**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

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October 4, 2017

TY:

Legend

Transferor =

Parent =

Country A =

Exchange =

FSub1 =

Disregarded Entity =

State A =

State B =

Holdco US =

Holdco US Group =

Financial =

Operating =

Entity Y =

a =

b =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in response to your letter dated Date 6, requesting rulings with respect to the federal income tax treatment of Transferor's proposed transactions (the "Proposed Transactions").

The rulings contained in this letter are predicated upon facts and representations submitted by Transferor and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process. The information submitted for consideration is substantially as set forth below.

## I. PRE-TRANSACTION STRUCTURE

Parent is a Country A corporation that functions as a holding company. Parent's common stock is traded on Exchange. Parent owns all of the outstanding stock of Transferor and FSub1, each a Country A corporation.

Transferor owns all of the outstanding interests in Disregarded Entity, an entity chartered under a governmental subdivision of Country A that is disregarded as separate from Transferor for federal tax purposes. Disregarded Entity owns all of the outstanding stock of Holdco US, a State A limited liability company that is treated as a corporation for federal tax purposes.

Holdco US is the common parent of Holdco US Group, an affiliated group that files a consolidated federal income tax return on a calendar year basis. Holdco US owns all of the outstanding stock of Financial, a State A corporation. Financial owns all of the outstanding stock of Operating, a State B corporation.

Entity Y is a State A limited liability company that has elected to be treated as a corporation for federal tax purposes. Entity Y has two classes of shares outstanding: Class A and Class B. Holdco US wholly owns the Class A shares. The Class A shares

represent approximately a percent (more than 80 percent) of the voting power and value of Entity Y's outstanding shares. Senior management of Entity Y wholly owns the Class B shares. The Class B shares represent the remaining, approximately b percent, voting power and value of Entity Y's outstanding shares.

## II. PREVIOUS TRANSACTIONS

### A. Incorporation of U.S. Assets

In Year 1, and on subsequent occasions, FSub1 transferred U.S. assets used in its U.S. trade or business to Operating in exchange for stock. These transfers qualified for nonrecognition under section 351 of the Internal Revenue Code. FSub1 and Operating received a private letter ruling from the Internal Revenue Service ("IRS") on Date 1, stating that one of these transfers qualified for nonrecognition under section 351. With respect to these transfers, Operating elected under Treas. Reg. § 1.884-2T(d)(4) to increase its earnings and profits ("E&P") by an allocable portion of FSub1's effectively connected E&P ("ECE&P") and non-previously taxed accumulated ECE&P. In addition, FSub1 reduced its ECE&P and non-previously taxed accumulated ECE&P in accordance with Treas. Reg. § 1.884-2T(d)(4)(iii).

Pursuant to Treas. Reg. § 1.884-2T(d)(5)(i), FSub1 agreed that, upon the disposition of part or all of the stock or securities it owned in Operating (or a successor in interest), it would treat as a dividend equivalent amount for the taxable year in which the disposition occurred an amount equal to the lesser of (1) the amount realized upon such disposition, or (2) the total amount of ECE&P and non-previously taxed

accumulated ECE&P that was allocated to Operating pursuant to Treas. Reg. § 1.884-2T(d)(4)(ii).

B. Formation of Financial

In Year 2, FSub1 formed Financial and transferred to it all of the stock of Operating in exchange for Financial stock. This transfer qualified for nonrecognition under section 351. As part of the same transaction, FSub1 transferred all of the stock of Financial to Disregarded Entity in exchange for an ownership interest in Disregarded Entity. In connection with the transfer, Parent and Operating received a private letter ruling from the IRS on Date 2 stating, in part, the following:

> (1) Provided that the Actual Transaction qualifies as an exchange under § 351, and provided: (1) [Financial] makes a valid election to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to [Operating] pursuant to the prior elections by [FSub1] under § 1.884-2T(d)(4); (2) [FSub1] attaches a statement to its timely filed (including extensions) federal income tax return treating such earnings and profits as if they had been allocated from [FSub1] to [Financial] pursuant to an election under § 1.884-2T(d)(4); and (3) [FSub1] attaches a statement to its timely filed (including extensions) federal income tax return agreeing that, upon the disposition of part or all of the stock or securities of either [Operating] (or a successor-in-interest) or Disregarded Entity (or a successor-in-interest), or upon a direct or indirect disposition of part or all of the stock or securities of [Financial] (or a successor-in-interest), [FSub1] shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i):
>
> a. [FSub1's] transfer of [Operating's] stock to [Financial] will not constitute a "disposition" of part or all of [Operating's] stock within the meaning of § 1.884-2T(d)(5)(i); and
>
> b. [Operating's] earnings and profits will be reduced by an amount equal to the earnings and profits allocated to [Financial] pursuant to a valid election under § 1.884-2T(d)(4).

> (2) If [FSub1] disposes of part or all of the stock or securities of either [Financial] (or a successor-in-interest) or [Disregarded Entity] (or a successor-in-interest), or if [Financial] disposes of part or all of the stock or securities of [Operating] (or a successor-in-interest), [FSub1] shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i).

C. Spin-Off of Transferor

In Year 3 and Year 4, pursuant to a reorganization described in section 368(a)(1)(D), FSub1 transferred all of its interests in Disregarded Entity (which owned all the stock of Financial) and cash to Transferor, a newly-formed corporation, in exchange solely for stock of Transferor. FSub1 then distributed all the stock of Transferor to Parent in a transaction to which section 355 applied. In connection with this transaction, Parent and Operating received a private letter ruling from the IRS on Date 3 stating, in part, the following:

> (10) Provided that [Transferor] attaches a statement to its timely filed (including extensions) federal income tax return agreeing that [Transferor] will treat a disposition of part or all of the stock or securities of either [Financial] (or a successor-in-interest) or [Disregarded Entity] (or a successor-in-interest), as a "disposition" for purposes of § 1.884-2T(d)(5)(i), then [Disregarded Entity's] transfer of the [Financial] stock to [Transferor] will not be treated as a "disposition" of stock under § 1.884-2T(d)(5)(i). If in the future [Financial] is liquidated into [Transferor] in a liquidation under § 332, such liquidation of [Financial] will be treated as a "disposition" for purposes of § 1.884-2T(d)(5)(i), notwithstanding § 1.884-2T(d)(5)(ii).
>
> …
>
> (12) [Transferor's] sale of [Financial] stock is a "disposition" for purposes of § 1.884-2T(d)(5)(i), and [Transferor] must treat an appropriate amount as a dividend equivalent amount in accordance with § 1.884-2T(d)(5)(i).

The IRS supplemented this ruling on Date 4, adding, in part, a sentence to the end of ruling (10), stating:

> This ruling is in lieu of and replaces Ruling 2 of [the ruling addressing the Formation of Financial] for transfers occurring after [FSub1's] transfer of the [Financial] stock to [Transferor].

D. Acquisition of Entity Y Assets

In Year 5, Disregarded Entity acquired all the assets of Entity Y. Pursuant to a restructuring involving the assets acquired from Entity Y, Transferor (through Disregarded Entity) formed Holdco US and transferred to Holdco US the assets acquired from Entity Y and all of the stock of Financial, in exchange solely for stock of Holdco US (the "Entity Y Acquisition"). As a result of the Entity Y Acquisition, Holdco US became the new common parent of the Holdco US Group. In connection with the Entity Y Acquisition, on Date 5 the IRS issued a private letter ruling stating, in part, the following:

> 3. Pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii), the transfer by Disregarded Entity of the stock of Financial to [Holdco US] pursuant to the [Entity Y Acquisition] will not be treated as a "disposition" of the Financial stock under Treas. Reg. § 1.884-2T(d)(5)(i).
>
> 4. Financial's earnings and profits will be reduced by an amount equal to the earnings and profits allocated to [Holdco US] in accordance with [representations made in] this ruling letter.
>
> 5. The statement filed pursuant to [the representations made in] this ruling letter is in lieu of and replaces the statement filed pursuant to ruling 10 of the [ruling addressing the split-off of Transferor] for dispositions occurring after the date of the [Entity Y Acquisition].

## III. PROPOSED TRANSACTIONS

A further restructuring of the assets acquired from Entity Y is contemplated that will include (1) a recapitalization of the shares of Holdco US in a transaction that is intended to qualify as a reorganization under section 368(a)(1)(E) (the "Recapitalization") and (2) the merger of Entity Y with and into a disregarded subsidiary of Holdco US in a transaction that is intended to qualify as a reorganization under section 368(a)(1)(A) (the "Merger"). The Recapitalization and the Merger will involve the following steps:

1. The limited liability agreement of Holdco US will be amended to authorize Holdco US to issue Class I, Class II-A, and Class II-B shares. In this regard, it is contemplated that (a) the Class I shares will have terms that are consistent with the terms of the existing shares of Holdco US owned by Disregarded Entity (and, correspondingly, Transferor) (the "Existing Holdco US Shares"); (b) the Class II-A shares will have terms that are consistent with the terms of the existing Class A shares of Entity Y owned by Holdco US; and (c) the Class II-B shares will have terms that are consistent with the terms of the existing Class B shares of Entity Y owned by members of the senior management of Entity Y.

2. Holdco US will form a new wholly owned, disregarded subsidiary ("Merger Sub") with a single class of shares, and Entity Y will merge with and into Merger Sub, with Merger Sub surviving. As part of this transaction (i.e., the Merger), each vested Class B share of Entity Y will be converted into and become the right to receive a Class II-B share of Holdco US and a cash payment from Holdco US of approximately $ .

3. Following the completion of the Merger, Disregarded Entity (and, correspondingly, Transferor) will exchange the Existing Holdco US Shares for Class I and Class II-A shares of Holdco US, and, in conjunction with this exchange (i.e., the Recapitalization), the Existing Holdco US Shares will be canceled.

At the conclusion of these transactions, it is anticipated that (1) the Class I and Class II-A shares of Holdco US owned by Disregarded Entity (and, correspondingly, Transferor) will represent approximately a percent (more than 80 percent) of the voting

power and value of Holdco US's outstanding shares; and (2) the Class II-B shares of Holdco US owned by members of the senior management of Entity Y will represent approximately b percent of the voting power and value of Holdco US's outstanding shares.

## IV. REPRESENTATIONS

Transferor has made the following representations in connection with the Proposed Transaction:

1. In connection with the Entity Y acquisition,

   a. Transferor filed a Year 5 federal income tax return within 30 days of the date of the letter ruling issued Date 5 and attached a statement to that return agreeing that it will treat a disposition of part or all of the shares or securities of Holdco US (or a successor-in-interest), or part or all of the interests in Disregarded Entity (or a successor-in-interest), as a "disposition" for purposes of Treas. Reg. § 1.884-2T(d)(5)(i); and

   b. Holdco US filed an amended Year 5 federal income tax return within 30 days of the date of that letter ruling and attached to that return a statement described in Treas. Reg. § 1.884-2T(d)(4)(i) agreeing to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to Financial pursuant to prior elections made with respect to Financial under Treas. Reg. § 1.884-2T(d)(4) as if they had been allocated from Transferor to Holdco US pursuant to an election under Treas. Reg. § 1.884-2T(d)(4).

2. The Recapitalization will qualify as a reorganization under section 368(a)(1)(E); as a consequence, the exchange by Disregarded Entity (and, correspondingly, Transferor) of the Existing Holdco US Shares for Class I and Class II-A shares of Holdco US will qualify for nonrecognition of gain or loss under section 354.

3. The total fair market value of the Class I and Class II-A shares of Holdco US to be received by Disregarded Entity (and, correspondingly, Transferor) in the Recapitalization will be approximately equal to the total fair market value of the Existing Holdco US Shares immediately before that transaction.

4. The aggregate basis of the Class I and Class II-A shares of Holdco US to be received by Disregarded Entity (and, correspondingly, Transferor) in the

Recapitalization will be equal to the aggregate basis of the Existing Holdco US Shares immediately before that transaction.

5. There are no dividend arrearages on the Existing Holdco US Shares.

6. Aside from the exchange by Disregarded Entity (and, correspondingly, Transferor) of the Existing Holdco US Shares for Class I and Class II-A shares of Holdco US, no cash or other property will be exchanged in the Recapitalization.

7. Transferor will file an amendment to the statement described in Representation 1.a. in accordance with the provisions of Treas. Reg. § 1.884-2T(d)(5)(i) and (iv) providing that it will treat a disposition of part or all of the Class I shares, the Class II-A shares, or any securities of Holdco US (or a successor-in-interest) that it owns through Disregarded Entity, or part or all of the interests in Disregarded Entity (or a successor-in-interest), as a "disposition" for purposes of Treas. Reg. § 1.884-2T(d)(5)(i).

## V. RULINGS

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

1. Pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii), the Recapitalization will not constitute a "disposition" of the shares of Holdco US by Transferor for purposes of Treas. Reg. § 1.884-2T(d)(5)(i).

2. Transferor is not required to treat as a dividend equivalent amount for purposes of section 884(a) any portion of the amount realized on account of the Recapitalization.

No opinion is expressed about the tax treatment of any of the transactions described herein, including the Recapitalization and the Merger, 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 transactions not specifically covered by the above rulings. In particular, no opinion is expressed as to whether the Recapitalization qualifies under section 368(a)(1)(E), or the Merger qualifies under section 368(a)(1)(A).

Lastly, no opinion is expressed as to the tax treatment of the $ per share payment issued from Holdco US to the Class II-B shareholders.

This ruling letter 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 must attach a copy of this letter to the taxpayer's federal income tax return for the tax year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. A copy of this ruling should be attached to any federal income tax return to which it is relevant.

Sincerely,

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Rosy L. Lor
Senior Technical Reviewer, Branch 1
Associate Chief Counsel (International)

Enclosure:
Copy for 6110 Purposes