary of Facts

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Prior to the Transactions, Parent wholly owned Controlled 1, Distributing 2, LLC 2, Sub 1 and Sub 2. Through its separate affiliated group as defined in section 355(b)(3)(B) (the Parent SAG), Parent is engaged in Business X (which will be conducted by the newly-formed Distributing 1 and its subsidiaries following the Transactions), Business Y (which will be conducted by Controlled 1 and its subsidiaries following the Transactions), and the Distributing 2 Business (which is currently conducted by Distributing 2 and its subsidiaries, but which will be vertically divided into the Distributing 2 Business and the Controlled 2 Business, as described below). Financial information has been submitted that indicates that Business X, Business Y, and the Distributing 2 Business each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The management of Parent believes that dividing Business X and Business Y into two separate, smaller, and less complex companies will help achieve the following corporate business purposes: (i) enable Distributing 1 and Controlled 1 more easily to comply with the distinct regulatory regimes to which they are subject, (ii) enable Distributing 1 and Controlled 1 more efficiently to satisfy their respective capitalization requirements, (iii) allow each business more effectively to pursue its distinct investment priorities and strategies and enable the management of both Distributing 1 and Controlled 1 to focus on unique opportunities for long-term growth and profitability, and (iv) create an independent equity structure that will afford Controlled 1 direct access to the capital markets and will facilitate the ability of Controlled 1 and Distributing 1 to effect future acquisitions utilizing their respective common stock at earnings multiples more comparable with those of their respective peers and acquisition targets.

The Transactions

To effectuate this division of businesses, Parent proposes the following series of transactions (the Transactions), some of which already may have been consummated by the date of this letter:

- (i) LLC 2, a wholly-owned subsidiary of Parent that is classified as a disregarded entity for federal income tax purposes, will (i) form LLC 3, an entity that will also be classified as a disregarded entity for federal income tax purposes, (ii) contribute to LLC 3 a building that will be used by Sub 1 in Business X, and (iii) distribute LLC 3 to Parent.
- (ii) Parent will contribute to Sub 1 all of the membership interests in LLC 3 and all of the stock of Sub 2.

- (iii) In an integrated transaction, (1) Parent will form Distributing 1, and Distributing 1 will form LLC 1 as a wholly-owned limited liability company that will be treated as a disregarded entity for federal income tax purposes and (2) Parent will merge with and into LLC 1, with LLC 1 surviving. This step is referred to as the Reorganization. As a result of the Reorganization, Parent's common stockholders will receive solely shares of Distributing 1's common stock, and Parent's preferred stockholders will receive solely shares of Distributing 1's preferred stock.
- (iv) Distributing 2 will contribute to Controlled 2 (its newly-formed, wholly-owned subsidiary that has outstanding a single class of common stock) certain assets, all employees and operations related to Controlled 2's portion of the Distributing 2 Business, and certain other assets (the Internal Contribution that will form the Controlled 2 Business). As part of the Internal Contribution, Controlled 2 also will assume certain liabilities relating to the Controlled 2 Business.
- (v) Distributing 2 will distribute all the outstanding common stock of Controlled 2 to LLC 1 (the Internal Spin-off).
- (vi) LLC 1 will distribute to Distributing 1 all of the outstanding stock of Controlled 1, Controlled 2, and the entities that own the assets, operations, and employees relating to Business X.
- (vii) Distributing 1 will contribute \$a to Distributing 2 for all outstanding shares of a new class of preferred stock of Distributing 2 (the Special Preferred), which (1) will be entitled to a preference upon a liquidation of Distributing 2 and (2) will possess b percent of the total voting power of all of the issued and outstanding shares of capital stock of Distributing 2 and will vote as a class with the common stock of Distributing 2 except as to the election of directors, as described below.
- (viii) Distributing 1 will contribute to Controlled 1, in exchange for Controlled 1 common stock, all of the outstanding membership interests in LLC 1 (the External Contribution), which will own all of the stock of Distributing 2, except for the Special Preferred, and all of the stock of the entities that hold assets and liabilities relating to Business Y.
- (ix) Distributing 1 will contribute all of the stock of Controlled 2 to Sub 1.
- (x) Distributing 1 will distribute all the outstanding common stock of Controlled 1 to the common stockholders of Distributing 1 pro rata (the External Spin-off). Holders of the outstanding preferred stock of Distributing 1 will not be entitled to receive any shares of common stock of Controlled 1 in the External Spin-off.

In connection with the Transactions, Distributing 1 and Controlled 1 (and/or their subsidiaries, as applicable) will enter into the Intercompany Agreements. Furthermore, in order to facilitate the timely completion of the Transition, there will be a transition period during which Distributing 1, as the holder of the Special Preferred, will have the right to nominate and elect one of the c directors to the Distributing 2 board of directors (subject to customary requirements as to director eligibility) who, at the election of Distributing 1, may be the chairman of the board of Distributing 2 (the Special Preferred Director). The Special Preferred Director will have the same rights as the other directors of Distributing 2 except as the Transition Director Provisions provide. The Special Preferred will be redeemed in its entirety by Distributing 2 for \$a by the earlier of (i) the completion of the Transition or (ii) a specified date, which will be no later than d months after the External Spin-off. Upon such redemption, the Special Preferred Director will be required to resign from the Distributing 2 board.

Following the Internal Spin-off, Distributing 2, through its separate affiliated group, as defined in section 355(b)(3)(B) (the Distributing 2 SAG), will continue to conduct the Distributing 2 Business, and Controlled 2, through its separate affiliated group, as defined in section 355(b)(3)(B) (the Controlled 2 SAG), will conduct the Controlled 2 Business. Following the External Spin-off, Distributing 1, through its separate affiliated group, as defined in section 355(b)(3)(B) (the Distributing 1 SAG), will be engaged in Business X, and Controlled 1, through its separate affiliated group, as defined in section 355(b)(3)(B) (the Controlled 1 SAG), will conduct Business Y.

As a result of the External Spin-off, the Distributing 1 stock options, shares of restricted stock, restricted stock units, and performance stock units with respect to Distributing 1's stock that are outstanding at the time of the External Spin-off and held by employees of either the Distributing 1 SAG or the Controlled 1 SAG each will be replaced with either a combination of stock options, restricted stock, restricted stock units, and performance stock units with respect to both Distributing 1 and Controlled 1 stock or substantially similar replacement awards of an employee's employer following the External Spin-off (Distributing 1 or Controlled 1). The new awards will have vesting schedules that are substantially identical to the surrendered or replaced awards and the combined net fair market value (*i.e.*, the spread in the case of options) of the new Distributing 1/Controlled 1 awards will be substantially identical to the fair market value of the surrendered or replaced Distributing 1 awards.

Representations

Parent has made the following representations regarding the Transactions:

Reorganization

- (a) Immediately prior to the Reorganization, Distributing 1 will be engaged in no business activity, have no tax attributes (including those specified in section 381(c)), and hold no assets except for the interests in LLC 1,

which holds no assets. Distributing 1 and LLC 1 may hold the nominal assets necessary to pay incidental expenses or maintain their legal status under state law.

- (b) Pursuant to the Reorganization, each shareholder of Parent will receive solely Distributing 1 stock, the rights and terms of which will be identical to the rights and terms of the Parent stock relinquished by such shareholder in the Reorganization.
- (c) The fair market value of the Distributing 1 stock to be received by the shareholders of Parent will be approximately equal to the fair market value of the Parent stock surrendered in the exchange.
- (d) Immediately following the consummation of the Reorganization, the shareholders of Parent will own all outstanding shares of Distributing 1 stock and will own such stock solely by reason of their ownership of Parent stock immediately prior to the Reorganization.
- (e) Distributing 1 has no plan or intention to issue additional shares of its stock following the Reorganization, except to satisfy obligations under incentive compensation plans of Distributing 1.
- (f) Immediately following the consummation of the Reorganization, Distributing 1 will hold all the assets held by Parent immediately prior to the Reorganization, except for assets used to pay expenses in connection with the Reorganization. Assets distributed to shareholders who receive cash or other property, assets used to pay expenses, assets used to pay dissenters to the transaction, and all redemptions and distributions (except for regular, normal dividends) made by Parent immediately preceding the transaction will, in the aggregate, constitute less than one percent of the net assets of Parent. Dissenting shareholders (if applicable) will own less than one percent of the Parent stock.
- (g) At the time of the Reorganization, Parent will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Parent, except for options to purchase or other rights to acquire shares of Parent stock that were granted pursuant to Parent incentive compensation plans in effect prior to the Reorganization. After the Reorganization becomes effective, rights to acquire any such Parent shares issued pursuant to such Parent incentive compensation plans will be replaced with rights to acquire shares of Distributing 1.
- (h) The liabilities of Parent to be assumed by Distributing 1 or to which the assets of Parent are subject (within the meaning of section 357(d)) were

incurred by Parent in the ordinary course of its business and are associated with the assets transferred.

- (i) Parent's shareholders, Parent itself, and Distributing 1 will pay their respective expenses incurred in connection with the Reorganization.
- (j) Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

Internal Spin-off

- (k) Distributing 2 and Controlled 2 each will treat all members of its respective separate affiliated group, as defined in section 355(b)(3)(B), as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (l) Neither the Distributing 2 Business conducted by the Distributing 2 SAG, nor control of an entity conducting the Distributing 2 Business, will have been acquired during the five-year period ending on the date of the Internal Spin-off in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the Proposed Regulations) in whole or in part, except for transactions that have expanded the Distributing 2 Business.
- (m) Neither the Controlled 2 Business conducted by the Controlled 2 SAG, nor control of an entity conducting the Controlled 2 Business, will have been acquired during the five-year period ending on the date of the Internal Spin-off in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the Proposed Regulations) in whole or in part, except for transactions that have expanded the Controlled 2 Business.
- (n) The five years of financial information submitted on behalf of the Distributing 2 Business is representative of the present business operations of the Distributing 2 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (o) The five years of financial information submitted on behalf of the portion of the Distributing 2 Business that will comprise the Controlled 2 Business is representative of the 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.

- (p) Following the Internal Spin-off, Distributing 2 and Controlled 2 each will continue, independently and with its separate employees (or employees of the other members of its SAG), the active conduct of its share of all the integrated activities of the business conducted by Distributing 2 prior to consummation of the Internal Spin-off.
- (q) The Internal Spin-off is being carried out to facilitate the External Spin-off. The Internal Spin-off is motivated, in whole or substantial part, by this purpose.
- (r) The Internal Spin-off will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
- (s) For purposes of section 355(d), immediately after the Internal Spin-off, 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 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 Internal Spin-off.
- (t) For purposes of section 355(d), immediately after the Internal Spin-off, 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 Internal Spin-off 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 Internal Spin-off.
- (u) The Internal Spin-off is not part of a plan or series of related transactions (within the meaning of section 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 2 (including any predecessor or successor of any such corporation).
- (v) Immediately after the Internal Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing 2 or Controlled 2, who did not hold such an interest

immediately before the Internal Spin-off or (ii) neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

- (w) Distributing 2, Distributing 1, and Controlled 2 each will pay its own expenses, if any, incurred in connection with the Internal Spin-off.
- (x) No part of the consideration to be distributed by Distributing 2 in the Internal Spin-off will be received by Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (y) The total adjusted bases and the fair market value of the assets transferred to Controlled 2 in the Internal Contribution will equal or exceed the sum of the liabilities assumed by Controlled 2 plus any liabilities to which the transferred assets are subject (as determined under section 357(d)).
- (z) Any liabilities assumed (as determined under section 357(d)) by Controlled 2 in the Internal Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred to Controlled 2 in the Internal Contribution.
- (aa) No property will be transferred by Distributing 2 to Controlled 2 for which an investment credit allowed under section 46 has or will be claimed.
- (bb) No indebtedness between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) has been or will be settled or cancelled in connection with the Internal Spin-off other than the settlement of intercompany loans and intercompany open account balances attributable to the normal business operations of Distributing 2 (and its subsidiaries) prior to the Internal Spin-off.
- (cc) No intercorporate debt will exist between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) at the time of, or after, the Internal Spin-off, other than obligations arising in the ordinary course of business and obligations arising pursuant to the Intercompany Agreements.
- (dd) Immediately before the Internal Spin-off, items of income, gain, loss, deduction, and credit will be taken into account as required by applicable Treasury regulations (see section 1.1502-13). Further, Distributing 2's excess loss account, if any, with respect to its Controlled 2 common stock will be included in income immediately before the Internal Spin-off to the extent required by Treasury regulations (see section 1.1502-19).

- (ee) Apart from indemnity payments under certain of the Intercompany Agreements and apart from certain payments for certain of the services under the Intercompany Agreements, payments made in connection with all continuing transactions between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) following the Internal Spin-off will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (ff) Neither Distributing 2 nor Controlled 2 is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (gg) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Spin-off.

External Spin-off

- (hh) Distributing 1 and Controlled 1 each will treat all members of its respective SAG as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (ii) Neither Business X conducted by the Distributing 1 SAG, nor control of an entity conducting Business X, will have been acquired during the five-year period ending on the date of the External Spin-off in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the Proposed Regulations) in whole or in part, except for transactions that have expanded Business X. For tax purposes, the Distributing 1 SAG will be the principal owner of the goodwill and significant assets of Business X on the date of the External Spin-off and will remain the principal owner of these assets following the External Spin-off.
- (jj) Neither Business Y conducted by the Controlled 1 SAG, nor control of an entity conducting Business Y, will have been acquired during the five-year period ending on the date of the External Spin-off in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the Proposed Regulations) in whole or in part, except for transactions that have expanded Business Y. For tax purposes, the Controlled 1 SAG will be the principal owner of the goodwill and significant assets of Business Y on the date of the External Spin-off and will remain the principal owner of these assets following the External Spin-off.
- (kk) The five years of financial information submitted on behalf of Business X conducted by Distributing 1 is representative of the present business operations of Business X, and with regard to such business, there have

been no substantial operational changes since the date of the last financial statements submitted.

- (ll) The five years of financial information submitted on behalf of Business Y to be conducted by Controlled 1 is representative of the present business operations of Business Y, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (mm) Following the External Spin-off, Distributing 1 will continue the active conduct of Business X, independently and with its separate employees or employees of the other members of the Distributing 1 SAG.
- (nn) Following the External Spin-off, Controlled 1 will continue the active conduct of Business Y, independently and with its separate employees or employees of the other members of its SAG.
- (oo) The External Spin-off will be carried out for the purposes of (i) dividing Distributing 1 and Controlled 1 into two smaller and less complex companies, which will enable Distributing 1 and Controlled 1 to more easily comply with the distinct regulatory regimes to which they are subject, (ii) enabling Distributing 1 and Controlled 1 to more efficiently satisfy their respective capitalization requirements, (iii) allowing each business to more effectively pursue its distinct investment priorities and strategies and enabling management of both Distributing 1 and Controlled 1 to focus on unique opportunities for long-term growth and profitability, and (iv) creating an independent equity structure that will afford Controlled 1 direct access to the capital markets and will facilitate the ability of Controlled 1 and Distributing 1 to effect future acquisitions utilizing their respective common stock at earnings multiples more comparable with those of their respective peers and acquisition targets. The External Spin-off is motivated in whole or substantial part by these corporate business purposes.
- (pp) The External Spin-off is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (qq) For purposes of section 355(d), immediately after the External Spin-off, 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 External Spin-off.

- (rr) For purposes of section 355(d), immediately after the External Spin-off, 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 External Spin-off or (ii) attributable to distributions on 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 External Spin-off.
- (ss) The External Spin-off is not part of a plan or series of related transactions (within the meaning of section 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- (tt) Immediately after the External Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing 1 or Controlled 1 or (ii) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (uu) Distributing 1, Distributing 1's shareholders, and Controlled 1 each will pay its own expenses, if any, incurred in connection with the External Spin-off.
- (vv) No part of the consideration to be distributed by Distributing 1 in the External Spin-off will be received by a shareholder of Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (ww) The total adjusted bases and the fair market value of the assets transferred to Controlled 1 in the External Contribution will equal or exceed the sum of the liabilities assumed by Controlled 1 plus any liabilities to which the transferred assets are subject (as determined under section 357(d)).
- (xx) Any liabilities assumed (as determined under section 357(d)) by Controlled 1 in the External Contribution will have been incurred in the

ordinary course of business and will be associated with the assets transferred to Controlled 1 in the External Contribution.

- (yy) No property will be transferred by Distributing 1 to Controlled 1 for which an investment credit allowed under section 46 has or will be claimed.
- (zz) No indebtedness between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) has been or will be settled or cancelled in connection with the External Spin-off other than the settlement of intercompany loans and intercompany open account balances attributable to the normal business operations of Distributing 1 (and its subsidiaries) prior to the External Spin-off.
- (aaa) No intercorporate debt will exist between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) at the time of, or after, the External Spin-off other than obligations arising in the ordinary course of business and obligations arising pursuant to the Intercompany Agreements.
- (bbb) Immediately before the External Spin-off, items of income, gain, loss, deduction, and credit will be taken into account as required by applicable Treasury regulations (see section 1.1502-13). Further, Distributing 1's excess loss account, if any, with respect to its Controlled 1 common stock will be included in income immediately before the External Spin-off to the extent required by regulations (see section 1.1502-19).
- (ccc) Apart from (i) indemnity payments under certain of the Intercompany Agreements and (ii) certain payments for certain of the services under the Intercompany Agreements, payments made in connection with all continuing transactions between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) following the External Spin-off will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (ddd) Neither Distributing 1 nor Controlled 1 is an investment company as defined in sections 368(a)(2)(F)(iii) and (iv).
- (eee) Neither Distributing 1 nor Controlled 1 will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period preceding the External Spin-off, and neither will be a U.S. real property holding corporation immediately after the External Spin-off.
- (fff) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Spin-off.

Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Reorganization, the Internal Spin-off, and the External Spin-off:

Reorganization

- (1) The Reorganization (i.e., the formation of Distributing 1 and LLC 1, followed by the merger of Parent into LLC 1) will be treated, for federal income tax purposes, as the transfer by Parent of all of its assets, subject to liabilities, to Distributing 1 in exchange for stock of Distributing 1, followed by Parent's distribution of the Distributing 1 common and preferred stock to its common and preferred shareholders, respectively, in liquidation and will constitute a reorganization within the meaning of section 368(a)(1)(F) (Rev. Rul. 96-29, 1996-1 C.B. 50; section 1.368-2(b)(1)(iii), Ex. 2)). Parent and Distributing 1 each will be "a party to a reorganization" within the meaning of section 368(b).
- (2) Parent will not recognize any gain or loss upon the transfer of all of its assets to Distributing 1 in exchange for Distributing 1 stock and Distributing 1's assumption of Parent's liabilities (sections 361(a) and 357(a)).
- (3) Parent will not recognize any gain or loss on the distribution of Distributing 1 stock to its shareholders (section 361(c)).
- (4) Distributing 1 will not recognize any gain or loss on the receipt of Parent's assets in exchange for Distributing 1 stock and the assumption of Parent's liabilities (section 1032(a)).
- (5) Distributing 1's basis in each asset received from Parent in the Reorganization will equal the basis of such asset in the hands of Parent immediately before the Reorganization (section 362(b)).
- (6) Distributing 1's holding period for each asset acquired from Parent will include the period during which such assets were held by Parent (section 1223(2)).
- (7) Parent's shareholders will not recognize any gain or loss upon their exchange of shares of Parent stock for shares of Distributing 1 stock (section 354(a)).
- (8) The basis of the Distributing 1 stock received by Parent's shareholders in the Reorganization will be the same as such shareholders' basis in the

Parent stock surrendered in exchange therefor, allocated in the manner described in section 1.358-2(a)(2) (section 358(b)(1)).

- (9) Provided the Parent stock is held as a capital asset at the time of the Reorganization, the holding period of the Distributing 1 stock received by shareholders in exchange therefor will include the holding period of the Parent stock (section 1223(1)).
- (10) The affiliated group of which Parent was the common parent corporation and the taxable year of such affiliated group will not terminate, and such affiliated group and such taxable year will continue with Distributing 1, the successor to Parent, as the common parent of the affiliated group (sections 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(ii) and (iii); Rev. Rul. 57-276, 1957-1 C.B. 126).
- (11) Distributing 1 will succeed to and take into account the items of Parent described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a)(2)).

Internal Spin-off

- (12) The Internal Contribution, followed by the Internal Spin-off, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing 2 and Controlled 2 each will be “a party to a reorganization” within the meaning of section 368(b).
- (13) Distributing 2 will not recognize any gain or loss on the Internal Contribution (sections 361(a) and 357(a)).
- (14) Controlled 2 will not recognize any gain or loss on the Internal Contribution (section 1032(a)).
- (15) Controlled 2’s basis in each asset received from Distributing 2 in the Internal Contribution will equal the basis of such asset in the hands of Distributing 2 immediately before the Internal Contribution (section 362(b)).
- (16) Controlled 2’s holding period in each asset received from Distributing 2 in the Contribution will include the period during which Distributing 2 held such asset (section 1223(2)).
- (17) Distributing 2 will not recognize any gain or loss on the Internal Spin-off (section 361(c)).

- (18) Distributing 1 will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of Controlled 2 common stock in the Internal Spin-off (section 355(a)(1)).
- (19) The basis of the Controlled 2 common stock and Distributing 2 common stock in the hands of Distributing 1 will be the same as Distributing 1's basis in the Distributing 2 common stock with respect to which the Controlled 2 common stock was received, allocated between the Distributing 2 common stock and Controlled 2 common stock in proportion to the fair market value of each immediately following the Internal Spin-off in accordance with section 1.358-2(a)(2) (sections 358(a)(1), 358(b)(2), and 358(c)).
- (20) The holding period of the Controlled 2 common stock received by Distributing 1 in the Internal Spin-off will include the holding period of the Distributing 2 common stock with respect to which the Controlled 2 common stock was received, provided the shares of Distributing 2 common stock are held as a capital asset by Distributing 1 on the date of the Internal Spin-off (section 1223(1)).
- (21) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with section 312(h) and sections 1.312-10(a) and 1.1502-33.

External Spin-off

- (22) The External Contribution, followed by the External Spin-off, will be 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).
- (23) Distributing 1 will not recognize any gain or loss on the External Contribution (sections 361(a) and 357(a)).
- (24) Controlled 1 will not recognize any gain or loss on the External Contribution (section 1032(a)).
- (25) Controlled 1's basis in the assets received from Distributing 1 in the External Contribution (which will include stock in certain subsidiaries of Distributing 1) will equal the basis of such assets in the hands of Distributing 1 immediately before the External Contribution (section 362(b)).
- (26) Controlled 1's holding period in the assets received from Distributing 1 in the External Contribution (which will include stock in certain subsidiaries of

Distributing 1) will include the period during which Distributing 1 held such assets (section 1223(2)).

- (27) Distributing 1 will not recognize any gain or loss on the External Spin-off (section 361(c)).
- (28) Distributing 1's shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of Controlled 1 common stock in the External Spin-off (section 355(a)(1)).
- (29) The basis of the Controlled 1 common stock and Distributing 1 common stock in the hands of each holder of Distributing 1 common stock will be the same as the shareholder's basis in the Distributing 1 common stock with respect to which the Controlled 1 common stock was received, allocated between the Distributing 1 common stock and Controlled 1 common stock in proportion to the fair market value of each immediately following the External Spin-off in accordance with section 1.358-2(a)(2) (sections 358(a)(1), 358(b)(2), and 358(c)).
- (30) The holding period of the Controlled 1 common stock received by Distributing 1's shareholders in the External Spin-off will include the holding period of the Distributing 1 common stock with respect to which the Controlled 1 common stock was received, provided the shares of Distributing 1 common stock are held as a capital asset by Distributing 1's shareholders on the date of the External Spin-off (section 1223(1)).
- (31) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and sections 1.312-10(a) and 1.1502-33.
- (32) Except for purposes of section 355(g), any Indemnity Payments made by Distributing 1 to Controlled 1, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the External Spin-off or for a taxable period beginning on or before and ending after the External Spin-off and (ii) will not have become fixed and ascertainable until after the External Spin-off will be treated as occurring immediately before the External Spin-off (see Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (33) Following the External Spin-off, Controlled 1 will not be a successor of Distributing 1 or Parent for purposes of section 1504(a)(3). Therefore, Controlled 1 and its direct and indirect subsidiaries that are "includible corporations" under section 1504(b) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group

of corporations entitled to file a consolidated federal income tax return with Controlled 1 as the common parent.

Caveats

We express no opinion about the federal income tax treatment of the Transactions under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from the Transactions that are not specifically covered by the above rulings. In particular, no rulings were requested and no rulings are expressed as to the tax effects of step (ix), above. In addition, this office has not reviewed any information pertaining to, and has made no determination regarding: (i) whether either the Internal Spin-off or the External Spin-off satisfies the business purpose requirement of section 1.355-2(b); (ii) whether either the Internal Spin-off or the External Spin-off is being used principally as a device for the distribution of the earnings and profits of either the distributing or controlled corporations involved or both (see section 355(a)(1)(B) and section 1.355-2(d)); and (iii) whether either the Internal Spin-off or the External Spin-off 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 the distributing or controlled corporations involved (see section 355(e) and section 1.355-7).

Procedural Matters

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

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

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

In accordance with the power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

Sincerely,

Filiz A. Serbes _____

Filiz A. Serbes

Chief, Branch 3

Office of Associate Chief Counsel (Corporate)