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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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CC:CORP:3
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Date:
August 13, 2021

Legend

Distributing =

Controlled =

Acquiring =

Merger Sub =

Business A =

Business B =

Business C =

x =

Merger Agreement =

Fund A =

Fund B =

Fund A Information =

Fund B Information =

PLR-106337-21

3

Relevant Time =

Dear _____ :

This letter responds to your letter dated March 17, 2021, submitted on behalf of Distributing, requesting rulings on the application of section 355(e) of the Internal Revenue Code (the "Code") to a series of proposed transactions (the "Proposed Transactions," as defined herein). The material information submitted in that request and in supplemental submissions dated April 28, May 18, July 8, July 13, July 30, and August 11, 2021 is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under section 355 and section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under section 355. The rulings contained in this letter only address one or more discrete legal issues involved in the transactions described in this letter. The Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon information submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this Office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Distributing is a publicly traded corporation and the parent of a worldwide group that includes both domestic and foreign entities engaged in Business A and Business B. Distributing is also the common parent of an affiliated group of domestic corporations

that file a US consolidated federal income tax return. Distributing has a single class of common stock outstanding (“Distributing Common Stock”), the shares of which are publicly traded and widely held by Distributing’s shareholders (the “Distributing Shareholders”).

Acquiring is a publicly traded corporation and the parent of a worldwide group that includes both domestic and foreign entities. Acquiring and its subsidiaries are engaged in the conduct of Business C. Acquiring has a single class of common stock outstanding (“Acquiring Common Stock”), the shares of which are publicly traded and widely held by Acquiring’s shareholders (the “Acquiring Shareholders”).

Certain shareholders own both Distributing Common Stock and Acquiring Common Stock (the “Overlapping Shareholders”).

Proposed Transactions

For what are represented to be valid business reasons, consistent with the Merger Agreement, Distributing has or will undertake the following Proposed Transactions:

1. Following an internal restructuring to separate Business A from Business B, Distributing will distribute all of the outstanding stock of Controlled to the Distributing Shareholders pro rata (the “Spin-off”).
2. Immediately after the Spin-off, Controlled will merge with Merger Sub, a wholly owned subsidiary of Acquiring, with Controlled surviving, and the Controlled stock will be converted into a right to receive shares of Acquiring Common Stock (the “Combination”). Under the initial exchange ratio provided under the Merger Agreement, the Controlled shareholders will receive x percent of Acquiring Common Stock.

Acquiring has a pre-existing share repurchase program pursuant to which Acquiring repurchases shares in order to achieve an appropriate capital structure and deliver attractive cash returns to the Acquiring Shareholders. Following the Combination, Acquiring may continue to repurchase shares of its stock (the “Share Repurchases”). The Share Repurchases will be made through (i) open market purchases, (ii) one or more accelerated share repurchase (“ASR”) programs, (iii) one or more tender offers open to all holders of Acquiring Common Stock, or (iv) a combination thereof.

Overlap Counting Principles

For purposes of applying section 355(e)(3)(A)(iv) (the “Overlap Rule”) and the methodology of the example in the 1998 legislative history of section 355(e)(3)(A)(iv) (the “Net Decrease Methodology”) to determine the extent of Overlapping Shareholders at the time of the Combination, Distributing will employ the principles described below (the “Overlap Counting Principles”).

- (i) *Look-Through Approach.* In applying the Overlap Rule and the Net Decrease Methodology, Distributing will look through entities to the ultimate indirect owners of Distributing Common Stock and Acquiring Common Stock, and will take into account the identified actual overlap in the ultimate indirect ownership of Distributing Common Stock and Acquiring Common Stock at that level, based on actual knowledge, or if Distributing does not have actual knowledge, then based upon the sources of proof described in paragraph (ii). Notwithstanding the foregoing, in proving the identity of Overlapping Shareholders, and the extent of their share ownership for purposes of applying the Overlap Rule and the Net Decrease Methodology, Distributing will treat as the ultimate owner of Distributing Common Stock and Acquiring Common Stock: (i) widely held investment vehicles with public investors (such as a mutual fund or ETF); (ii) any regulated investment company; (iii) any domestic pension trust described in Section 401(a) which is exempt from tax under Section 501(a); (iv) any domestic charitable organization described in Section 501(c)(3) (including an endowment or private foundation); (v) any state, local, or foreign government (or agency or instrumentality thereof), including any fund ultimately owned by a government, and Fund A and Fund B; and (vi) any foreign trust or pension plan (provided that the beneficiaries of the trust or pension plan have a pro rata interest in the assets thereof).
- (ii) *Sources of Proof of Overlapping Shareholders.* For purposes of determining the identity of, and number of shares owned by, the Overlapping Shareholders, absent actual knowledge at the Relevant Time, Distributing will rely on information that is “publicly available.” Information shall be deemed as publicly available when it is available for viewing by the public. Publicly available information shall include: (i) information filed pursuant to applicable federal securities laws by institutional investment managers (Form 13F) and registered management investment companies (Form N-Q, Form N-PORT and Form N-CSR) (together, “SEC Filings”); or (ii) information voluntarily posted on the investor’s or the investment adviser’s website (“Website Posting”). Distributing will rely on the Fund A Information for Fund A and the Fund B Information for Fund B. In determining the identity of, and number of shares owned by, Overlapping Shareholders, Distributing shall rely on Overlapping Shareholder information from SEC Filings or Website Postings at the Relevant Time.
- (iii) *Reliance on Actual Knowledge.* For purposes of these Overlap Counting Principles, actual knowledge means the actual knowledge of the Chief Financial Officer or General Counsel of either Distributing or Acquiring. In order to determine Overlapping Shareholder information that is not publicly available on appropriate SEC Filings or Website Postings at the Relevant Time, Distributing may obtain actual knowledge as of the Relevant Time through written or oral confirmation from a shareholder (or an authorized

representative thereof) with regard to: (i) its ownership of Distributing Common Stock and Acquiring Common Stock, (ii) whether the beneficiaries or owners of a shareholder have direct or indirect pro rata interests in the shareholder's assets, or (iii) any other relevant information.

Representations

- a) The Spin-off is intended to qualify under Section 355.
- b) The Combination is intended to qualify under Section 368.
- c) Taking into account the rulings issued in this letter, the Spin-off will not be 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 or Controlled (including any predecessor or successor of any such corporation).
- d) The Share Repurchases will be motivated by a business purpose and the stock to be repurchased in the Share Repurchases will be widely held.
- e) The Share Repurchases will not be motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
- f) At the time that a Share Repurchase is consummated, Acquiring will not know the identity of any beneficial shareholder: (i) from which stock is repurchased in the open market; (ii) in the case of an ASR program, from which the third-party investment bank borrows stock or purchases stock to fulfill the bank's obligation to return borrowed shares; or (iii) that participates in a tender offer (except to the extent that the shareholder is the record holder of tendered shares or provides an identifying tax-related form or statement to the repurchasing corporation in connection with such participation).
- g) There is no plan or intention that the aggregate amount of stock purchased in the Share Repurchases will equal or exceed 20 percent of the outstanding stock of Acquiring immediately after the Combination.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) Distributing may employ the Overlap Counting Principles in applying the Overlap Rule and the Net Decrease Methodology to the Combination.

- (2) To the extent that Share Repurchases are treated as part of a plan (or series of related transactions) with the Spin-off for purposes of section 355(e), the Share Repurchases will be treated as being made from all “Public Shareholders” of Acquiring (i.e., shareholders that are not a “controlling shareholder” or “10 percent shareholder,” within the meaning of Treas. Reg. §§1.355-7(h)(3) and (14), respectively) on a pro rata basis for purposes of testing the effect of the Share Repurchases on the Spin-off under section 355(e).

For purposes of this Ruling 2, each shareholder of Acquiring will be treated as a Public Shareholder with respect to any Share Repurchases that occur on or prior to five business days after either (1) actual knowledge of the Chief Financial Officer or General Counsel of Acquiring of the existence of a shareholder that is not a Public Shareholder or (2) the filing of a Schedule 13D, Schedule 13G, Form 3, or Form 4, indicating a shareholder of Acquiring holds enough shares to be considered a 5 percent shareholder within the meaning of Treas. Reg. §1.355-7(h)(8) (and it actively participates in the management or operation of the repurchasing corporation as described in Treas. Reg. §1.355-7(h)(3)) or a 10 percent shareholder within the meaning of Treas. Reg. §1.355-7(h)(14). For purposes of determining whether a 10 percent shareholder within the meaning of Treas. Reg. §1.355-7(h)(14) exists, Acquiring may disregard a Schedule 13G unless Item 6 reports such a shareholder or is left blank, or the filer discloses its status as a 10 percent shareholder within the meaning of Treas. Reg. §1.355-7(h)(14) on Form 3 or Form 4.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the 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.

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.

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.

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

Sincerely,

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: