Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B04
PLR-160224-04
Date:
March 04, 2005

LEGEND

Parent	=
Transferor	=
Acquiring	=
Date A	=
Date B	=
Date C	=
Date D	=
Date E	=
Entity A	=

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Entity G =

Entity H =

Entity I =

Entity J =

Country A =

Country B =

P =

Q =

R =

S =

T =

U =

W =

Y =

Z =

Dear

This is in reply to a letter dated November 17, 2004 requesting a ruling that three gain recognition agreements ("GRAs") filed pursuant to Treas. Reg. §1.367(a)-8 are terminated when Entity D distributes the stock of Acquiring in a transaction described in section 355 of the Internal Revenue Code ("Code"). Additional information was provided in letters dated January 3, 2005, January 21, 2005, January 28, 2005, February 4, 2005, February 16, 2005, and March 2, 2005. The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by Parent, Transferor, Entity D, and Entity F and accompanied by a penalty of perjury statement executed by the appropriate parties. 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 a part of the audit process.

Parent, a domestic corporation, is the common parent of an affiliated group that files a consolidated tax return. On Date A, Transferor, a domestic corporation, was a member of Parent's affiliated group and included in Parent's consolidated tax return. Entity A, Entity B, and Entity C were domestic corporations that were wholly owned (directly or indirectly) by Transferor. The aggregate value of Entity A, Entity B, and Entity C was Y. The aggregate basis in the stock of Entity A, Entity B, and Entity C was W.

Entity D, a publicly traded Country A corporation, owns approximately T percent directly and U percent indirectly, of Acquiring, a domestic corporation. Entity D's indirect ownership interest in Acquiring is held through Entity G, a wholly owned Country B

entity that elected to be disregarded for U.S. tax purposes. Entity G also owns approximately S percent of Entity H, a Country B entity.

On Date A, Entity A merged into Acquiring, and Transferor received stock of Entity D in exchange for the stock of Entity A in a reorganization represented to qualify under sections 368(a)(1)(A) and (a)(2)(D). This transaction constituted an indirect stock transfer within the meaning of Treas. Reg. §1.367(a)-3(d)(1)(i). Parent, as the common parent of the affiliated group that filed a consolidated return (that included Transferor as a member), filed a GRA with respect to the indirect stock transfer under Treas. Reg. §1.367(a)-8(a).

On Date B, a date subsequent to Date A and prior to Date C, Transferor was split-off from Parent's affiliated group and became the common parent of its own affiliated group that filed a consolidated return. After being split-off from Parent's affiliated group, Transferor filed the annual certifications with respect to the GRA filed as a result of the indirect stock transfer of Entity A, and provided copies to Parent, as required by Treas. Reg. §1.367(a)-8(b)(5)(ii).

Entity B was owned directly by Entity J, a domestic corporation and a member of the consolidated group of Transferor. Entity C was owned directly by Transferor. On Date C, Entity B and Entity C merged into Acquiring, and Entity J and Transferor received stock of Entity D in exchange for the stock in Entity B and Entity C, in reorganizations represented to qualify under sections 368(a)(1)(A) and (a)(2)(D). The value of Acquiring, inclusive of Entity A, Entity B, and Entity C, was Z. Because these transactions constituted indirect stock transfers within the meaning of Treas. Reg. §1.367(a)-3(d)(1)(i), Transferor entered into GRAs with respect to such transfers under Treas. Reg. §1.367(a)-8(a).

On Date D, the shareholders of Entity D contributed their Entity D stock to Entity E, a Country A corporation that is treated for U.S. tax purposes as a disregarded entity of Entity F, a newly formed domestic corporation, in exchange for the stock of Entity F, in a transaction represented to qualify under section 351.

In a series of steps that the Service has previously ruled will be treated as a transaction described in section 355 (PLR-147741-03 and PLR-115913-04), Entity D intends to distribute all of its stock of Acquiring and Entity H to Entity E, which for U.S. tax purposes is treated as a distribution to Entity F. Parent and Transferor request a ruling that the section 355 transaction will terminate the GRAs filed with respect to the indirect stock transfers of Entity A, Entity B, and Entity C.

LAW AND ANALYSIS

Under Treas. Reg. §1.367(a)-3(d)(1)(i), if a U.S. person exchanges stock of a corporation (the acquired corporation) for stock of a foreign corporation that controls the acquiring corporation in a reorganization described in sections 368(a)(1)(A) and

(a)(2)(D), the U.S. person is treated as making an indirect transfer of the stock of the acquired corporation to a foreign corporation that is subject to the rules of section 367(a), including, where applicable, the requirement to enter into a GRA to preserve nonrecognition treatment under section 367(a).

If required to file a GRA, the U.S. transferor agrees that if the transferee foreign corporation disposes of the stock of the transferred corporation prior to the close of the fifth taxable year following the close of the taxable year of the initial stock transfer, the U.S. transferor will recognize the gain realized but not recognized upon the initial transfer of the stock of the transferred corporation, with interest.

If a U.S. person makes an indirect transfer of stock described in Treas. Reg. §1.367(a)-3(d)(1), for purposes of applying the GRA provisions of Treas. Reg. §1.367(a)-8, the transferee foreign corporation will be the foreign corporation (Entity D) that issues the stock or securities to the U.S. person in the exchange, and the transferred corporation will be the acquiring corporation (Acquiring). See Treas. Reg. §1.367(a)-3(d)(2)(i) and (ii).

Treasury Reg. §1.367(a)-8(g)(1) provides that if the U.S. transferor disposes of any stock of the transferee foreign corporation in a nonrecognition transfer, and the U.S. transferor complies with reporting requirements similar to those contained in Treas. Reg. §1.367(a)-8(g)(2) (addressing certain nonrecognition transfers of stock or securities of the transferred corporation), then the GRA is not triggered and the U.S. transferor continues to be subject to the terms of the GRA in its entirety.

Because the shareholders of Entity D contributed their Entity D stock to Entity F in transfers intended to qualify under section 351, Parent and Transferor are required to comply with reporting requirements similar to those contained in Treas. Reg. §1.367(a)-8(g)(2), which include the filing of new GRAs. See Treas. Reg. §1.367(a)-8(g)(1). The new GRAs apply the provisions of Treas. Reg. §1.367(a)-8 to the initial indirect stock transfers of Entity A, Entity B, and Entity C in a manner that accounts for the subsequent transfer of Entity D stock to Entity F. Because Entity F, a domestic corporation, receives the stock of Entity D, the transferee foreign corporation, with a carryover basis under section 362 pursuant to the section 351 exchange, certain dispositions of Entity D stock, and certain distributions of Acquiring stock under section 332 or 355, should not be triggering events but rather should terminate the GRAs

provided the requirements of Treas. Reg. §1.367(a)-8(h) are satisfied.[1] Hence, Entity F is treated as the U.S. transferor for purposes of applying Treas. Reg. §1.367(a)-8(h).[2]

Under Treas. Reg. §1.367(a)-8(h)(3), if, during the term of the GRA, the transferee foreign corporation (Entity D) distributes to the U.S. transferor (Entity F) the stock that initially necessitated the filing of the GRA (Acquiring stock) in a transaction that qualifies under section 355, the GRA shall terminate and have no further effect, provided that immediately after the section 355 distribution the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

In the case at hand, the basis requirement of Treas. Reg. §1.367(a)-8(h)(3) will be satisfied if immediately after the section 355 distribution a portion of the basis that Entity F has in the Acquiring stock is less than or equal to the basis in the Entity A, Entity B, and Entity C stock immediately prior to the transfers that necessitated the GRAs. This designated portion of Entity F's basis in Acquiring stock will consist of a portion of that basis that is in the same proportion to the total basis as the aggregate value of Entity A, Entity B, and Entity C is to the combined value of Acquiring (inclusive of Entity A, Entity B, and Entity C).

A closing agreement is being entered into with Entity F to ensure that this basis requirement is satisfied. The closing agreement also provides that if Entity F's basis in Entity D is decreased or a deemed dividend inclusion is required pursuant to Treas. Reg. §1.367(b)-5(c)(2) as a result of the section 355 transaction, the designated portion of Entity F's basis in the Acquiring stock will not be increased (and any increase in basis otherwise allocable to such portion is forfeited), notwithstanding Treas. Reg. §1.367(b)-5(c)(4).

Thus, based solely on the information submitted, the representations set forth above, and the entry into the closing agreement attached hereto and made a part thereof, it is held as follows:

> Treas. Reg. §1.367(a)-8(h)(3) applies to the section 355 distribution of the stock of Acquiring to Entity F and therefore the GRAs filed with respect to the indirect stock transfers of Entity A, Entity B, and Entity C will terminate and have no further effect.

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[1] Under Treas. Reg. §1.367(a)-8(g)(2), the new GRAs must be filed along with the annual certifications for the year of the section 351 exchange. Because the section 355 distribution, which terminates the GRAs, will occur before the due date for the filing of such tax return, the filing of new GRAs and annual certifications will not be required.

[2] Transferor and Parent, however, continue to remain liable under their respective GRAs (prior to their termination). See Treas. Reg. §1.367(a)-3(d)(3), Example 1A.

We are, accordingly, approving a closing agreement with Entity F with respect to those issues affecting its basis in the stock of Acquiring as set forth above. The necessary closing agreement with Entity F has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

No opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from any transactions that are not specifically covered by the above ruling. Specifically, no opinion is expressed as to whether the transactions described in this ruling constitute a reorganization described in sections 368(a)(1)(A) and (a)(2)(D) or an exchange described in section 351.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your first and second representatives.

A copy of this letter and the executed closing agreement must be attached to Parent's and Transferor's income tax returns for the year in which the section 355 transaction is consummated.

Sincerely,

/s/ Harry J. Hicks III

Harry J. Hicks III
Associate Chief Counsel
Office of the Associate Chief Counsel
(International)

DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under §7121 of the Internal Revenue Code of 1986, as amended ("the Code"),

(hereafter referred to as Entity F), as common parent on behalf of all the members of a consolidated group, and the Commissioner of Internal Revenue hereby make the following closing agreement ("Closing Agreement") based on representations made by Entity F, Entity D, Parent, and Transferor, in the paragraphs below. All references in this Closing Agreement to entities, dates, countries, and letters are as described in the legend to the private letter ruling (PLR-160224-04) issued in conjunction with this Closing Agreement.

WHEREAS:

(1) Parent, a domestic corporation, is the common parent of an affiliated group that files a consolidated tax return. On Date A, Transferor, a domestic corporation, was a member of Parent's affiliated group and included in Parent's consolidated tax return. Entity A, Entity B, and Entity C were domestic corporations that were wholly owned (directly or indirectly) by Transferor. The aggregate basis in the stock of Entity A, Entity B, and Entity C was W.

(2) Entity D, a publicly traded corporation, owns approximately T percent directly and U percent indirectly of Acquiring, a domestic corporation. Entity D's indirect ownership interest in Acquiring is held through Entity G, a wholly owned Country B entity that elected to be disregarded for US tax purposes. Entity G also owns approximately S percent of Entity H, a Country B entity.

(3) On Date A, Entity A merged into Acquiring, and Transferor received stock of Entity D in exchange for the stock of Entity A in a reorganization described in sections 368(a)(1)(A) and (a)(2)(D). This transaction constituted an indirect stock transfer within the meaning of Treas. Reg. §1.367(a)-3(d)(1)(i). Parent, as the common parent of the affiliated group that filed a consolidated return, filed a GRA with respect to the indirect stock transfer that satisfied the requirements of Treas. Reg. §1.367(a)-8(a).

(4) On Date B, a date subsequent to Date A and prior to Date C, Transferor was split-off from Parent's affiliated group and became the

common parent of its own affiliated group that filed a consolidated return. Entity J, a domestic corporation and a member of Transferor's consolidated group, owned Entity B directly. Entity C was owned directly by Transferor. On Date C, Entity B and Entity C merged into Acquiring, and Entity J and Transferor received stock of Entity D in exchange for the stock in Entity B and Entity C in reorganizations described in sections 368(a)(1)(A) and (a)(2)(D). As indirect stock transfers within the meaning of Treas. Reg. §1.367(a)-3(d)(1)(i), Transferor entered into GRAs that satisfied the requirements of Treas. Reg. §1.367(a)-8(a). Entity A, Entity B, and Entity C will hereafter be referred to as the merger subsidiaries.

(5) The value of the merger subsidiaries at the time of the mergers was approximately Y. The aggregate value of Acquiring after the mergers (including the merger subsidiaries) was approximately Z.

(6) On Date D, in an exchange represented to qualify under section 351, the shareholders of Entity D contributed their Entity D stock to Entity E, a Country A corporation that is treated for US tax purposes as a disregarded entity of Entity F, a newly formed domestic corporation, in exchange for the stock of Entity F.

(7) The basis that Entity F had in Entity D immediately after the section 351 exchange that occurred on Date D is the sum of the bases that the shareholders of Entity D had in their Entity D stock immediately prior to such section 351 exchange.

(8) A series of steps will be undertaken that will be treated as though Entity D distributed all of its Acquiring and Entity H shares to Entity E in a transaction ("the Distribution") that the Internal Revenue Service has ruled qualifies under section 355 of the Code.

(9) As a result of the Distribution, Entity F's basis in the Acquiring shares generally would be determined by allocating its basis in the Entity D shares among the Entity D, Entity H, and Acquiring shares based on their relative values, in accordance with Treas. Reg. §1.358-2. The value of the Acquiring shares as a percentage of the aggregate value of the Entity D, Entity H, and Acquiring shares is approximately R percent.

(10) Following the section 351 transaction and Distribution, Entity F will be the common parent of an affiliated group of corporations that includes Acquiring, and that files a consolidated federal income tax return with a taxable year ending on Date E.

(11) In connection with this closing agreement, a letter ruling is being provided to Parent and Transferor under section 367(a) that the three gain

recognition agreements entered into pursuant to Treas. Reg. §1.367(a)-8(a) with respect to the exchange of stock in the merger subsidiaries for Entity D shares will be terminated as a result of the Distribution, provided that a designated portion of Entity F's basis in the Acquiring shares ("the designated portion") is less than or equal to W, the basis in the stock of the merger subsidiaries immediately prior to the mergers that necessitated the GRAs.

THEREFORE, based on the above information and material submitted by Entity F, Transferor, Entity D and Parent in connection with this Closing Agreement, in the absence of other material factual or legal circumstances concerning the events described above, and in conjunction with a private letter from the Associate Chief Counsel (International) to Parent and Transferor that will be issued in connection with this Closing Agreement, it is determined for US federal income tax purposes that the basis that Entity F has in the shares of Acquiring immediately after the Distribution will be as follows:

(1) Based on the value of Acquiring in relation to the aggregate value of the distributing corporation (Entity D) and the distributed corporations (Acquiring and Entity H), R percent of Entity F's basis in Entity D stock will be allocated to the Acquiring stock under Treas. Reg. §1.358-2.

(2) In order to ensure that the designated portion of Entity F's basis in the Acquiring stock is less than or equal to the basis in the stock of the merger subsidiaries at the time of the indirect stock transfers, but no greater than the basis that the designated portion otherwise would have under Treas. Reg. §1.358-2, and in consideration of the fact that Entity F's Treas. Reg. §1.358-2 basis in the Acquiring stock is not determinable without incorporating the basis that the public had in the Entity D stock which is presently unknown, Entity F's basis in the shares of Acquiring with respect to the designated portion will be reduced to zero.

(3) The designated portion will be Q percent of Entity F's basis in the Acquiring stock. Q percent of Entity F's basis in the Acquiring stock will be reduced to zero. That percentage is based upon the relative values of the merger subsidiaries to that of Acquiring inclusive of the merger subsidiaries.

(4) Because Entity F's basis in the designated portion of the Acquiring stock will be zero, Entity F's total basis in the Acquiring stock immediately after the distribution will consist of P percent of the Treas. Reg. §1.358-2 basis that would otherwise be allocated to the Acquiring stock. In summary then, R percent of Entity F's basis in Entity D stock will be allocated to the Acquiring stock under Treas. Reg. §1.358-2, and only P

percent of that R percent of basis will be allocated to the Acquiring stock. That basis will be allocated pro rata among all the Acquiring shares held by Entity F.

(5) To the extent that Entity F's basis in the stock of Entity D is decreased or a deemed dividend inclusion is required pursuant to Treas. Reg. §1.367(b)-5(c)(2) as a result of the Distribution, Entity F's basis may only be increased by P percent of the amount by which that basis would otherwise be increased pursuant to Treas. Reg. §1.367(b)-5(c)(4).

(6) A copy of this Closing Agreement will be attached to the income tax return of Entity F for the taxable year of the Distribution.

NOW THIS CLOSING AGREEMENT WITNESSETH, that Entity F and the Commissioner of Internal Revenue hereby mutually agree to the determinations set forth above and further mutually agree that those determinations shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions shall render this Closing Agreement ineffective to the extent that it is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF, by signing the foregoing, the above parties signify that they have read and agreed to the terms of this document.

Entity F

By: /s/ Entity F Date: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

By: /s/ Harry J. Hicks III Date: _____
Title: Associate Chief Counsel (International)