**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-132430-12

Date:
May 31, 2013

**Legend**:

Distributing =

Controlled =

Acquiring =

Merger Sub =

Sub 1 =

Sub 2 =

Sub 3 =

| | |
|---|---|
| Sub 4 | = |
| Sub 5 | = |
| Sub 6 | = |
| Sub 7 | = |
| Sub 8 | = |
| Sub 9 | = |
| Sub 10 | = |
| Sub 11 | = |
| LLC 1 | = |
| LLC 2 | = |
| LLC 3 | = |

| | |
|---|---|
| LLC 4 | = |
| LLC 5 | = |
| LLC 6 | = |
| LLC 7 | = |
| LLC 8 | = |
| LLC 9 | = |
| LLC 10 | = |
| LLC 11 | = |
| LLC 12 | = |
| LLC 13 | = |
| LLC 14 | = |

| | | |
|---|---|---|
| LLC 15 | = | |
| Shareholder A | = | |
| Shareholder B | = | |
| Shareholder C | = | |
| Shareholder D | = | |
| Shareholder E | = | |
| Business A | = | |
| Business B | = | |
| Business C | = | |
| Concerns | = | |

| | | |
|---|---|---|
| Organization | = | |
| Entities | = | |
| Other Entities | = | |
| Risks | = | |
| Type A | = | |
| Type B | = | |
| Approval | = | |
| Re-Financing Call Right | = | |
| Obligations | = | |
| Provisions | = | |
| Interest Rate | = | |
| Grade | = | |
| Credit Rating Agency A | = | |
| Credit Rating Agency B | = | |
| Other Agreements | = | |
| Special Dividend | = | |
| Acquiring Special Share Repurchase | = | |
| State A | = | |

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your July 27, 2012 letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that letter and in later correspondence is summarized 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 the appropriate parties. 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) 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 Distributing or Controlled (see § 355(e)(2)(A)(ii) and § 1.355-7).

## Summary of Facts

Distributing is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Distributing Group"). The authorized and outstanding capital stock of Distributing consists of one class of common stock (the "Distributing Common Stock"). The Distributing Common Stock is publicly traded and widely held. Based on publicly available securities information, only Shareholder A, Shareholder B, Shareholder C, Shareholder D, and Shareholder E held five percent or more of the Distributing Common Stock as of Date 1.

Distributing wholly owns, among other things, Controlled, which was formed in connection with the Proposed Transaction (defined below) on Date 2 as a disregarded entity, and Distributing owns all of the outstanding common stock (or membership interests as the case may be) of each of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8 and the Other Entities. Sub 9 will be wholly-owned by Distributing and may be a pre-existing entity or newly formed by Distributing in connection with the Proposed Transaction (defined below). Sub 1 owns all of the outstanding common stock of Sub 10. Sub 3 owns all of the outstanding common stock of Sub 11. Each of Distributing, and Sub 1 through Sub 11 is (or, perhaps in the case of Sub 9, will be) classified as a corporation for federal tax purposes under §§ 301.7701-2 and 3. Each of Sub 2, Sub 4, Sub 5, and Sub 10 has outstanding publicly-traded non-voting preferred stock or membership interests that qualify under § 1504(a)(4), and Sub 11 has outstanding publicly-traded voting preferred membership interests.

Distributing and the members of its "separate affiliated group" as defined in § 355(b)(3) (the "Distributing SAG") directly engage in Business A through activity of Sub 2, which is a segment of Business B. Financial information has been submitted indicating that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. As a result of the Proposed Transaction, Controlled and the members of its "separate affiliated group" as defined in § 355(b)(3) (the "Controlled SAG") will directly engage in Business C, which currently is a segment of Business B. Financial information has been submitted indicating that Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Distribution (defined below) is motivated, in whole or substantial part, by the following corporate business purposes: (i) protecting Distributing's credit quality by insulating Business B from significant projected capital expenditures of Business C and increasing Controlled's access to capital markets; (ii) permitting Controlled management to focus on the Concerns; (iii) creating an independent company for Business C, that is, in conjunction with Organization, the best model to drive economic efficiency and achieve the most open and transparent markets and to create efficient use and expansion in Business C; (iv) reducing Distributing's and the Entities' exposure to Risks of Business C while reducing Business C's exposure to the Risks of Business B; and (v) facilitating the Acquiring Merger (defined below) ((i) through (v), collectively, the "Corporate Business Purposes").

**Proposed Transaction**

For what are represented to be valid business purposes, Distributing proposes to effect the Distribution (defined in step (xlvii)). The following steps have been proposed (collectively, the "Proposed Transaction") to implement the Distribution:

(i) (a) Sub 10 formed LLC 1 (the "LLC 1 Formation"); (b) Sub 2 formed LLC 2 (the "LLC 2 Formation"); (c) Sub 11 formed LLC 3 (the "LLC 3 Formation"); (d) Sub 4 formed LLC 4 (the "LLC 4 Formation"); (e) Sub 5 formed LLC 5 (the "LLC 5 Formation"); and (f) Sub 6 formed LLC 6 (the "LLC 6 Formation" and together with the LLC 1 Formation, the LLC 2 Formation, the LLC 3 Formation, the LLC 4 Formation, and the LLC 5 Formation, the "Type A Subsidiaries Formations"; the entities formed in the Type A Subsidiaries Formations, collectively, the "Type A Subsidiaries" and individually a "Type A Subsidiary"). No election will be made to treat any Type A Subsidiary as a corporation for U.S. federal income tax purposes.

(ii) Distributing will issue debt (the "Distributing Notes") to unrelated creditors in one or more issuances effectuated at least a days prior to the effective date of the Distribution (as defined in Step (xlvii)) and the Debt Exchange (as defined in Step (l)).

(iii) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 6.

(iv) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 1, which will contribute such proceeds to Sub 10.

(v) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 2.

(vi) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 3, which will contribute such proceeds to Sub 11.

(vii) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 4.

(viii) Distributing will contribute a portion of the proceeds from the issuance of the Distributing Notes to Sub 5.

(ix) Each of Sub 2, Sub 4, Sub 5, Sub 10, and Sub 11 will redeem all of its outstanding preferred stock or preferred membership interests, as the case may be, from holders that are not otherwise affiliated with Distributing.

(x) LLC 6 will issue debt (the "LLC 6 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 6 Distribution (as defined in Step (xx)).

(xi) LLC 1 will issue debt (the "LLC 1 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 1 Distribution (as defined in Step (xxv)).

(xii) LLC 2 will issue debt (the "LLC 2 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 2 Distribution (as defined in Step (xxix)).

(xiii) LLC 3 will issue debt (the "LLC 3 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 3 Distribution (as defined in Step (xxxiv)).

(xiv) LLC 4 will issue debt (the "LLC 4 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 4 Distribution (as defined in Step (xxxviii)).

(xv) LLC 5 will issue debt (the "LLC 5 Notes") to unrelated creditors in one or more issuances effectuated prior to the effective time of the LLC 5 Distribution (as defined in Step (xlii)).

(xvi) (a) Distributing will form LLC 7, LLC 8, LLC 9, LLC 10, LLC 11 and LLC 12 (LLC 7 and LLC 9 collectively the "Holding Company LLCs"); (b) Sub 1 will form LLC 13; and (c) Sub 3 will form LLC 14 (collectively with LLC 8, LLC 10, LLC 11, LLC 12, and LLC 13, the "Type B Opco LLCs," and the Holding Company LLCs collectively with the Type B Opco LLCs, the "Type B LLCs," and each individually, a "Type B LLC"). No election will be made to treat any of these newly formed subsidiaries as a corporation for U.S. federal income tax purposes.

(xvii) Distributing will cause Controlled to elect to be treated as a corporation for U.S. federal income tax purposes.

(xviii) Sub 6 will merge with and into LLC 12 with LLC 12 surviving (the “Sub 6 Merger”).

(xix) LLC 12 will contribute all of its Business C assets and liabilities to LLC 6, (such transaction, the “LLC 6 Contribution”) in exchange for the proceeds from the issuance of the LLC 6 Notes in Step (x).

(xx) LLC 12 will distribute all of its membership interests in LLC 6 to Distributing (the “LLC 6 Distribution”).

(xxi) Distributing will contribute its ownership interests in (i) LLC 12 and (ii) the Other Entities to Sub 9 (the “LLC 12 Contribution”). The LLC 12 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)).

(xxii) Sub 1 will merge with and into LLC 7 with LLC 7 surviving (the “Sub 1 Merger”).

(xxiii) Sub 10 will merge with and into LLC 13 with LLC 13 surviving (the “Sub 10 Merger”).

(xxiv) LLC 13 will contribute all of its Business C assets and liabilities to LLC 1, (such transaction, the “LLC 1 Contribution”) in exchange for the proceeds from the issuance of the LLC 1 Notes in Step (xi).

(xxv) LLC 13 will distribute all of its membership interests in LLC 1 to LLC 7, which will distribute such membership interests to Distributing (such transactions, the “LLC 1 Distribution”).

(xxvi) LLC 7 will merge with and into Sub 9 with Sub 9 surviving (the “LLC 13 Contribution”). The LLC 13 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)).

(xxvii) Sub 2 will merge with and into LLC 8 with LLC 8 surviving (the “Sub 2 Merger”).

(xxviii) LLC 8 will contribute all of its Business C assets and liabilities to LLC 2, (such transaction, the “LLC 2 Contribution”) in exchange for the proceeds from the issuance of the LLC 2 Notes in Step (xii).

(xxix) LLC 8 will distribute all of its membership interests in LLC 2 to Distributing (the “LLC 2 Distribution”).

(xxx) Distributing will contribute its membership interests in LLC 8 to Sub 9 (the “LLC 8 Contribution”). The LLC 8 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)).

(xxxi) Sub 3 will merge with and into LLC 9 with LLC 9 surviving (the “Sub 3 Merger” and collectively with the Sub 1 Merger, the “Holdco Mergers”).

(xxxii) Sub 11 will merge with and into LLC 14 with LLC 14 surviving (the “Sub 11 Merger”).

(xxxiii) LLC 14 will contribute all of its Business C assets and liabilities to LLC 3, (such transaction, the “LLC 3 Contribution”) in exchange for the proceeds from the issuance of the LLC 3 Notes in Step (xiii).

(xxxiv) LLC 14 will distribute all of its membership interests in LLC 3 to LLC 9, which shall distribute such membership interests to Distributing (such transactions, the “LLC 3 Distribution”).

(xxxv) LLC 9 will merge with and into Sub 9 with Sub 9 surviving (the “LLC 14 Contribution”). The LLC 14 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)).

(xxxvi) Sub 4 will merge with and into LLC 10 with LLC 10 surviving (the “Sub 4 Merger”).

(xxxvii) LLC 10 will contribute all of its Business C assets and liabilities to LLC 4, (such transaction, the “LLC 4 Contribution”) in exchange for the proceeds from the issuance of the LLC 4 Notes in Step (xiv).

(xxxviii) LLC 10 will distribute all of its membership interests in LLC 4 to Distributing (the “LLC 4 Distribution”).

(xxxix) Distributing will contribute its membership interests in LLC 10 to Sub 9 (the “LLC 10 Contribution”). The LLC 10 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)).

(xl) Sub 5 will merge with and into LLC 11 with LLC 11 surviving (the “Sub 5 Merger” collectively with the Sub 6 Merger, the Sub 10 Merger, the Sub 2 Merger, the

Sub 11 Merger, and the Sub 4 Merger, the “Opco Mergers,” each individually, an “Opco Merger” and the Opco Mergers collectively with the Holdco Mergers, the “Upstream Mergers” and each individually an “Upstream Merger”).

(xli) LLC 11 will contribute all of its Business C assets and liabilities to LLC 5, (such transaction, the “LLC 5 Contribution,” and collectively with the LLC 6 Contribution, the LLC 1 Contribution, the LLC 2 Contribution, the LLC 3 Contribution, and the LLC 4 Contribution, the “Type A Contributions”) in exchange for the proceeds from the issuance of the LLC 5 Notes in Step (xv).

(xlii) LLC 11 will distribute all of its membership interests in LLC 5 to Distributing (the “LLC 5 Distribution” and collectively with the LLC 6 Distribution, LLC 1 Distribution, LLC 2 Distribution, LLC 3 Distribution, and LLC 4 Distribution, the “Type A Distributions,” and each individually, a “Type A Distribution”).

(xliii) Distributing will contribute its membership interests in LLC 11 to Sub 9 (the “LLC 11 Contribution” and collectively with the LLC 12 Contribution, LLC 13 Contribution, LLC 8 Contribution, LLC 14 Contribution, and LLC 10 Contribution, the “Sub 9 Contributions,” each individually, a “Sub 9 Contribution,” and collectively with the respective Upstream Merger(s), Type A Contribution, and Type A Distribution, the “Opco Transactions”). The LLC 11 Contribution will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii)). The Opco Transactions for each respective Opco may occur in a different order vis-à-vis the Opco Transactions for any other Opco than as set forth in the order of the steps described herein for the Proposed Transaction.

(xliv) Distributing will form LLC 15. Sub 8 will merge with and into LLC 15 with LLC 15 surviving (Step (xliv(a))). Thereafter, Distributing will contribute LLC 15 to Sub 9 (Step (xliv(b))). Step (xliv(b)) will occur only after Distributing receives Approval for such contribution, which may not occur until after the Distribution (as defined in Step (xlvii). No election will be made to treat LLC 15 as a corporation for U.S. federal income tax purposes.

(xlv) Distributing will contribute to Controlled all of the outstanding membership interests of the Type A Subsidiaries and cash in exchange for Controlled stock (the “Controlled Stock”) and the Controlled indebtedness (the “Controlled Indebtedness”) (such transaction, the “Contribution”).

(xlvi) Sub 7 will sell to Controlled or one or more Type A Subsidiaries a building, certain leases, and certain computer hardware and software, each associated with Business C, for cash and the assumption of certain liabilities.

(xlvii) Pursuant to a resolution of its board of directors, Distributing will either (a) distribute all of the Controlled Stock pro rata to its shareholders (the “Spin-Off”), or (b) (i) conduct an exchange offer (the “Exchange Offer”) to exchange Controlled Stock for Distributing stock (the “Exchange”), and (ii) in the event that the Exchange Offer is undersubscribed or is otherwise not effectuated, distribute pro rata to Distributing shareholders any remaining shares of Controlled Stock held by Distributing (the “Subsequent Distribution,” and collectively with the Exchange, the “Splint-Off” and either such Splint-Off or such Spin-Off, the “Distribution” as effectuated through the mechanics described herein). To the extent the Distribution will take the form of the Spin-Off, Distributing will transfer the Controlled Stock to a distribution agent (the “Distribution Agent”) and to the extent the Distribution will take the form of the Splint-Off, Distributing will transfer the Controlled Stock to an exchange agent (the “Exchange Agent” and either the Exchange Agent or the Distribution Agent, the “Agent”). In either case, the Agent will hold the Controlled Stock on behalf of the shareholders entitled to receive such stock in the Distribution.

(xlviii) After the transfer of the Controlled Stock to the Agent in Step (xlvii), Acquiring will cause Merger Sub to merge with and into Controlled with all of the Controlled Stock, including the Controlled Stock held by the Agent, being exchanged solely for Acquiring voting stock (“Acquiring Stock” and such transaction, “Acquiring Merger”). In the Acquiring Merger, Distributing expects that the Controlled shareholders (i.e., historic Distributing shareholders) will receive more than b percent (treating fractional shares of Acquiring Stock as received by the Controlled shareholders in the Acquiring Merger), but less than c percent of the stock of Acquiring. Any fractional shares of Acquiring Stock that would otherwise be issuable in the Acquiring Merger will be transferred to the Agent and sold on the open market on behalf of the Controlled shareholders that would have received such fractional Acquiring shares. The net proceeds of such sales will be distributed to the shareholders who would have otherwise been entitled to receive the fractional shares as soon as practicable after the Acquiring Merger and the Distribution (the “First Fractional Shares Sales”). Prior to the Acquiring Merger, Acquiring will cause Merger Sub to elect to be treated as a corporation for U.S. federal income tax purposes.

(xlix) To the extent the Distribution will take the form of the Spin-Off, the Distribution Agent will distribute the shares of Acquiring Stock it holds to the shareholders entitled to receive shares of Controlled Stock as part of the Spin-Off in Step (xlvii). To the extent the Distribution will take the form of the Splint-Off, the Exchange Agent will exchange the shares of Acquiring Stock it holds for shares of Distributing stock with those shareholders that had elected to exchange their shares of Distributing stock for shares of Controlled Stock in the Exchange in Step (xlvii) and then will distribute any remaining shares of Acquiring Stock pro rata to the remaining Distributing shareholders as part of the Subsequent Distribution. As in the First Fractional Shares Sale, any fractional shares of Acquiring Stock otherwise issuable in this step will be sold by the Agent in the open market on behalf of the shareholders that would have received the fractional shares of Acquiring Stock, and the net proceeds of such sales will be distributed to such shareholders on a pro rata basis as soon as practicable after this step (the “Second Fractional Shares Sale” and collectively with the First Fractional Shares Sale, the

"Fractional Shares Sales"). If taken into account for purposes of § 355(e), the Fractional Shares Sales would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

(l) On or about the effective time of the Distribution, Distributing expects to transfer all of the Controlled Indebtedness to the holders of the Distributing Notes in exchange for all or a portion of the Distributing Notes (the "Debt Exchange").

(li) Using the cash received in (a) the LLC 6 Contribution in Step (xix) and (b) the contribution by Distributing in Step (iii), LLC 12 will repay historic external debt of Sub 6 (the "LLC 12 Historic Debt Repayment").

(lii) Using the cash received in (a) the LLC 1 Contribution in Step (xxiv) and (b) the contribution by Sub 1 in Step (iv), LLC 13 will repay historic external debt of Sub 10 (the "LLC 13 Historic Debt Repayment").

(liii) Using the cash received in (a) the LLC 2 Contribution in Step (xxviii) and (b) the contribution by Distributing in Step (v), LLC 8 will repay historic external debt of Sub 2 (the "LLC 8 Historic Debt Repayment").

(liv) Using the cash received in (a) the LLC 3 Contribution in Step (xxxiii) and (b) the contribution by Sub 3 in Step (vi), LLC 14 will repay historic external debt of Sub 11 (the "LLC 14 Historic Debt Repayment").

(lv) Using the cash received in (a) the LLC 4 Contribution in Step (xxxvii) and (b) the contribution by Distributing in Step (vii), LLC 10 will repay historic external debt of Sub 4 (the "LLC 10 Historic Debt Repayment").

(lvi) Using the cash received in (a) the LLC 5 Contribution in Step (xli) and (b) the contribution by Distributing in Step (viii), LLC 11 will repay historic external debt of Sub 5 (the "LLC 11 Historic Debt Repayment," and collectively with the LLC 12 Historic Debt Repayment, the LLC 13 Historic Debt Repayment, the LLC 8 Historic Debt Repayment, the LLC 14 Historic Debt Repayment, and the LLC 10 Historic Debt Repayment, the "Opcos Historic Debt Repayment"). It is possible the Opcos Historic Debt Repayment will occur prior to the Sub 9 Contributions and/or the Distribution.

## Continuing Agreements

Distributing and certain of its affiliates, Controlled, and Acquiring, have entered into, or will enter into, certain agreements in connection with the implementation of the Proposed Transaction, including (i) a separation agreement, (ii) a merger agreement, (iii) transition services agreements, (iv) an employee matters agreement, (v) agreements regarding rights to intellectual property, and (vi) agreements regarding rights to certain facilities to be owned by Controlled or Distributing (collectively, the "Continuing Agreements").

Services under the transitional services agreements are expected to be provided at no less than cost and no more than fair market value. Except for payments with respect to transitional services, payments made in connection with the other Continuing Agreements will be on terms intended to reflect those terms arrived at by parties negotiating at arm's length.

## The Controlled Indebtedness

The Controlled Indebtedness (i) will have at least a d term to maturity, and (ii) will not contain any call or put rights, other than the Re-Financing Call Right. The Controlled Indebtedness will be Obligations that will rank pari passu with all present and future Obligations of Controlled, will not contain any Provisions, will bear an Interest Rate, and the yield will be determined at the time the Controlled Indebtedness is priced. The Controlled Indebtedness is expected to have a Grade credit rating from Credit Rating Agency A and Credit Rating Agency B. After the later of the Acquiring Merger or the Debt Exchange, Acquiring is expected to guarantee the Controlled Indebtedness (at such time, Controlled also is expected to provide a cross-guarantee on Acquiring's outstanding third-party indebtedness). Acquiring's guarantee is not expected to change the credit rating of the Controlled Indebtedness from Grade.

## The Debt Exchange

For the purpose of effectuating the Debt Exchange in an efficient manner, Distributing anticipates issuing indebtedness (i.e., the Distributing Notes) directly to one or more commercial banks and/or investment banks (the "Financial Institutions") and subsequently exchanging the Controlled Indebtedness for such Distributing indebtedness. It is expected that any newly issued Distributing Notes to be exchanged will have a maturity date of within e and f and will be prepayable without penalty. While it is expected that the Distributing indebtedness will be newly issued, it is possible that in lieu of such newly issued indebtedness, the Financial Institutions will purchase existing Distributing indebtedness ("Distributing Indebtedness") from current holders of such indebtedness. In such event the term "Debt Exchange" (defined in Step (l)) would incorporate any exchange of Controlled Indebtedness for such Distributing Indebtedness. The amount of Distributing Notes or Distributing Indebtedness exchanged for Controlled Indebtedness in the Debt Exchange will not exceed the daily average outstanding third party indebtedness of Distributing for the 365 day period ending on the close of business on Date 3, the last full business day before the date on which Distributing's board of directors directed management to actively pursue the distribution of Business C.

In the event the Financial Institutions (i) loan money directly to Distributing for newly issued Distributing Notes or (ii) purchase existing Distributing Indebtedness, they will acquire good and valid title to the Distributing Notes or Distributing Indebtedness at least g days prior to the date of the Debt Exchange.

It is possible that the Financial Institutions may sell all or a portion of the Distributing Notes or Distributing Indebtedness to a syndicate of securities underwriters (the "Securities Underwriters" and collectively with the Financial Institutions, the "Exchanging Note Holders") prior to the execution of the Exchange Agreement (defined below).

Distributing expects to enter into an exchange agreement (the "Exchange Agreement") with the Exchanging Note Holders for the exchange by such institutions of Distributing Notes or Distributing Indebtedness for the Controlled Indebtedness. Any such Exchange Agreement would be executed no sooner than h days after the acquisition by the Financial Institutions of such Distributing Notes or Distributing Indebtedness and, if Distributing Notes are newly issued, no sooner than h days after the funds have been disbursed to Distributing. The pricing for the Debt Exchange will be determined pursuant to arm's length negotiations, and such negotiations are expected to take into account the margins that such Exchanging Note Holders typically seek for an underwriting of instruments similar to the Controlled Indebtedness. The Exchanging Note Holders may enter into Other Agreements with respect to the Distributing Notes or Distributing Indebtedness, but neither Distributing, nor any affiliate will be a party to such agreements.

The Exchanging Note Holders are expected to solicit non-binding indications of interest for the Controlled Indebtedness they will receive in exchange for the Distributing Notes or Distributing Indebtedness from third-party investors prior to the execution of the Exchange Agreement. However, (i) the Exchanging Note Holders will not enter into a binding obligation to sell the Controlled Indebtedness, and (ii) the sale to third party investors will not be executed, in either case, sooner than immediately after the execution of the Exchange Agreement. In addition, no person will have any right or obligation to acquire any Controlled Indebtedness from Distributing, other than the Exchanging Note Holders pursuant to and upon execution of the Exchange Agreement.

## Pre-Distribution Stock Repurchases

All repurchases of Distributing Common Stock that occurred or will occur for the two year period before the Distribution will have been open market transactions occurring in an amount and at a time that would have occurred regardless of the Distribution (the "Pre-Distribution Repurchases"). If taken into account for purposes of § 355(e), the Pre-Distribution Repurchases would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

## Acquiring Special Contraction

Prior to the Acquiring Merger, Acquiring is expected to (i) declare the Special Dividend, (ii) effect the Acquiring Special Share Repurchase, or (iii) effect a combination of the Special

Dividend and Acquiring Special Share Repurchase in which the amount payable to the Acquiring shareholders will not exceed i (collectively with the Acquiring Special Share Repurchase and the Special Dividend, or any combination thereof, the "Acquiring Special Contraction"). If treated as occurring after the Acquiring Merger and taken into account for purposes of § 355(e), the Acquiring Special Contraction would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

Acquiring Stock Public Sale, Distributing Savings Plan, Acquiring Equity Compensation Plan and Acquiring Reinvestment Plan

As described above, in the Acquiring Merger, all of the Controlled Stock will be exchanged for Acquiring Stock, including the Controlled Stock held by the Agent. If taken into account for purposes of § 355(e), acquisitions of Acquiring Stock that would otherwise qualify under § 1.355-7(d)(7) but for the fact they are acquisitions of Acquiring Stock and not Controlled Stock (such an acquisition, an "Acquiring Stock Public Sale"), would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

Distributing has a § 401(k) qualified plan (a "Savings Plan") for the Distributing Group's employees that qualifies as a § 401(a) plan and a trust. One investment option available to Distributing Group employees, who may self-direct investments, through the Savings Plan is participation in the Distributing Common Stock fund (the "Fund") pursuant to which such employees can invest in Distributing Common Stock. The Savings Plan currently holds in the aggregate, on behalf of the Distributing Group employees as beneficiaries, Distributing Common Stock representing less than j percent of the total value and voting power of the stock of Distributing. Under the Proposed Transaction, the Savings Plan would receive shares of Controlled Stock on behalf of the Fund participants, and upon the Acquiring Merger such shares of Controlled Stock would convert to Acquiring Stock. Because Acquiring Stock would not be a permitted investment of the Fund under the Savings Plan governing documents, however, the Fund participants would be required to direct the divestment of such shares within k to l months. If the Fund participants fail to provide such direction within the required period, the plan trustee would be required to direct the sale of such Acquiring shares on behalf of the Savings Plan (such sale, along with any sale as directed by a Fund participant or otherwise, a "Savings Plan Sale"). Any such sale would be contractually required to be effectuated in an open market transaction.

If the aggregation rule of section 355(e)(4)(C)(i) were to apply for purposes of determining whether the Savings Plan, with respect to any sales of Distributing Common Stock or Acquiring stock it makes, "actively participates in the management or operation" of any corporation for purposes of the definition of "Controlling shareholder" within the meaning of § 1.355-7(h)(3), such sales would cause the Distribution to be treated as a distribution to which § 355(e) applies if those sales were regarded as part of a plan including the Distribution, and this fact has been specifically considered in issuing Ruling (21).

Acquiring has an equity compensation plan (the "Equity Compensation Plan"), which was neither established nor amended in contemplation of the Distribution, and which will continue after the Acquiring Merger. All employees of Acquiring, including former employees of the Distributing Group who become employees of Acquiring as a result of the Acquiring Merger as well as employees who may never have performed services for Distributing or Controlled, will be eligible to participate in the Equity Compensation Plan. In addition, as part of the Acquiring Merger, Distributing options and restricted stock held by employees of the Distributing Group who become employees of Acquiring will be converted into Acquiring options and restricted stock (the "Option and Restricted Stock Conversion" and any post-Acquiring Merger issuances with respect to the Equity Compensation Plan or Acquiring options or restricted stock issued in the Option and Restricted Stock Conversion, "Equity Compensation Issuances"). If taken into account for purposes of § 355(e), the Option and Restricted Stock Conversion or the Equity Compensation Issuances would cause the Distribution to be treated as a distribution to which § 355(e) applies, and these facts have been specifically considered in issuing Ruling (21).

Acquiring also has a dividend reinvestment plan (the "Reinvestment Plan"), which will continue after the Acquiring Merger. The Reinvestment Plan affords the shareholders of Acquiring Stock an election to reinvest their dividends in new shares of Acquiring Stock (the issuance of such a new share, a "Reinvestment Share Issuance"). All shareholders of Acquiring Stock following the Acquiring Merger will be eligible to participate in the Reinvestment Plan. If taken into account for purposes of § 355(e), any Reinvestment Share Issuance would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

<u>Acquiring Board of Directors</u>

In conjunction with the Distribution, <u>m</u> positions on the Acquiring Board of Directors will be filled with candidates nominated by Acquiring's nominating/corporate governance committee (such action, the "Filling of the Acquiring Board Member Positions"). If taken into account for purposes of § 355(e), the Filling of the Acquiring Board Member Positions would cause the Distribution to be treated as a distribution to which § 355(e) applies, and this fact has been specifically considered in issuing Ruling (21).

## Representations

<u>The Upstream Mergers</u>

For purposes of these rulings, "Transferor" shall refer to the corporation transferring its assets in the merger. The following representations have been made with respect to each of the Upstream Mergers:

(a) The Upstream Merger will be effected pursuant to the respective state laws. Pursuant to the plan of merger and by operation of law, the following will occur simultaneously: (i) all of the assets and all of the liabilities of Transferor at the effective time of the Upstream Merger will become the assets and liabilities of Distributing (through its interests in the Type B LLC), and (ii) the separate legal existence of Transferor will cease to exist for all purposes.

(b) Distributing has no plan or intention to sell, transfer, or otherwise dispose of any of the assets of Transferor (including the indirect assets of Sub 1 or Sub 3 with regard to the Sub 1 Merger and Sub 3 Merger, respectively) acquired in the transaction, except for (i) dispositions made in the ordinary course of business, (ii) transfers described in § 368(a)(2)(C) or § 1.368-2(k), or (iii) the transactions that comprise the Proposed Transactions.

(c) The liabilities of Transferor assumed (within the meaning of § 357(d)) by Distributing in the Upstream Merger were (i) incurred by Transferor in the ordinary course of its business and are associated with the assets to be transferred to Distributing in such Upstream Merger or (ii) incurred to facilitate the appropriate liquidity and capital structure for each of Distributing and Controlled.

(d) Following the Upstream Merger, Distributing will continue, through one or more members of Distributing's qualified group (within the meaning of § 1.368-1(d)(4)(ii)), the historic business of Transferor (the historic business of Sub 10 and Sub 11, respectively, with regard to the Sub1 Merger and the Sub3 Merger, respectively) or use a significant portion of Transferor's historic assets (the historic business assets of Sub 10 and Sub 11, respectively, with regard to the Sub1 Merger and the Sub3 Merger, respectively) in a business.

(e) Distributing and Transferor will pay their respective expenses, if any, incurred in connection with the Upstream Merger.

(f) There is no intercorporate indebtedness existing between Transferor and Distributing that was issued, acquired, or will be settled at a discount.

(g) No two parties to the Upstream Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(h) The total fair market value of the assets to be transferred to Distributing by Transferor will exceed the sum of the liabilities of Transferor to be assumed by Distributing (through its interests in the Type B LLC) (within the meaning of § 357(d)). The fair market value of the assets of Distributing will exceed the amount of its liabilities immediately after the Upstream Merger.

(i) Transferor is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

The Sub 9 Contributions

(j) No stock or securities will be issued for services rendered to or for the benefit of Sub 9 in connection with the Sub 9 Contributions, and (ii) no stock or securities will be issued for indebtedness of Sub 9 that is not evidenced by a security or for interest on indebtedness of Sub 9 which accrued on or after the beginning of the holding period of Distributing for the debt.

(k) The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of Sub 9.

(l) Any patents or patent applications that will be transferred in the Sub 9 Contributions will qualify as “property” within the meaning of § 351 of the Code. Distributing will transfer all substantial rights in such patents or patent applications within the meaning of § 1235 of the Code. See Rev. Rul. 69-156, 1969-1 C.B. 101.

(m) The Sub 9 Contributions are not the result of the solicitation by a promoter, broker, or investment house.

(n) Distributing will not retain any rights in the property transferred to Sub 9.

(o) The value of the stock deemed to be received in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

(p) The fair market value of the assets to be transferred by Distributing to Sub 9 will be equal to or exceed the sum of the liabilities to be assumed by Sub 9 (within the meaning of § 357(d)).

(q) The liabilities to be assumed by Sub 9 (within the meaning of § 357(d)), if any, were incurred by the Entities in the ordinary course of business and are associated with the assets to be transferred.

(r) Immediately before the Sub 9 Contributions, there will be no indebtedness between Sub 9 and Distributing and there will be no indebtedness created in favor of Distributing as a result of the Sub 9 Contributions.

(s) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(t) All exchanges with respect to each Sub 9 Contribution will occur on approximately the same date as the other exchanges with respect to such Sub 9 Contribution.

(u) There is no plan or intention on the part of Sub 9 to redeem or otherwise reacquire any stock or indebtedness to be deemed issued in the Sub 9 Contributions.

(v) Taking into account any issuance of additional shares of Sub 9 stock; any issuance of stock for services; the exercise of any Sub 9 stock rights, warrants, or subscriptions; a public offering of Sub 9 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 9 to be received in the exchange, Distributing will be in "control" of Sub 9 within the meaning of § 368(c).

(w) Sub 9 will remain in existence and retain and use the property transferred to it in a trade or business.

(x) There is no plan or intention by Sub 9 to dispose of the transferred property other than in the normal course of business operations.

(y) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Sub 9 Contributions.

(z) Sub 9 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(aa) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and no stock or securities of Sub 9 will be used to satisfy the indebtedness of Distributing.

(bb) Sub 9 will not be a "personal service corporation" within the meaning of § 269A.

<u>The Contribution and Distribution</u>

The following representations have been made regarding the Contribution and the Distribution:

(cc) Any indebtedness owed by Controlled to Distributing (or any of its affiliates) after the Debt Exchange will not constitute stock or securities.

(dd) The fair market value of the Controlled Stock to be received by each Distributing shareholder in any Exchange is intended to reflect the fair market value of the Distributing stock to be surrendered by the Distributing shareholder in such exchange.

(ee) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(ff) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of the corporation.

(gg) The 5 years of financial information submitted on behalf of the Distributing SAG is representative of Business A's present operation, and with regard to Business A, there have been no substantial operational changes since the date of the last financial statements submitted.

(hh) The 5 years of financial information submitted on behalf of the Controlled SAG is representative of Business C's present operation, and with regard to Business C, there have been no substantial operational changes since the date of the last financial statement submitted.

(ii) Following the Distribution, other than as provided in the Continuing Agreements, the Distributing SAG will continue the active conduct of Business A, and the Controlled SAG will continue the active conduct of Business C independently and with their separate employees.

(jj) The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by the Corporate Business Purposes.

(kk) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(ll) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing in the Contribution will exceed the sum of (i) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(mm) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were (i) incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the Contribution or (ii) incurred to facilitate the appropriate liquidity and capital structure for each of Distributing and Controlled.

(nn) The total fair market value of the assets transferred in the Contribution will be equal to or exceed the adjusted basis of those assets.

(oo) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(pp) Except with respect to intercompany settlements, Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution and related transactions.

(qq) Other than (i) the Controlled Indebtedness and (ii) trade payables between Distributing and its affiliates and Controlled and its affiliates (A) incurred in the ordinary course of business or (B) created pursuant to the Continuing Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(rr) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled Stock will be included in income immediately before the Distribution (see § 1.1502-19).

(ss) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(tt) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(uu) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(vv) Treating (i) the aggregation rule of section 355(e)(4)(C)(i) as not applying for purposes of determining whether the Savings Plan "actively participates in the management or operation" of any corporation for purposes of the definition of "Controlling shareholder" within the meaning of § 1.355-7(h)(3), (ii) any acquisition of Acquiring stock following the Acquiring Merger as if such Acquiring stock were stock of Controlled for purposes of §§ 1.355-7(b)(2), (d)(3), (d)(7), (d)(8), and (d)(9), and (iii) Acquiring Stock Public Sales, Fractional Shares Sales, Reinvestment Share Issuances, Equity Compensation Issuances, the Option Restricted Stock Conversion, Pre-Distribution Repurchases, Acquiring Special Contraction, and the Filling of the Acquiring Board Member Positions as not resulting in any "acquisitions" for purposes of § 355(e), the Distribution is not part of a plan or series of related transactions (within the meaning of § 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 § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation). The determination of whether a person is a "Five-percent shareholder" or "Ten-percent shareholder" is made solely by reference to the Filings and Actual Knowledge. For purposes of this letter: (A) the Filings are the latest Schedules 13D or 13G filed with respect to the issuing company with the Securities and Exchange Commission on or prior to the date of the particular sale or disposition with respect to which it is being determined whether the seller or acquirer is a "Five-percent shareholder" or "Ten-percent shareholder" within the meaning of § 1.355-7(h)(8) and (14); and (B) Actual Knowledge is, with respect to any particular sale or disposition, limited to actual knowledge of (i) those persons whose ownership of stock and/or options is listed in a Form 3, 4, or 10-K filed by the issuing company with the Securities and Exchange Commission, and (ii) with respect to the persons listed in (i), the ownership of such stock or options listed in the latest relevant Form 3, 4, or 10-K made on or prior to the date of such sale or disposition.

(ww) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(xx) The payment of cash in lieu of a fractional share of Acquiring Stock is solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in the transaction to any shareholder in lieu of a fractional share of Acquiring Stock will not exceed one percent of the total consideration that will be distributed in the transaction. Any fractional share interests of any shareholder entitled to receive fractional shares will be aggregated, and it is intended that no such shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring Stock.

The Acquiring Merger

(yy) The Acquiring Merger will be effected pursuant to the laws of State A. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and all of the liabilities of Merger Sub at the effective time of the Acquiring Merger will become the assets and liabilities of Controlled, and (ii) the separate legal existence of Merger Sub will cease to exist for all purposes.

(zz) The fair market value of the Acquiring Stock received by each Controlled shareholder in the Acquiring Merger will be intended to be approximately equal to the fair market value of the Controlled Stock surrendered in the exchange thereof.

(aaa) Following the Acquiring Merger, Controlled will hold at least 90 percent of the fair market value of its net assets and at least 70 percent of the fair market value of its gross assets held immediately prior to the Acquiring Merger and at least 90 percent of the fair market value of Merger Sub's net assets and at least 70 percent of the fair market value of Merger Sub's gross assets held immediately prior to the Acquiring Merger. For purposes of this representation, amounts paid by Controlled or Merger Sub to dissenters, amounts paid by Controlled or Merger Sub to shareholders who receive cash or other property, amounts used by Controlled or Merger Sub to pay reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Controlled will be included as assets of Controlled or Merger Sub, respectively, immediately prior to the Acquiring Merger.

(bbb) Prior to the Acquiring Merger, Acquiring will be in control of Merger Sub within the meaning of § 368(c).

(ccc) Controlled has no plan or intention to issue additional shares of its stock that would result in Acquiring losing control of Controlled within the meaning of § 368(c).

(ddd) Neither Acquiring nor any person related to Acquiring (within the meaning of § 1.368-1(e)(3)) has any plan or intention, directly or through any subsidiary corporation, to purchase any of Acquiring Stock issued in the Acquiring Merger.

(eee) Acquiring has no plan or intention to liquidate Controlled, to merge Controlled with or into another corporation, to sell or otherwise dispose of the stock of Controlled or to cause Controlled to sell or otherwise dispose of any of its assets or of any of the assets acquired from Merger Sub, except for (i) dispositions made in the ordinary course of business, or (ii) transfers described in § 368(a)(2)(C) or § 1.368-2(k).

(fff) The liabilities of Merger Sub assumed by Controlled and the liabilities to which the transferred assets of Merger Sub are subject were incurred by Merger Sub in the ordinary course of its business.

(ggg) Following the Acquiring Merger, Acquiring will continue, through one or more members of Acquiring's qualified group (within the meaning of § 1.368-1(d)(4)(ii)), the historic business of Controlled or use a significant portion of Controlled's historic assets in a business.

(hhh) Acquiring, Merger Sub, Controlled and the shareholders of Controlled will pay their respective expenses, if any, incurred in connection with the Acquiring Merger.

(iii) There is no intercorporate indebtedness existing between Controlled and Acquiring or between Merger Sub and Controlled that was issued, acquired, or will be settled at a discount.

(jjj) In the Acquiring Merger, shares of Controlled Stock representing control of Controlled, as defined in § 368(c), will be exchanged solely for voting stock of Acquiring. For purposes of this representation, shares of Controlled exchanged for cash or other property originating with Acquiring will be treated as outstanding Controlled Stock on the date of the Acquiring Merger.

(kkk) At the time of the Acquiring Merger, Controlled will not have outstanding any warrants, options, convertible securities, restricted stock, or any other type of right pursuant to which any person could acquire stock in Controlled, that, if exercised or converted, would affect Acquiring's acquisition or retention of control of Controlled, as defined in § 368(c).

(lll) Acquiring does not own, nor has it owned during the past five years, any shares of the stock of Controlled.

(mmm) No two parties to the Acquiring Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(nnn) At the time of the Acquiring Merger, the total fair market value of the assets of Controlled will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject. The fair market value of the assets of Acquiring will exceed the amount of its liabilities immediately after the Acquiring Merger.

(ooo) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

**Rulings**

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

The Upstream Mergers

For purposes of these rulings, “Transferor” shall refer to the corporation transferring its assets in the merger.

(1) Each of the Upstream Mergers will qualify as a reorganization under § 368(a)(1)(A), and Transferor and Distributing will each be a “party to a reorganization” under § 368(b).

(2) Transferor will recognize no gain or loss on the transfer of its assets to Distributing in exchange for the deemed issuance of Distributing stock and the assumption by Distributing of liabilities of Transferor in each Upstream Merger. §§ 357(a) and 361(a).

(3) Distributing will recognize no gain or loss on its receipt of the assets of Transferor in actual or constructive exchange for Distributing stock in each Upstream Merger. § 1032(a).

(4) Transferor will recognize no gain or loss on the deemed distribution of Distributing stock in each Upstream Merger. § 361(c).

(5) Distributing will recognize no gain or loss on the deemed receipt of Distributing stock in exchange for its stock in Transferor in each Upstream Merger. § 354(a).

(6) Distributing’s basis in each asset received in each of the Upstream Mergers will equal the basis of the asset in the hands of each Transferor immediately prior to such Upstream Merger. § 362(b).

(7) Distributing’s holding period in each asset received from each Transferor in each Upstream Merger will include the period during which that asset was held by the Transferor. § 1223(2).

(8) Distributing will succeed to and take into account as of the close of the effective date of each Upstream Merger the items of each Transferor described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder. § 381(a) and § 1.381(a)-1.

(9) The excess loss account if any, of Distributing with respect to the stock of each Transferor will be eliminated without the recognition of gain as a result of the respective Upstream Merger. § 1.1502-19(b)(2).

<u>The Sub 9 Contributions</u>

(10) Except as provided in § 357(c), Distributing will recognize no gain or loss in the Sub 9 Contributions. §§ 351(a) and 357(a).

(11) Sub 9 will recognize no gain or loss in the Sub 9 Contributions. § 1032(a).

(12) The aggregate basis of the Sub 9 membership interests held by Distributing shall be increased by the aggregate basis of the contributed assets allocated between the different classes, if any, of Sub 9 stock held by Distributing in proportion to the relative fair market values of the classes, and decreased by the amount of liabilities (other than liabilities described in § 357(c)(3)) assumed by Sub 9 in the Sub 9 Contributions, and such increased or decreased basis shall not be separately tracked within any share. § 358(a) and (d).

(13) Sub 9's basis in each asset received from Distributing in the Sub 9 Contributions will equal the basis of each such asset in the hands of Distributing immediately before its contribution to Sub 9, increased by the amount of gain, if any, recognized by Distributing pursuant to § 357(c) in the Sub 9 Contributions. § 362(a).

(14) Distributing's holding period in the Sub 9 membership interests deemed received by Distributing in the Sub 9 Contributions will include the holding period of property contributed by Distributing, provided such property is held by Distributing as a capital asset on the date of the Sub 9 Contributions. § 1223(1).

(15) Sub 9's holding period in each asset received from Distributing in the Sub 9 Contributions will include the period during which Distributing held such asset. § 1223(2).

<u>The Contribution and the Distribution</u>

(16) The Contribution and the Distribution, together, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a "party to the reorganization" within the meaning of § 368(b).

(17) No gain or loss will be recognized by Distributing on the Contribution except to the extent of any gain recognized under § 357(c) with respect to any excess of liabilities assumed by Controlled over the adjusted basis of the assets contributed to Controlled. §§ 357(a) and 361(a).

(18) No gain or loss will be recognized by Controlled on the Contribution. § 1032(a).

(19) Controlled's basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer, increased by the amount of gain, if any, recognized by Distributing pursuant to § 357(c) on the transfer. § 362(b).

(20) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held the asset. § 1223(2).

(21) No gain or loss will be recognized by Distributing on the Distribution, and no gain or loss will be recognized by Distributing on the Debt Exchange. § 361(c).

(22) Provided that the Controlled Indebtedness is transferred in the Debt Exchange in connection with the Proposed Transactions as described above, then under the intercompany transaction regulations, Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Indebtedness on the receipt or transfer of the Controlled Indebtedness, other than any (i) deductions attributable to the fact that Distributing Notes or Distributing Indebtedness may be redeemed at a premium, (ii) income attributable to the fact that Distributing Notes or Distributing Indebtedness may be redeemed at a discount, and (iii) interest expense accrued with respect to Distributing Notes or Distributing Indebtedness. § 1.1502-13(g)(3)(i)(B)(7).

(23) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing shareholders upon their receipt of the Controlled Stock in the Distribution. § 355(a).

(24) In the event of the Spin-Off, each Distributing shareholder's basis in a share of Distributing Common Stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing Common Stock with respect to which the Spin-Off is made and the Controlled Stock (or allocable portions thereof) received in the Spin-Off with respect to the share of Distributing Common Stock in proportion to their fair market values.

(25) In the event of an Exchange, the basis of the Controlled Stock received by each Distributing shareholder in the Exchange (including any fractional share interest in a share of Controlled Stock to which the shareholder may be entitled) will be the same as the shareholder's basis in the Distributing stock surrendered in exchange therefor in the Exchange, allocated in the manner described in § 1.358-2(a)(2). § 358(a)(1).

(26) In the event of a Subsequent Distribution, each Distributing shareholder's basis in a share of Distributing Common Stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing Common Stock with respect to which the Subsequent Distribution is made and the share of Controlled Stock (or allocable portions thereof) received in the Subsequent Distribution with respect to the share of Distributing Common Stock in proportion to their fair market values.

(27) Each Distributing shareholder's holding period in the Controlled Stock received will include the holding period of the Distributing Common Stock with respect to which the distribution of the Controlled Stock is made, provided that the Distributing Common Stock is held as a capital asset on the date of the Distribution. § 1223(1).

(28) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

(29) A Distributing shareholder that receives cash in lieu of a fractional share of Controlled Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in Rulings (24) and (26) with respect to the Spin-Off or Subsequent Distribution, if any, respectively, and in Ruling (25) with respect to an Exchange, if any, and the amount of cash received. § 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the Distribution. §§ 1221 and 1222.

(30) Controlled will not be a successor to Distributing for purposes of § 1504(a)(3); therefore Controlled and its direct and indirect subsidiaries that are "includible corporations" (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent (and following the Acquiring Merger with Acquiring as the common parent pursuant to ruling (35)).

(31) Distributing's basis in its shares of Controlled Stock at the time of the Distribution will be determined under § 1.1502-19(d) by allocating basis first to equalize and eliminate any excess loss account with respect to any share of Controlled Stock.

(32) Except for purposes of § 355(g), any Post-Distribution Payments made by Distributing or any of its affiliates to Controlled or any of its affiliates, or vice versa, that (i) have arisen or will arise with respect to a taxable period ending on or before the Distribution or for a taxable period beginning on or before and ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution. In addition, any Type A Contribution that is delayed until after the Distribution will be treated as occurring immediately before the Distribution. *See Arrowsmith v. Comm'r*, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

<u>The Acquiring Merger</u>

(33) The acquisition by Acquiring of all the Controlled Stock in exchange solely for shares of Acquiring Stock in the Acquiring Merger will qualify as a reorganization under § 368(a)(1)(A). The reorganization will not be disqualified because voting stock of Acquiring is used in the Merger. § 368(a)(2)(E). Controlled and Acquiring will each be a "party to a reorganization" under § 368(b).

(34) Acquiring will recognize no gain or loss upon the receipt of Controlled Stock in exchange solely for Acquiring Stock in the Acquiring Merger. § 1032(a).

(35) The Acquiring Merger will constitute a “reverse acquisition” within the meaning of § 1.1502-75(d)(3).

(36) For purposes of §§ 1.1502-31 and 1.1502-33, the Acquiring Merger will qualify as a “group structure change.” § 1.1502-33(f)(1).

(37) Acquiring’s holding period in the stock of Controlled will include the period during which Acquiring held the stock of Merger Sub. § 1223(1).

(38) A Controlled shareholder will not recognize gain or loss in the Acquiring Merger on the exchange of Controlled Stock solely for Acquiring Stock (including any fractional share interest to which the shareholder would be entitled). § 354(a)(1).

(39) A Controlled shareholder’s basis in the Acquiring Stock received in the Acquiring Merger (including any fractional share interest to which the shareholder would be entitled) will equal the basis of the Controlled common stock exchanged therefor. § 358(a)(1).

(40) A Controlled shareholder’s holding period in the stock of Acquiring will include the period during which the shareholder held the stock of Controlled exchanged therefor, provided the Controlled Stock is a capital asset in the Controlled shareholder’s hands on the date of the exchange. § 1223(1).

(41) A shareholder that receives cash in lieu of a fractional share of Acquiring Stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received. § 1001. Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the Merger. §§ 1221 and 1222.

## Caveats

We express no opinion about the tax treatment of the Proposed Transaction 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 Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether any distribution described above and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

**Procedural Statements**

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

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: