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Date:  
June 06, 2005

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Corp X =

LP =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

Sub 7 LLC =

Sub 6 LLC =

Sub 5 LLC =

Business A =

Business B =

Business C =

Business Line =

Industry D =

W =

X =

Shareholder A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State A =

State B =

State C =

Dear

This letter responds to your March 9, 2005, request for rulings on certain federal income tax consequences of the Proposed Transactions (defined below). Additional information was received in letters dated March 17, 2005, May 5, 2005, May 20, 2005, May 26, 2005, June 2, 2005, and June 6, 2005. The material information provided for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in

support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

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) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of Distributing or 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) 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”). Distributing has outstanding two series of voting common stock: Series W common stock and Series X common stock. Both series are publicly traded and listed on an exchange. Based on public securities filings, Distributing believes that (i) no person beneficially owns five percent or more of the outstanding Distributing Series W common stock, and (ii) Shareholder A is the only beneficial owner of five percent or more of the outstanding Distributing Series X common stock.

Distributing wholly owns LLC 1 and Sub 1, and LLC 1 wholly owns LLC 2. LLC 2 owns all the stock of Controlled and Sub 2, a percent of the common stock of Sub 3, b percent of the preferred stock of Sub 3, and all of the ownership interests in LLC 3 and LLC 4. LLC 2 recently acquired the Sub 3 preferred stock from unrelated persons for cash. A person unrelated to any member of the Distributing Group owns the remaining common and preferred stock of Sub 3. Sub 1 wholly owns Sub 4, Sub 4 wholly owns Sub 5, Sub 5 wholly owns Sub 6, and Sub 6 wholly owns Sub 7. Sub 2 owns c (less than 80) percent of the stock of Sub 8. Persons unrelated to any member of the Distributing Group own the remaining Sub 8 stock. Sub 8 owns d percent of the membership interests in LLC 5, a limited liability company that is treated as a partnership for federal income tax purposes. LLC 5 owns e percent of the capital and profits interests in LP, a limited partnership. Sub 3 wholly owns Sub 9 and Sub 10. Sub 9 owns f percent of the capital and profits interests in LP. Sub 10 owns g percent, and Sub 3 owns h percent, of the stock of Corp X (Sub 10 and Sub 3 together own less than 50 percent of the stock of Corp X).

Distributing, Controlled, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 9, and Sub 10 are members of the Distributing Group and are affiliated with Distributing under § 1.355-3(b)(4)(iv). Each of LLC 1, LLC 2, LLC 3, and LLC 4 is an entity intended to be disregarded as separate from its owner for federal tax purposes under

§ 301.7701-3 of the Procedure and Administrative Regulations (a “disregarded entity”). Controlled was formed in connection with the Proposed Transactions.

Distributing (through LLC 1, LLC 2, and LLC 3) is directly engaged in Business A and is indirectly engaged in other businesses. Sub 8 and LP are directly engaged in Business B, and Sub 7 is directly engaged in Business Line, one of the Business C lines of business. Business A, Business B, and Business C are all in Industry D. Financial information submitted by Distributing indicates that Business A (as conducted by Distributing through LLC 1, LLC 2, and LLC 3) and Business Line (as conducted directly by Sub 7) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Business B and Business C are being separated from Business A because Distributing believes, and its investment advisor concurs, that the Distribution will significantly reduce the discount to the underlying value of Distributing's businesses and assets applied by the public markets to the trading value of Distributing's equity and equity linked securities (the "Holding Company Discount"). This will (i) allow Distributing to issue equity and equity-linked securities on significantly more favorable terms, (ii) make the stock of Distributing a significantly more attractive and efficiently priced acquisition currency, and (iii) increase the value of equity and equity-linked compensation of the employees and management of Distributing. In addition, Distributing and its investment advisor believe that the Distribution will allow Controlled to issue equity on significantly more favorable terms than is presently possible as a subsidiary of Distributing, thereby allowing Controlled to raise capital and pursue acquisitions using its more efficiently priced equity securities. Finally, the Distribution will allow Controlled to incur additional indebtedness, as may be required for the growth of Business B, Business C, or any potential strategic opportunities, without affecting Distributing's target capital structure.

### **Proposed Transactions**

To effect the separation of Business B and Business C from Business A, the Distributing Group has proposed and partially undertaken the following series of related transactions (the “Proposed Transactions”):

- (i) On Date 1, LLC 2 formed Controlled.
- (ii) On Date 2, LLC 2 formed LLC 4, a single member limited liability company that will be a disregarded entity.
- (iii) On Date 3, LLC 2 contributed all of the Sub 3 stock that it owned to LLC 4.
- (iv) On Date 4, Sub 3 merged into LLC 4 under State C law (the “Sub 3 Merger”). The holder of the minority common and preferred stock interests in Sub 3 will receive cash in exchange for its Sub 3 shares. Because the Sub 3 stock held within the

Distributing Group before the merger was treated as owned directly by Distributing (through LLC 1, LLC 2, and after step (iii), LLC 4) for federal tax purposes, Sub 3 is treated in this step as merging directly into Distributing.

(v) LLC 4 will distribute the stock of Sub 9 to LLC 2. Because the Sub 9 stock will be treated for federal tax purposes as owned by Distributing before and after this distribution, this step will be disregarded for federal income tax purposes.

(vi) Sub 1 will change its name.

(vii) Distributing will contribute the stock of Sub 1 to LLC 1.

(viii) LLC 1 will contribute the stock of Sub 1 to LLC 2. Because the Sub 1 stock will be treated for federal tax purposes as owned by Distributing before and after steps (vii) and (viii), these steps will be disregarded for federal income tax purposes.

(ix) Sub 7 will convert under State A law from a corporation to a single member limited liability company that will be a disregarded entity (the "Sub 7 Conversion"). Sub 7 will change its name to Sub 7 LLC.

(x) Sub 6 will convert under State B law from a corporation to a single member limited liability company that will be a disregarded entity (the "Sub 6 Conversion"). Sub 6 will change its name Sub 6 LLC.

(xi) Sub 5 will convert under State B law from a corporation to a single member limited liability company that will be a disregarded entity (the "Sub 5 Conversion"). Sub 5 will change its name to Sub 5 LLC.

(xii) Sub 4 will merge into Sub 1 under State B law (the "Sub 4 Merger").

(xiii) Distributing will transfer  $j$  dollars in cash to Sub 1.

(xiv) Distributing will contribute to Sub 1, Sub 2, and Sub 9, respectively, any intercompany receivable owed to Distributing by such entity.

(xv) LLC 2 will contribute all the stock of Sub 1, Sub 2, and Sub 9 (collectively, the "Contributed Assets") to Controlled in exchange solely for Controlled Series W common stock and Controlled Series X common stock (the "Contribution"). Because the Contributed Assets and Controlled will be treated for federal tax purposes as owned directly by Distributing (through LLC 1 and LLC 2) before this contribution, this step will be treated for federal tax purposes as a contribution of the Contributed Assets by Distributing directly to Controlled.

(xvi) Controlled will contribute all the stock of Sub 2 and Sub 9 to Sub 1 in deemed exchange for additional Sub 1 stock (the "Second Contribution").

(xvii) LLC 2 will distribute all the stock of Controlled to LLC 1.

(xviii) LLC 1 will distribute all the stock of Controlled to Distributing. Because the Controlled stock will be treated for federal tax purposes as owned directly by Distributing before and after steps (xvii) and (xviii), these steps will be disregarded for federal income tax purposes.

(xix) Distributing will distribute pro rata (i) all the Controlled Series W common stock to the holders of Distributing Series W common stock and (ii) all the Controlled Series X common stock to the holders of Distributing Series X common stock (collectively, the "Distribution"). Distributing will distribute cash in lieu of issuing a fractional share to any shareholder that would otherwise be entitled to receive a fractional share of Controlled common stock. Steps (xv) through (xviii) will occur on or before the date of, and prior to, this step (xix).

It is expected that Controlled will adopt a shareholder rights plan (the "Rights Plan"). Under the Rights Plan, each shareholder of record on a specified date will receive one right for each share of common stock of Controlled (collectively, the "Rights"). Initially, the Rights will not be traded separately from Controlled's common stock and will not be exercisable. The Rights will become exercisable only if a person or group obtains, or announces an offer to acquire, ownership of shares (as defined in the rights agreement to be entered in to between Controlled and a rights agent) representing  $f$  percent or more of the value of Controlled's common stock. When exercisable, a holder of a Right (other than the acquiring person or group) would be entitled (i) to buy, at a price representing one-half of the then current market price, additional common shares of Controlled of the same series as the share with respect to which that Right was received and (ii) in the event of a merger or other acquisition of Controlled, to buy common shares of the acquiring entity, also at a price representing one-half of the market price of those shares. It is expected that the Rights Plan will exempt from its terms the ownership or acquisition of Controlled common stock by current owners to the extent described in the Rights Agreement. Rights may be redeemed at a nominal price at any time before their becoming exercisable by action of Controlled's board of directors. At the time the Rights are attached to the Controlled stock, and at the time of the Distribution, the likelihood that the Rights would be exercised will be both remote and uncertain.

In connection with the Proposed Transactions, the Distributing Group and the Controlled group will enter into agreements for (i) transitional administrative services ("Back Office Services") for a period not expected to exceed two years (the "Transition Period") following the effective time of the Distribution, (ii) tax sharing and allocations, and (iii) certain other contractual relationships the terms of which will be negotiated at arm's length (collectively, the "Transition Agreements"). The Back Office Services may be compensated on a cost basis during the Transition Period but will be compensated on an arm's-length basis if the service period is extended.



It is expected that the terms of certain compensatory stock options, restricted shares of stock, and stock appreciation rights (together, the "Employee Rights") on Distributing Series W common stock that are outstanding at the time of the Distribution will be adjusted and that some of the Employee Rights on Distributing Series W common stock will be converted into Employee Rights on Distributing Series W common stock and Controlled Series W common stock (together, the "Employee Rights Modifications").

## **Representations**

### Sub 3 Merger

Distributing makes the following representations regarding the Sub 3 Merger described above in step (iv):

(a1) Distributing (through LLC 1 and LLC 2, and following the contribution described in step (iii), LLC 4), on the date of adoption of the plan of liquidation (merger), and at all times until the effective time of the Sub 3 Merger, will be the owner of at least 80 percent of the total combined voting power of all classes of Sub 3 stock entitled to vote and the owner of at least 80 percent of the total value of all classes of Sub 3 stock (excluding nonvoting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4)).

(b1) No shares of Sub 3 stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation (merger) of Sub 3.

(c1) All distributions from Sub 3 to Distributing (through LLC 1 and LLC 2) pursuant to the plan of complete liquidation (merger) will be made within a single taxable year of Sub 3.

(d1) Sub 3 will cease to exist for federal income tax purposes at the effective time of the Sub 3 Merger.

(e1) Sub 3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years before the date of adoption of the plan of liquidation (merger).

(f1) No assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Distributing (through LLC 1, LLC 2, and LLC 4) except for (i) dispositions in the ordinary course of business, and (ii) dispositions occurring more than three years before the adoption of the plan of liquidation (merger).

(g1) Except in the Contribution described in step (xv) above, the liquidation of Sub 3 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 3, if persons holding,

directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership is determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3) following the Distribution.

(h1) Before the adoption of the plan of liquidation (merger), no assets of Sub 3 will have been distributed in kind, transferred, or sold to Distributing (through LLC 1, LLC 2, or LLC 4), except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years before adoption of the plan of liquidation (merger).

(i1) Sub 3 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(j1) The fair market value of the assets of Sub 3 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation (merger) and immediately before the Sub 3 Merger. The total fair market value of the assets of Sub 3 transferred to Distributing (through LLC 1, LLC 2, and LLC 4) by Sub 3 will exceed the sum of (a) the amount of liabilities assumed by Distributing (through LLC 1, LLC 2, and LLC 4) in connection with the liquidation and (b) the amount of liabilities owed to Distributing (through LLC 1, LLC 2, and LLC 4).

(k1) There is no intercorporate debt existing between Distributing (or LLC 1, LLC 2, or LLC 4) and Sub 3 and none has been cancelled, forgiven, or discounted, except for (i) transactions that occurred more than three years before the date of adoption of the plan of liquidation (merger) and (ii) an open account intercompany balance between Sub 3 and Distributing (or LLC 1, LLC 2, or LLC 4) attributable to the normal business operations of each company.

(l1) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(m1) The fair market value of the consideration received by Distributing and the minority shareholder for each share of Sub 3 stock will approximately equal the fair market value of that stock.

(n1) None of the assets being distributed by Sub 3 to the minority shareholder (i) has a fair market value greater than its basis in the hands of Sub 3, (ii) is an installment obligation, (iii) is property described in the recapture provisions of the Code, or (iv) is property for which Sub 3 obtained a deduction.

(o1) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Sub 3 Merger have been fully disclosed.

### Contribution and Distribution

Distributing makes the following representations regarding the Contribution and Distribution described above in steps (xv) and (xix):

(a2) Controlled will not be indebted to Distributing after the Distribution.

(b2) No part of the consideration distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled stock received by holders of Distributing restricted stock.

(c2) The five years of financial information submitted on behalf of Business A (as conducted by Distributing through LLC 3) and Business C (as conducted by Sub 1) represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(d2) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock and securities of a controlled corporation (Sub 1) that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(e2) Following the Distribution, Distributing (through LLC 3) and Controlled (through Sub 1) will each continue the active conduct of its business, independently and with its separate employees.

(f2) The Distribution is being carried out for the following corporate business purposes: (A) to reduce the Holding Company Discount, which is expected to significantly benefit the businesses of Distributing by (i) permitting Distributing to issue equity and equity-linked securities on significantly more favorable terms, (ii) making the stock of Distributing a significantly more attractive and efficiently priced acquisition currency, and (iii) increasing the value of equity and equity-linked compensation of the employees and management of Distributing; (B) to allow Controlled to issue equity on significantly more favorable terms than is presently possible as a subsidiary of Distributing, thus facilitating Controlled's ability to raise capital and pursue acquisitions using its more efficiently priced equity securities; and (C) to allow Controlled to incur additional indebtedness, as may be required for the growth of Business B, Business C, or any potential strategic opportunities, without affecting Distributing's target capital

structure. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(g2) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(h2) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(i2) 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.

(j2) 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 or securities that were 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.

(k2) The total adjusted basis of the assets transferred to Controlled by Distributing will equal or exceed the sum of (a) the total liabilities assumed (within the meaning of §357(d)) by Controlled and (b) the total of any money and the fair market value of any other property (within the meaning of §361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(l2) Other than accounts payable incurred in the ordinary course of business, including those under the Transition Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(m2) 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). Any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution to the extent required by regulations (see § 1.1502-19).

(n2) Except for payments made for Back Office Services during the Transition Period, payments made in all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(o2) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(p2) 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 either corporation).

(q2) The payment of cash in lieu of a fractional share of Controlled common stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 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 Controlled common stock will not exceed one percent of the total consideration that will be distributed in the transaction. Any fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled common stock.

(r2) The total fair market value of the assets transferred to Controlled by Distributing will exceed the sum of (a) the amount of liabilities assumed (within the meaning of §357(d)) by Controlled in connection with the exchange, (b) the amount of liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of any money and the fair market value of any other property (other than stock 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 exchange.

(s2) Shares of Controlled stock distributed with respect to shares of Distributing restricted stock will not exceed, in the aggregate, 20 percent of the voting power of the Controlled stock outstanding immediately after the Distribution.

### Second Contribution

Distributing makes the following representations regarding the Second Contribution described above in step (xvi):

(a3) (i) No stock or securities will be issued for services rendered to or for the benefit of Sub 1 in connection with the proposed transaction; and (ii) no stock or

securities will be issued for indebtedness of Sub 1 that is not evidenced by a security or for interest on indebtedness of Sub 1 which accrued on or after the beginning of the holding period of Controlled for the debt.

(b3) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(c3) Controlled will not retain any rights in the property transferred to Sub 1.

(d3) The value of the stock received in exchange for accounts receivable, if any, will equal 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.

(e3) Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Controlled is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.

(f3) The total adjusted basis of the assets transferred to Sub 1 by Controlled will equal or exceed the total liabilities assumed (within the meaning of §357(d)) by Sub 1.

(g3) The total fair market value of the assets transferred to Sub 1 by Controlled will exceed the sum of (a) the amount of liabilities assumed (as determined under § 357(d)) by Sub 1 in connection with the exchange, (b) the amount of liabilities owed to Sub 1 by Controlled that are discharged or extinguished in connection with the exchange, and (c) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 351(a) without the recognition of gain) received by Controlled in connection with the exchange. The fair market value of the assets of Sub 1 will exceed the amount of its liabilities immediately after the exchange.

(h3) Any liabilities of Controlled assumed (within the meaning of § 357(d)) by Sub 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(i3) There is no indebtedness between Sub1 and Controlled and there will be no indebtedness created in favor of Controlled as a result of the transaction.

(j3) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(k3) All exchanges will occur on approximately the same date.

(l3) There is no plan or intention on the part of Sub 1 to redeem or otherwise acquire any stock or indebtedness issued in the proposed transaction.

(m3) Taking into account the issuance of additional shares of Sub 1 stock; any issuance of stock for services; the exercise of any Sub 1 stock rights, warrants or subscriptions; a public offering of Sub 1 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Sub 1 received in the exchange, Controlled will be in "control" of Sub 1 within the meaning of § 368(c).

(n3) Controlled will be deemed to receive stock, securities or other property approximately equal to the fair market value of the property transferred to Sub 1 or for services rendered or to be rendered for the benefit of Sub 1.

(o3) Sub 1 will remain in existence and retain and use the property transferred to it in a trade or business.

(p3) There is no plan or intention by Sub 1 to dispose of the transferred property other than in the normal course of business operations.

(q3) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.

(r3) Sub 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii) (taking into account changes to § 351(e) made by § 1002(a) of the Taxpayer Relief Act of 1997, P.L. 105-34).

(s3) Controlled is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(t3) Sub 1 will not be a "personal service corporation" within the meaning of § 269A.

(u3) The aggregate fair market value of the Contributed Assets will exceed the aggregate adjusted bases of the Contributed Assets immediately after the Contribution, and the aggregate fair market value of the stock of Sub 2 and Sub 9 will exceed the aggregate adjusted basis of this stock immediately after the Second Contribution.

## **Rulings**

### **Sub 3 Merger**

Section 3.01(31) of Rev. Proc. 2005-3, 2005-1 I.R.B. 118, provides that the Internal Revenue Service will not rule on the qualification of a transaction as a liquidation under § 332 unless the Service determines that there is a significant issue that is not clearly and adequately addressed by published authority. The taxpayer has submitted information indicating that a significant issue exists with respect to the Sub 3

Merger described above in step (iv). Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 3 Merger:

- (1) The Sub 3 Merger will qualify as a complete liquidation of Sub 3 under § 332.
- (2) Distributing will not recognize any gain or loss on the Sub 3 Merger (§ 332(a)).
- (3) Sub 3 will not recognize any gain or loss on the Sub 3 Merger (§§ 336(d)(3), 337(a), and 337(b)).
- (4) Distributing's basis in each asset received from Sub 3 in the Sub 3 Merger will equal the basis of that asset in the hands of Sub 3 immediately before the Sub 3 Merger (§ 334(b)(1)).
- (5) Distributing's holding period in each asset received from Sub 3 in the Sub 3 Merger will include the period during which that asset was held by Sub 3 (§ 1223(2)).
- (6) Distributing will succeed to and take into account the items of Sub 3 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).
- (7) Except to the extent the earnings and profits of Sub 3 are reflected in the earnings and profits of Distributing, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 3 as of the date of the Sub 3 Merger (§§ 381(c)(2)(A), 1.381(c)(2)-1, and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 3 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 3 Merger (§ 381(c)(2)(B)).

#### Contribution and Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows on the Contribution and Distribution described above in steps (xv) and (xix):

- (8) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” under § 368(b). The Second Contribution will not prevent the Contribution and Distribution from qualifying as a reorganization under § 368(a)(1)(D) (see Rev. Rul. 2002-85, 2002-2 C.B. 986).
- (9) Distributing will not recognize any gain or loss on the Contribution (§§ 361(a) and 357(a)).



(10) Distributing's aggregate basis in the Controlled stock received in exchange for the Contributed Assets will equal Distributing's aggregate basis in the Contributed Assets (§ 358(a)).

(11) Controlled will not recognize any gain or loss on its receipt of the Contributed Assets from Distributing in the Contribution (§ 1032(a)).

(12) Controlled's basis in each Contributed Asset received from Distributing will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(13) Controlled's holding period in each Contributed Asset received from Distributing in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

(14) Distributing will not recognize any gain or loss on the Distribution (§ 361(c)(1)).

(15) The Distributing shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled stock in the Distribution (§ 355(a)(1)).

(16) Provided that, at the time of the Distribution, the Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of such rights by Distributing and its shareholders will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Controlled, or the Distributing shareholders (Rev. Rul. 90-11, 1990-1 C.B. 10).

(17) A shareholder who receives cash in lieu of fractional shares of Controlled common stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined below in ruling (18) and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional shares of stock will be held as capital assets on the date of the Distribution (§§ 1221 and 1222).

(18) Each Distributing shareholder's basis in a share of Distributing stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing stock with respect to which the Distribution is made and the share or shares of Controlled stock (or allocable portions thereof) received with respect to the share of Distributing stock in proportion to their fair market values. If one share of Controlled stock is received in respect of more than one share of Distributing stock, the basis of each share of Distributing stock must be allocated to the shares of Controlled stock received in a manner that reflects that, to the greatest extent possible, a share of Controlled stock received is received in respect of shares of Distributing stock acquired on the same date

and at the same price. If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled stock (or portion thereof) is received with respect to a particular share of Distributing stock, the shareholder may designate which share of Controlled stock is received with respect to a particular share of Distributing stock, provided the terms of the designation are consistent with the terms of the distribution.

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

(20) Distributing and Controlled will allocate their earnings and profits, if any, in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

### Second Contribution

Based solely on the information submitted and the representations set forth above, we rule as follows on the Second Contribution described above in step (xvi):

(21) Controlled will not recognize any gain or loss on the Second Contribution (§ 351(a)).

(22) Sub 1 will not recognize any gain or loss on the Second Contribution (§ 1032).

(23) Sub 1's basis in the stock of Sub 2 and Sub 9 will in each instance equal the stock's basis in the hands of Controlled immediately before the Second Contribution (§ 362(a)).

(24) Sub 1's holding period in the stock of Sub 2 and Sub 9 will in each instance include the period during which that stock was held by Controlled (§ 1223(2)).

(25) Controlled's aggregate basis in the Sub 1 stock will equal Controlled's aggregate basis in the stock of Sub 2 and Sub 9 immediately before the Second Contribution (§ 358(a)).

(26) Controlled's holding period in the Sub 1 stock will include the holding period of Controlled in the stock of Sub 2 and Sub 9 immediately before the Second Contribution, provided that the contributed stock was either a capital asset as defined in § 1221 or property described in § 1231 (§ 1223(1)).

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transactions 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 Transactions that are not specifically covered by the above rulings.

In particular, no opinion is expressed regarding:

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

(ii) Whether the Distribution is 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 the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(iv) The federal tax treatment of the holder of Sub 3 stock (other than Distributing/LLC 1/LLC 2/LLC 4) who receives cash in exchange for its shares in the Sub 3 Merger described above in step (iv).

(v) Whether any of the Sub 4 Merger, the Sub 5 Conversion, the Sub 6 Conversion, and the Sub 7 Conversion (described above in steps (ix) through (xii)) will qualify under § 332;

(vi) The federal tax treatment of compensation paid for Back Office Services during the Transition Period described above in the penultimate paragraph of the Proposed Transactions section of this letter; and

(vii) The federal tax treatment of the Employee Rights Modifications described above in the last paragraph of the Proposed Transactions section of this letter.

### **Procedural Statements**

This ruling letter is directed only to the taxpayers who requested it and applies only to the facts of the Proposed Transactions. 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 in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and to a second taxpayer representative.

Sincerely,  
Associate Chief Counsel (Corporate)

By: \_\_\_\_\_

Wayne T. Murray  
Acting Deputy Associate Chief Counsel  
(Corporate)

cc: