Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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Date:
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Group Parent =

Distributing =

Controlled 1 =

Controlled 2 =

LLC =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Regulator =

Type O Entity =

Type P =

Business A =

Business B =

Business C =

Country M =

This letter replies to a request dated November 30, 1998, for rulings about the federal income tax consequences of a proposed transaction. We have received additional information in letters dated April 8, 1999, July 23, 1999, and August 12, 1999. The information submitted for consideration is summarized below.

Group Parent, Distributing, Controlled 1, and Controlled 2 join in the filing of a consolidated return. The last day of their taxable year is December 31st. Group Parent owns all of the outstanding stock in Distributing. Distributing owns all the outstanding stock in Controlled 1 and in Controlled 2. Distributing incorporated Controlled 1 and Controlled 2 in the past, and since that time Controlled 1 and Controlled 2 have always been members of Group Parent's consolidated group. Group Parent, Distributing, Controlled 1, and Controlled 2 are all state X corporations, and all use the accrual method of accounting. Distributing operates Business A; Controlled 1 operates Business B; Controlled 2 operates Business C.

Financial information has been submitted indicating that Businesses A, B, and C have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

On Date 1, Group Parent formed LLC as a State Y single member limited liability company disregarded for federal income tax purposes. Group Parent is currently in the process of seeking approval from the Regulator for LLC to qualify as a Type O Entity. Type O Entities are permitted to engage, at least to a substantial extent, in Type P

activities. Type O Entity status would permit LLC to engage in activities Distributing and its subsidiaries are prohibited from engaging in under current regulations.

To facilitate achievement of the business purposes described below, the taxpayer proposes and has partly consummated the following transaction ("the Proposed Transaction"):

Step 1: Prior to the distribution described below in Step 2, the assets of Controlled 2 relating to its operations in Country M would be sold to another subsidiary of Distributing.

Step 2: Distributing would distribute 100 percent of the issued and outstanding stock of Controlled 1 and of Controlled 2 to Group Parent.

Step 3: Group Parent would cause Controlled 1 and Controlled 2 to merge with and into LLC, with LLC surviving.

The taxpayer completed Step 1 on Date 2. It completed Step 2 on Date 3. Step 3 is as yet unconsummated.

The business purposes for the spin-off of Controlled 1 and Controlled 2 were to increase the amount of Type P activities that the consolidated group may engage in, and to enable it to engage in such activities more efficiently. The taxpayer conducted Steps 1 and 2 without regard to whether it could subsequently successfully consummate Step 3. The purpose for the merger of Controlled 1 and Controlled 2 into LLC (which entity Group Parent has elected to have disregarded for Federal income tax purposes) is to minimize taxes paid to State X.

There are no deferred intercompany items with respect to the stock of Controlled 1 and Controlled 2. There are no excess loss accounts in either Controlled 1 or Controlled 2 stock, and Group Parent (as the successor to Controlled 1 and Controlled 2) will remain a member of the Group Parent consolidated group. No deferred intercompany items or ELAs with respect to stock of either Controlled 1 or Controlled 2 will be created as a result of the Proposed Transaction.

The following representations have been made in connection with the transaction:

(a) The indebtedness, if any, owed by Group Parent to Distributing after the distribution did not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing was received by Group

Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted on behalf of Distributing, Controlled 1, and Controlled 2 are representative of each corporation's present operations, and with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) Following the Proposed Transaction, Distributing and Group Parent (as successor to Controlled 1 and Controlled 2) will each continue the active conduct of its business, independently and with its separate employees, except for those employees of Distributing that also conduct business for Controlled 1.

(e) The distribution of the Controlled 1 and Controlled 2 stock was carried out for the following corporate business purposes: To allow the Group Parent group efficiently to operate a Type O Entity, in order to remain competitive in the financial services industry. The distribution of the stock of Controlled 1 and Controlled 2 was motivated, in whole or substantial part, by one or more of these corporate business purposes.

(f) Except for the deemed liquidations of Controlled 1 and Controlled 2 into Group Parent, there is no plan or intention by Group Parent to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, Distributing or Controlled 1 or Controlled 2 or member interest in LLC after the Proposed Transaction. There is no plan or intention by any shareholder who owns 5 percent or more of the stock of Group Parent, and the management of Group Parent, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Group Parent, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Group Parent after the Proposed Transaction.

(g) There is no plan or intention by Distributing, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Proposed Transaction, other than through stock purchases meeting the requirements of §4.05(1) of Rev. Proc. 96-30. There is no plan or intention by Group Parent, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Proposed Transaction, other than through stock purchases meeting the requirements of §4.05(1) of Rev. Proc. 96-30.

(h) Except for the deemed liquidations of Controlled 1 and Controlled 2 into Group Parent, there is no plan or intention to liquidate Distributing or Group Parent, to merge Distributing or Group Parent with any other corporation, or to sell or otherwise dispose of the assets of Distributing, Controlled 1, Controlled 2, or Group Parent after the Proposed Transaction, except in the ordinary course of business.

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(i) Payments made in connection with all continuing transactions, if any, between Distributing and Group Parent (as successor to Controlled 1 and Controlled 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(j) No parties to the Proposed Transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(k) The distribution is not part of a plan or series of related transactions (within the meaning of §355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing, Controlled 1, or Controlled 2, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing, Controlled 1, or Controlled 2.

The following additional representations, as set forth in Rev. Proc. 90-52, 1990-2 C.B. 626, are made with respect to the merger of Controlled 1 and Controlled 2 into LLC, a single member limited liability company disregarded for federal income tax purposes ("the liquidation"):

(l) Group Parent, on the date of adoption of the plan of merger/liquidation, and at all times until the mergers are completed, will be the owner of at least 80 percent of the single outstanding class of Controlled 1's and Controlled 2's stock.

(m) No shares of Controlled 1's or Controlled 2's stock will have been redeemed during the three years preceding the adoption of the plan of merger/liquidation of Controlled 1 and Controlled 2.

(n) All distributions from Controlled 1 and Controlled 2 to Group Parent pursuant to the plan of merger/liquidation will be made within a single taxable year of Controlled 1 and Controlled 2.

(o) Upon the mergers of Controlled 1 and Controlled 2 with and into LLC, Controlled 1 and Controlled 2 will cease to be going concerns and their activities will be limited to winding up their affairs, paying their debts, and distributing their remaining assets to their shareholder.

(p) Controlled 1 and Controlled 2 will retain no assets following their mergers with and into LLC.

(q) Neither Controlled 1 nor Controlled 2 will have acquired assets in a nontaxable transaction at any time, except for acquisitions occurring more than three years prior to

the date of adoption of the plan of merger/liquidation.

(r) The mergers of Controlled 1 and Controlled 2 with and into LLC will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Controlled 1 and Controlled 2, if persons holding, directly or indirectly, more than 20 percent in value of the Controlled 1 and Controlled 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient, except as provided in Step 1 of the Proposed Transaction, above. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of §318(a) as modified by §304(c)(3).

(s) Prior to the adoption of the merger/liquidation plan, no assets of Controlled 1 or Controlled 2 will have been distributed in kind, transferred, or sold to Group Parent, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to the adoption of the merger/liquidation plan.

(t) Controlled 1 and Controlled 2 will report all earned income represented by assets that will be distributed to their shareholders such as receivables being reported on a cash basis, unfinished construction contracts, or commissions due, etc.

(u) The fair market value of the assets of Controlled 1 and Controlled 2 will exceed their liabilities both at the date of the adoption of the plan of merger/liquidation and immediately prior to the time of the mergers of Controlled 1 and Controlled 2 with and into LLC.

(v) There is no intercorporate debt existing between Group Parent and Controlled 1 or Controlled 2 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the merger/liquidation plan (or, alternatively, if such date is later) except for transactions occurring prior to the date Group Parent initially acquired Controlled 1's or Controlled 2's stock.

(w) Group Parent is not an organization that is exempt from federal income tax under §501 or any other provision of the Code.

(x) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed mergers of Controlled 1 and Controlled 2 with and into LLC have been fully disclosed.

Based solely on the information submitted and on the representations set forth above, it is held as follows:

1. No gain or loss will be recognized by Distributing from the distribution of Controlled 1 and Controlled 2 stock to Distributing (§355(c)).

2. No gain or loss will be recognized by (and no amount will be included in the income of) Group Parent upon the receipt of Controlled 1 and Controlled 2 stock (§355(a)(1)).

3. The aggregate basis of the Controlled 1, Controlled 2, and Distributing stock in the hands of Group Parent immediately after the distribution will be the same as the aggregate basis of the Distributing stock held by Group Parent immediately before the distribution, allocated between the Distributing and Controlled 1 and Controlled 2 stock in proportion to the fair market value of each in accordance with §1.358-2(a) of the Internal Revenue regulations (§358(a)(1) and (b)).

4. The merger of Controlled 1 and Controlled 2 into LLC will not prevent Step 2 of the Proposed Transaction from qualifying as a tax-free distribution of Controlled 1 and Controlled 2 stock pursuant to §355 (§1.355-2(d)(2)(i); Commissioner v. Morris Trust, 367 F.2d 794 (4th Cir. 1966); Rev. Rul. 62-138, 1962-2 C.B. 95).

5. Each of the Mergers will be treated as a distribution by Controlled 1 and Controlled 2, respectively, to Group Parent in complete liquidation (§332 and § 1.332-2(d)).

6. Neither Controlled 1 nor Controlled 2 will recognize gain or loss from the liquidating distributions of their property to Group Parent (§337(a)).

7. Group Parent's basis in the property received from the deemed liquidations of Controlled 1 and Controlled 2 is the same as it would be in the hands of Controlled 1 and Controlled 2 (§334(b)(1)).

8. The holding periods of the assets received by Group Parent in the liquidation include their holding period while the assets were owned by Controlled 1 and Controlled 2 (§1223(2)).

9. Group Parent will recognize no gain or loss on the receipt of property distributed in complete liquidation of Controlled 1 and Controlled 2. (§332(a)).

10. Earnings and profits will be allocated between Distributing, Controlled 1, and Controlled 2 in accordance with §§312(h), 1.312-10, and 1.1502-33(e)(3). The earnings and profits of Controlled 1 and Controlled 2 that Group Parent succeeds to under §381 as a result of the subsequent deemed liquidation of Controlled 1 and Controlled 2 under §332 are eliminated pursuant to §1.1502-33(a)(2) to prevent duplication, because these earnings and profits are already reflected in the earnings and profits of Group Parent pursuant to §1.1502-33(b).

11. Group Parent will succeed to and take into account the items of Controlled 1 and Controlled 2 described in §381(c), subject to the conditions and limitations specified in §381(b) and (c) and the regulations thereunder.

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

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

Each affected taxpayer should attach a copy of this letter to its Federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: Victor L. Penico

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