

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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CC:CORP:B01

PLR-122548-17

Date:

November 02, 2017

### Legend

Distributing =

Controlled =

LLC2 =

LLC7 =

LLC8 =

PS1 =

Acquiror =

PLR-122548-17

New HoldCo =

Intermediary LLC =

Merger Sub =

Commission =

Significant Creditor =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

s =

t =

u =

v =

W =

Dear :

This letter (the “Second Supplemental Ruling Letter”) responds to your letter, submitted by your authorized representatives, requesting that we supplement the private letter rulings dated July 28, 2016 (PLR-123917-14) (the “Initial Ruling Letter”) and July 26, 2017 (PLR-135405-16) (the “First Supplemental Ruling Letter”). The material information submitted in your requests for the Initial Ruling Letter and the First Supplemental Ruling Letter, and in this second supplemental ruling request is summarized below. Capitalized or underlined terms not defined in this letter have the meanings assigned to them in the Initial Ruling Letter and First Supplemental Ruling Letter.

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

This letter is issued pursuant to section 6.03 of Rev. Proc. 2017-1, 2017-1 I.R.B. 1 regarding one or more significant issues under sections 355 and 368. The ruling contained in this letter only addresses one or more discrete legal issues associated with the Proposed Transaction and the Distributing Restructuring (as defined below). This Office expresses no opinion as to the overall tax consequences of the Proposed Transaction and the Distributing Restructuring or as to any issue not specifically addressed by the ruling below.

### **SUPPLEMENTAL FACTS**

The Bankruptcy Plan of Reorganization (as defined in PLR-123917-14) contemplated that Distributing could proceed with the Proposed Transaction, effecting the separation of Distributing’s Business 1 and Business 2, without regard to the timing or precise nature of any transactions that Distributing and LLC7 may undertake with respect to their remaining assets and subsidiaries (including their indirect interest in PS1) and their remaining outstanding debt. Thus, the Bankruptcy Plan of Reorganization severed the restructurings of Businesses 1 and 2, specifically providing for the confirmation and consummation as to LLC2, separate from, and independent of, any confirmation or consummation of the Plan as to Distributing and LLC7.

Consistent with this understanding, on Date 8, the Proposed Transaction was consummated pursuant to the confirmed Bankruptcy Plan of Reorganization (as subsequently amended). Following the Proposed Transaction, all of the stock of Controlled was owned by the LLC2 First Lien Creditors, and all of the stock of Distributing continued to be owned by the Distributing Shareholders. The Distributing SAG continues to conduct Business 2, and the Controlled SAG continues to conduct Business 1.

Distributing and LLC7 (and certain of Distributing's other subsidiaries) have remained under the jurisdiction of the Bankruptcy Court in the Bankruptcy Proceeding.

### Distributing Restructuring

Throughout the more than 5 years since the filing of the bankruptcy petition on Date 3, Distributing and its Business 2 (as conducted indirectly by LLC7 and LLC8, and directly by PS1) has been the subject of significant interest by unrelated parties engaged in Business 2 as well as other unrelated parties. This interest resulted in the execution of 1 separate acquisition agreements, 1 of which failed to be consummated; in some of these cases, the failure occurred after confirmation of the proposed transaction by the Bankruptcy Court. In addition, at various points since the filing of the bankruptcy petition on Date 3, Distributing and LLC7, in conjunction with various groups of Distributing's and LLC7's creditors, have considered alternative plans of reorganization to facilitate a path out of bankruptcy, including transactions pursuant to which creditors of Distributing, LLC7, or both, would convert a significant portion of their claims into equity of Distributing, alone or in combination with an infusion of funds for additional equity of Distributing.

On Date 9, Distributing and Acquiror entered into an agreement (the "Merger Agreement," subsequently amended on Date 13), pursuant to which Merger Sub will merge with and into Distributing with Distributing surviving as an indirect subsidiary of Acquiror (the "Distributing Acquisition"). Distributing's entrance into the Merger Agreement was approved by the Bankruptcy Court by entry of an order on Date 11. However, the Distributing Acquisition is subject to various conditions, including approval by the Commission, which could take up to 9 months.

On Date 10, Distributing, on behalf of itself and its remaining debtor subsidiaries, filed with the Bankruptcy Court, a joint plan of reorganization pursuant to Chapter 11 of the United States Bankruptcy Code (the "Distributing Bankruptcy Plan of Reorganization") and a related disclosure statement, setting forth the terms of a proposed restructuring of Distributing, LLC7, and its other debtor subsidiaries. The restructuring includes the Distributing Acquisition. The Distributing Bankruptcy Plan of Reorganization was last amended on Date 12, and may be further modified. Distributing, LLC7, and its

remaining debtor subsidiaries currently expect to seek Bankruptcy Court confirmation of the Distributing Bankruptcy Plan of Reorganization after Commission approval is obtained.

Distributing has proposed the following transaction (the “Distributing Restructuring”), which will be effected pursuant to the Distributing Bankruptcy Plan of Reorganization confirmed by the Bankruptcy Court. The steps of the Distributing Restructuring will occur in the following order and, except as otherwise indicated, will occur on the effective date for this portion of the restructuring in the Bankruptcy Proceeding (the “Distributing Effective Date”).

- (i) Prior to the Distributing Effective Date, Acquiror formed New HoldCo, a limited liability company all of the membership interests of which are owned by Acquiror. New HoldCo may either (a) elect to be treated as a corporation for federal income tax purposes or (b) be treated as an entity disregarded as separate from Acquiror (or a subsidiary of Acquiror) for federal income tax purposes.
- (ii) Prior to the Distributing Effective Date, New HoldCo formed Intermediary LLC, a limited liability company all of the membership interests of which are owned by New HoldCo. Intermediary LLC may either (a) elect to be treated as a corporation for federal income tax purposes or (b) be treated as an entity disregarded as separate from New HoldCo for federal income tax purposes.
- (iii) Prior to the Distributing Effective Date, Intermediary LLC formed Merger Sub, a corporation, all of the stock of which is owned by Intermediary LLC.
- (iv) On the Distributing Effective Date, Acquiror will make an equity contribution of approximately \$w (with potential adjustment for distributions from PS1 with respect to specified periods of time as set forth in the Merger Agreement) to New HoldCo (the “Acquiror Equity Contribution”) in exchange for additional membership interests in New HoldCo. New HoldCo will contribute the cash proceeds of the Acquiror Equity Contribution to Intermediary LLC, which will then contribute such cash proceeds to Merger Sub, in each case, in exchange for additional membership interests or stock, as applicable.
- (v) On the Distributing Effective Date, Merger Sub will merge with and into Distributing pursuant to applicable law, with Distributing surviving as a wholly owned subsidiary of Intermediary LLC (the “Merger”). The Distributing stock owned by the Distributing Shareholders will be cancelled for no consideration. The merger consideration will consist of the cash proceeds of the Acquiror Equity Contribution (the “Merger Consideration”). In addition, to the extent PS1 makes a distribution after the Distributing Effective Date with respect to specified periods

of time, a portion of such distribution may be sent to a distribution account established pursuant to the Distributing Plan of Reorganization for the benefit of holders of claims, as set forth in the Merger Agreement.

- (vi) On and/or after the Distributing Effective Date, depending on when claims against Distributing, LLC7, and certain of Distributing's other subsidiaries are finally determined in accordance with the bankruptcy claims resolution process, distributions will be made to holders of claims against Distributing, LLC7, and Distributing's other subsidiaries from a distribution account established pursuant to the Distributing Plan of Reorganization, which account will be funded by a combination of the Merger Consideration, cash that was on hand at Distributing and LLC7 on the Distributing Effective Date, and any amounts with respect to specified PS1 distributions.

### **SUPPLEMENTAL REPRESENTATION**

- (a) In connection with the request for this Second Supplemental Ruling Letter, Distributing and Controlled reaffirm all of the material information submitted in connection with, and all of the representations contained in, the Initial Ruling Letter and the First Supplemental Ruling Letter.

### **SUPPLEMENTAL RULING**

Based solely on the information and the representations submitted in connection with the Initial Ruling Letter, the First Supplemental Ruling Letter, and this Second Supplemental Ruling Letter, we rule as follows:

The transactions contemplated by the Distributing Restructuring will not prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(G) or the Distribution from qualifying as a distribution under section 355.

The supplemental information submitted and the transactions contemplated by the Distributing Restructuring will have no effect on the continued validity of the rulings contained in the Initial Ruling Letter and the First Supplemental Ruling Letter, and all such rulings will remain in full force and effect.

### **CAVEATS**

No opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, except as specifically addressed by the ruling above. In particular, no opinion is expressed concerning any

aspect of any transaction or item occurring as part of the Bankruptcy Proceeding, whether prior to or following the Proposed Transaction or the Distributing Restructuring, or the effect of any such transaction or item on the ruling above.

### **PROCEDURAL STATEMENTS**

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.

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

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

Sincerely,

*Frances L. Kelly*

Frances L. Kelly  
Senior Counsel, Branch 2  
Office of Associate Chief Counsel  
(Corporate)

cc: