**Internal Revenue Service**

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Date:
**November 13, 2009**

LEGEND

D2 =

D1 =

Controlled =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Business 1 =

Business 3 =

Month 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

c =

d =

e =

f =

g =

h =

j =

k =

Dear :

This ruling is in reply to your letter dated September 30, 2009 requesting rulings concerning some of the Federal income tax consequences of a proposed transaction. The material information submitted in the request and in later correspondence is set forth below.

The rulings contained in this letter are based on facts 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 request for rulings. Verification of the information, representations and other data may be required as part of the audit process.

**This letter is issued pursuant to Rev. Proc. 2009-25, 2009-24 I.R.B. 1088, regarding one or more significant issues solely under the jurisdiction of the Associate Chief Counsel (Corporate), involving the tax consequences of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue or step not specifically addressed by this letter. Rather, the rulings contained in this letter only address one or more discrete legal issues involved in the transaction.**

## Summary of Facts

D2 is a public company and the common parent of a consolidated group. D2 owns all the stock of D1, a corporation engaged in Business 1. Until the restructuring that took place in Month 1 (described below), D2 also owned all the stock of Sub 3, a corporation engaged in Business 3.

For what are represented to be valid business purposes, including the creation of a holding company structure to facilitate an initial public offering (IPO) with respect to Business 3, the following steps were taken in Month 1. First, D2 contributed all the Sub 3 stock to D1. Second, Sub 3 issued to D1 a note with a principal amount of c, which was intended by the parties to qualify as a Section 301 distribution from Sub 3 to D1. Because the principal amount of the note exceeded D1's basis in its Sub 3 stock, the distribution created an excess loss account ("ELA") in the Sub 3 stock held by D1. Third, D1 created Controlled, a corporation. D1 owned all the stock of Controlled. Controlled then created a merger sub that merged into Sub 3 in a transaction that was intended by the parties to qualify as a reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E). As a result of the merger, D1 owned all the Controlled stock and Controlled owned all the Sub 3 stock. There are now ELAs in the Controlled stock held by D1 and in the Sub 3 stock held by Controlled.

In anticipation of an IPO of Controlled, Controlled amended its certificate of incorporation (the "Charter") on Date 2 to authorize two classes of common stock: Class A and Class B (the "Recap"). Both classes have identical economic rights but Class A stock carries a votes per share while Class B stock carries b votes per share. As part of the Recap, all of D1's shares of Controlled stock were converted into d shares of Class B stock in a reorganization that D2 represents qualified as a reorganization under Section 368(a)(1)(E). (No shares of Class A stock were outstanding.) D2 states that the Recap was intended to preserve the D2 group's control of Controlled in case the group's economic ownership of Controlled were reduced below 80% after the IPO.

As amended on Date 2, Controlled's Charter allows for the possibility of a partial or total elimination of the tiered voting structure in the Controlled stock that was created in the Recap. Among other things, the Charter generally provides that: (i) any holder of Class B stock may convert its Class B stock into Class A stock, (ii) each Class B share automatically converts into a Class A share upon the transfer of such Class B share to a person other than D2 or a "subsidiary" (as defined by the Charter) of D2, (iii) all the Class B stock automatically converts into Class A stock in the event that the aggregate number of outstanding Class A and Class B shares beneficially owned by D2 and its "affiliates" (as defined by the Charter) other than Controlled and Controlled's "subsidiaries" (as defined by the Charter) represents less than k% of the aggregate number of outstanding shares of Controlled common stock, and (iv) all the Class B stock may be converted into Class A stock by a majority vote of the Class B stock. However, the Charter also generally provides, notwithstanding items (i)-(iv) of the preceding sentence, that in the event of a distribution of the Controlled stock to the public that is intended to qualify under Section 355, the Class B stock loses its conversion rights and the voting power of the Class B stock is reduced to the lowest positive whole number of votes per share that is possible while still permitting the distribution to qualify under Section 355(a).

On Date 2 and Date 3, the assets pertaining to Business 3 that were not held by Sub 3 were transferred to Controlled (i) by D2 in exchange for Class A stock of Controlled (which was intended by the parties to qualify as an exchange under Section 351) and (ii) by certain subsidiaries of D2 in exchange for cash or short-term notes of Controlled (all of which have been repaid).

On Date 4, Controlled issued e shares of Class A stock to the public in the IPO. Since the IPO, Controlled's stock price has appreciated considerably, including in relation to D2's stock price. To take advantage of this situation, and for what are represented to be valid business purposes, D2 proposes the following steps ("the Proposed Transaction"):

(i) On Date 5, D1 (the sole shareholder of the Controlled Class B stock) will distribute all of its Controlled stock to D2 (the "Internal Spin-off").

(ii) On Date 6, D2 will announce and file with the SEC an exchange offer to D2's shareholders, pursuant to which D2 will offer to exchange all of its Controlled Class A stock for outstanding shares of D2 stock (the "Exchange Offer"). The consummation of the Exchange Offer will be conditioned upon a minimum level of participation in the Exchange Offer by tendering D2 shareholders, which minimum level of participation will be determined by D2 prior to the commencement of the Exchange Offer but will be no less than f% of the number of shares of Controlled held by D2 after the Unwind described below in step (iii). The exchange ratio for the Exchange Offer will be set at a level intended to encourage the D2 shareholders to tender their D2 stock in the Exchange Offer. The expiration date of the Exchange Offer (the "Expiration Date") will be at least 20 business days after the Exchange Offer is announced.

(iii) On or shortly after the Expiration Date, if the tender condition in Step (ii) and other conditions to the Exchange Offer are met, D2 will convert its Controlled Class B stock into Class A stock, with g votes per share, in a reorganization that D2 represents will qualify under Section 368(a)(1)(E) ("the Unwind"). As a result of the Internal Spin-off and the Unwind, D2 will hold shares of Controlled stock with h% of the voting power and j% of the value of all the outstanding stock of Controlled. After the Unwind, D2 will transfer its Controlled stock to tendering D2 shareholders pursuant to the Exchange Offer in exchange for D2 stock (the "External Split-off").

(iv) If D2 does not distribute all of its Controlled stock in the External Split-off, then promptly after completion of the External Split-off D2 will distribute to its shareholders all its remaining Controlled stock (the "Clean-up Distribution"). After this step, D2 will not own any Controlled stock.

(v) D2 will contribute the stock of Sub 4, Sub 5 and Sub 6 to D1. In addition, on Date 7, D2 previously contributed Sub 7 to D1 (along with the contributions of Subs 4-6, the "Subsidiary Contributions"). The Subsidiary Contributions were planned without regard to the Internal Spin-off, and would have occurred or will occur whether or not the Internal Spin-off occurs.

**Representations**

(a) To the best knowledge and belief of D2, the Internal Spin-off will qualify under Section 355(a) assuming that the Service issues the rulings set forth below regarding the Unwind and the Subsidiary Contributions.

(b) To the best knowledge and belief of D2, the External Split-off and the Clean-Up Distribution will qualify under Section 355(a), assuming that the Service issues the rulings set forth below regarding the Unwind.

(c) To the best knowledge and belief of D2, the Recap qualifies as a tax-free reorganization under Section 368(a)(1)(E).

(d) There is, and there will be (as of immediately after the Internal Spin-off), no legally binding obligation to change the capital structure or the Charter of Controlled, including an obligation (i) to exercise any conversion rights, (ii) to change the relative voting power of any shareholder or class of shares of Controlled, and/or (iii) to affect any other right created in the Recap.

(e) As of immediately after the Internal Spin-off, there will be no legally binding obligation to proceed with the remainder of the Proposed Transaction. No legally binding obligation to proceed with the remainder of the Proposed Transaction will arise absent the fulfillment of the minimum tender condition referred to Step (ii) of the Proposed Transaction.

(f) At all times since the formation of Controlled, D1 has had control of Controlled within the meaning of Section 368(c).

(g) There is no regulatory, legal, contractual or economic compulsion or requirement that the Subsidiary Contributions be made as a condition of the Internal Spin-off**.** The fact that the value of D1 will decrease as a result of the Internal Spin-off was not a consideration in the decision to contribute property to D1. The Internal Spin-off is not contingent on there being contributed to D1 assets having a specified (or a roughly specified) value.

## Rulings

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

(1) The Unwind will not cause the Internal Spin-off to fail to satisfy the "controls immediately before" requirement of Section 355(a)(1)(A).

(2) The Subsidiary Contributions will not be treated as having been received by D1 in exchange for Controlled stock distributed by D1 in the Internal Spin-off.

## Caveat

No opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, including the tax consequences or characterization of the distributions, other issues related to the distributions, and the application of the anti-avoidance rule of Treasury Regulation Section 1.1502-19(e) to the excess loss accounts in the stock of Controlled and Sub 3.

## Procedural Statements

This ruling is directed only to the taxpayer requesting 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 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.

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

Sincerely,

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Stephen P. Fattman
Special Counsel to the Associate Chief Counsel (Corporate)