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Refer Reply To:
CC:CORP:B05- PLR-114408-02
Date:
August 1, 2002

In re:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 3 A	=
Sub 3 B	=
Sub 3 C	=
Sub 3 D	=
Sub 3 E	=
Sub 3 F	=
Sub 3 G	=
Sub 3 H	=
Sub 4	=
Sub 4 A	=
Sub 4 B	=
Sub 4 C	=

Sub 4 D	=
Sub 4 E	=
Sub 4 F	=
Sub 4 G	=
Sub 4 H	=
Sub 4 I	=
Sub 4 J	=
Sub 5	=
Sub 5 A	=
Sub 5 B	=
Sub 5 C	=
Sub 6	=

Sub 7	=
Sub 7 A	=
Sub 7 B	=
Sub 7 C	=
State A	=
State B	=
Business A	=
Date X	=
Date Y	=
Date Z	=
Date A	=
R	=
S	=
T	=
U	=
V	=
W	=
X	=

Y	=
Z	=
A	=
B	=
C	=
D	=
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F	=
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K	=
L	=
M	=
N	=

Dear

This is in response to your letter dated March 4, 2002, in which rulings are requested as to the federal income tax consequences of a proposed transaction. The facts submitted for consideration are substantially as set forth below.

Distributing 1 is a publicly traded State A corporation that is indirectly engaged in Business A through its ownership of Sub 1, Sub 2, and Distributing 2, each of which is a wholly-owned domestic subsidiary of Distributing 1. As of Date Z, Distributing 1 had outstanding W shares of common stock which were widely held and publicly traded.

Sub 1 wholly owns Sub 3, which is a domestic corporation. Sub 3 owns stock of Sub 3 A representing § 368(c) "control" and wholly owns, Sub 3 B, Sub 3 C, Sub 3 D, Sub 3 E, Sub 3 F, Sub 3 G and Sub 3 H, each of which is a domestic corporation. Sub

3 D wholly owns Sub 4, a foreign corporation, which wholly owns Sub 4 A, a foreign corporation. Sub 3 H wholly owns Sub 4 B and Sub 4 C, each of which is a domestic corporation, and Sub 4 D and Sub 4 E, each of which is a foreign corporation.

Distributing 2 wholly owns Distributing 3, Sub 5, and Sub 5 A, each of which is a domestic corporation. Sub 5 A wholly owns Sub 5 B and Sub 5 C, each of which is a domestic corporation.

Distributing 3 wholly owns Controlled and (after step (iv) below) Sub 6, each of which is a domestic corporation.

Controlled wholly owns Sub 7 which wholly owns Sub 7 A, Sub 7 B, and Sub 7 C. Each of Sub 7, Sub 7 A, Sub 7 B, and Sub 7 C is a domestic corporation.

Financial information has been submitted which indicates that each of Sub 2, Sub 3 A, Sub 3 B, Sub 3 C, Sub 3 E, Sub 3 F, Sub 3 G, Sub 4 A, Sub 4 B, Sub 4 C, Sub 4 D, Sub 4 E, Sub 4 I, Sub 5, Sub 5 B, Sub 5 C, Sub 6, Sub 7 A, Sub 7 B, and Sub 7 C has had gross receipts and operating expenses representative of the active conduct of a trade or business for the last five years. It has been represented that, immediately after the distributions of Controlled, described below, at least 90 percent of the fair market value of the gross assets of each of Distributing 1, Distributing 2, Distributing 3, Sub 1, Sub 3, Sub 3 D, Sub 3 H, Sub 4, Sub 4 G, Sub 4 H, Sub 5 A, Controlled, and Sub 7 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

According to taxpayer's submission, along with supporting documentation, the separation of Distributing and Controlled would positively affect the operations of each. Distributing and Controlled have experienced significant systemic problems by operating in a parent-subsidiary relationship with each other. Eliminating that relationship would enhance the business prospects of both entities.

Accordingly, the following steps have been taken or are proposed:

(i) On Date X, Controlled distributed to Distributing 3 two promissory notes in the total principal amount of $R. All or a portion of these promissory notes have been distributed by Distributing 3 to Distributing 2, and from Distributing 2 to Distributing 1 prior to Distribution 1 (step viii below). No excess loss account with respect to the stock of Distributing 2, Distributing 3, or Controlled was created or increased as a result of these distributions.

(ii) On Date Y, approximately S million shares of Distributing 1 common stock that were held by Controlled and approximately T million shares of Distributing 1 common stock that were held by Distributing 2, representing all of the shares of Distributing 1 common stock that were held by subsidiaries of Distributing 1, other than shares, if any, held by subsidiaries of Sub 2 that are H as inventory as part of their J operations, were recapitalized into shares of K Distributing 1 Preferred Stock in a transaction intended to qualify under § 368(a)(1)(E) of the Code. At the time of the transaction none of any shares of any series of Distributing 1 preferred stock will be held by Controlled or its subsidiaries.

(iii) Controlled recapitalized its outstanding stock into Controlled Class A Common Stock and Controlled Class B Common Stock in a transaction intended to qualify under § 368(a)(1)(E).

(iv) Controlled distributed to Distributing 3 or otherwise transferred to other subsidiaries of Distributing 1 certain subsidiaries (other than Sub 7, but including Sub 6 which was transferred to Distributing 3) and shares of K Distributing 1 Preferred Stock.

(v) On Date A controlled completed an initial public offering of shares of Controlled Class A Common Stock, in which it issued shares of Controlled Class A Common Stock representing less than 20 percent of the voting power of the outstanding Controlled common stock, and an offering of debentures (collectively referred to as the “Public Offering”) and used the net proceeds therefrom to prepay $U of the promissory notes that it issued in step (i) as well as certain other outstanding intercompany debt, including approximately $V owed to Sub 3. It is represented that the debentures issued in the Public Offering consitute debt for federal tax purposes. The Public Offering caused Distributing 1 and Controlled to deconsolidate for federal income tax purposes because in it shares of Controlled Class A common stock representing greater than 20 percent of the value of the outstanding Controlled stock were issued to the public.

(vi) The State B operations of Sub 4 F, an indirect wholly owned subsidiary of Distributing 1, will be transferred to a single-member limited liability company owned by Sub 4 B, an indirect wholly-owned subsidiary of Distributing 1, and the common stock of Sub 3 A, which stock is 100 percent owned by Sub 3, will be recapitalized into common stock and preferred stock of Sub 3 A representing § 368(c) “control,” in a transaction intended to qualify under § 368(a)(1)(E).

(vii) Distributing 1 and certain of Distributing 1's subsidiaries will restructure certain intercompany receivables into formal interest-bearing notes which are intended to qualify as securities for federal income tax purposes.

(viii) Distributing 3 will distribute an amount of its Controlled Class A Common Stock and Controlled Class B common stock representing § 368(c) control of Controlled to Distributing 2 (“Distribution 1").

(ix) Distributing 2 will distribute an amount of the Controlled Class A Common

Stock and Controlled Class B Common Stock received in step (viii) above, representing § 368(c) control, to Distributing 1 (“Distribution 2").

(x) Distributing 1 will distribute to Distributing 1 common stock shareholders, pro rata an amount of Controlled common stock representing § 368 (c) control of Controlled (“External Distribution”). An amount of Controlled common stock representing not more than Z percent of the value of the outstanding Controlled common stock immediately following the External Distribution (the “Retained Shares”) will be retained, in the aggregate, by Distributing 1, Distributing 2, and Distributing 3 (or wholly-owned subsidiaries thereof).

(xi) Pursuant to Distributing 1's restricted stock programs, Distributing 1 Restricted Stock has been awarded as compensation to certain employees of Distributing 1 (“Distributing 1's Employees”) and Controlled (“Controlled’s Employees”). It is represented such stock is subject to a “substantial risk of forfeiture” within the meaning of § 83. As part of the External Distribution shares of Controlled common stock will be distributed (“Restricted Stock Distribution”) on Distributing 1 restricted stock (“Distributing 1 Restricted Stock”). Pursuant to the Distributing 1 and Controlled restricted stock plans, shares of Controlled common stock received by holders of Distributing 1 Restricted Stock will be subject to the same vesting requirements and restrictions as the shares of underlying Distributing 1 Restricted Stock. Pursuant to such stock plans, immediately upon their receipt of shares of Controlled common stock in the External Distribution, Controlled’s Employees who hold Distributing 1 Restricted Stock will surrender to Distributing 1 their Distributing 1 Restricted Stock (the “Cancellation Transaction”) and receive from Controlled newly issued shares of Controlled common stock (the “Controlled Restricted Stock Transaction”) which are equal in value to the surrendered Distributing 1 Restricted Stock and which are subject to the same vesting requirements as the Distributing 1 Restricted Stock. Controlled will hold the reversionary interest in all the shares of Controlled restricted stock, regardless of whether such shares are held by Distributing 1’s Employees or Controlled’s Employees.

(xii) Distributing 3 will transfer $L to Controlled.

Distributing 1 proposes to acquire Sub 4 J indirectly by way of a merger of Sub 4 J into Sub 4 G, with Sub 4 G surviving. After the merger, Sub 4 G will be contributed to Sub 1, and Sub 3, and Sub 3 H and will become a wholly owned subsidiary of Sub 3 H. Following these transactions, Sub 4 G will wholly own Sub 4 H, which will wholly own Sub 4 I. As part of these transactions, an active business of Sub 4 C will be transferred to Sub 4 I.

The business purposes for the retention of the Retained Shares is to facilitate compliance with certain M requirements. None of Distributing 1's directors or officers will remain as directors and officers of Controlled following the External Distribution. The Retained Shares will be disposed of as soon as a disposition is warranted consistent with the business purpose for the retention but in any event not later than five years after the External Distribution. Distributing 1 and its subsidiaries will vote the Retained Shares in proportion to the votes cast by Controlled 's other shareholders.

Distributing 1 and Controlled will enter into certain transitional agreements ("Transitional Services Agreements") relating to the sharing of facilities, data systems, and other historically shared corporate and administrative services. The consideration to be paid under the Transitional Services Agreement is based on an existing cost allocation methodology between Distributing 1 and Controlled which is designed to achieve cost reimbursement.

Distributing 1 and Controlled have entered into agreements relating to the licensing of certain intellectual property. In addition, certain continuing N related arrangements will exist between Distributing 1 and Controlled following the transaction (the "N Agreement").

A tax sharing agreement and a G agreement were entered into prior to the Public Offering. Under such entered agreements, payments will be made by Distributing 1 to Controlled, or by Controlled to Distributing 1, as the case may be, with respect to events that have arisen in taxable periods ending on or before the Public Offering, or for taxable periods beginning before and ending after the Public Offering.

Controlled may decide, based on prevailing market conditions, to repurchase shares of Controlled Class A Common Stock in open market transactions prior to Distribution 1. In addition, Distributing 1 and Controlled may also decide to have Controlled repurchase shares of Controlled common stock from Distributing 3, Distributing 2, and/or Distributing 1 or their subsidiaries prior to the distributions of Controlled stock. It is represented that § 368(c) control will in all events be distributed in the distributions.

In connection with Distribution 1, the following representations have been made:

(a) Indebtedness, if any, owed by Controlled to Distributing 3 after Distribution 1 will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing 3 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(c) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Distributing 3 will consist of the stock and securities of a controlled corporation, Sub 6, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(d) The five years of financial information submitted on behalf of Sub 6 is representative of Sub 6's present operations and with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(e) Immediately after Distribution 1, 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 7, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Sub 7 will consist of the stock and securities of controlled corporations, Sub 7 A, Sub 7 B, and Sub 7 C, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(g) The five years of financial information submitted on behalf of Sub 7 A is representative of Sub 7 A's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(h) The five years of financial information submitted on behalf of Sub 7 B is representative of Sub 7 B's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(i) The five years of financial information submitted on behalf of Sub 7 C is representative of Sub 7 C's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(j) Following Distribution 1, Distributing 3 through controlled subsidiary Sub 6, and Controlled, through controlled subsidiaries Sub 7 A, Sub 7 B, and Sub 7 C, will continue the active conduct of its business, independently and with its separate employees.

(k) Distribution 1 is carried out for the corporate business purpose of making possible Distribution 2 and the External Distribution, the corporate business purposes for which are to resolve substantial "fit and focus" problems and enable Controlled to raise capital on a substantially more cost-effective basis through the Public Offering. Distribution 1 is motivated, in whole or substantial part, by these corporate business purposes.

(l) There is no plan or intention by Distributing 2 to sell, exchange, transfer by gift or otherwise dispose of any its stock in either Distributing 3 or Controlled after Distribution1, except pursuant to Distribution 2.

(m) There is no plan or intention by either Distributing 3 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(n) There is no plan or intention to liquidate either Distributing 3 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business.

(o) Except for intercompany indebtedness which does not constitute a security and which may arise pursuant to certain intercompany agreements entered into in connection with Distribution 1, no intercorporate debt will exist between Distributing 3 and Controlled at the time of, or subsequent to, Distribution 1.

(p) Immediately before Distribution 1, 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, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 3's excess loss account, if any, with respect to its Controlled common stock will be included in income immediately before Distribution 1 to the extent required by applicable regulations (see § 1.1502-19).

(q) Except for the Transitional Services Agreements, the licensing agreements with respect to certain intellectual property, and the N Agreement, payments made in connection with continuing transactions, if any, between Distributing 3 and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length.

(r) Immediately after Distribution 1, the gross assets of the businesses actively conducted (as defined in § 355(b)(2)) by each of Sub 6, Sub 7 A, Sub 7 B and Sub 7 C will have a fair market value equal to at least five percent of the total fair market value of such corporation’s gross assets.

(s) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 355(e)), pursuant to which one or more persons will acquire (other than as a result of the distribution) directly or indirectly stock possessing a 50 percent or greater interest (as defined in § 355(e)(4)(a)) of either Distributing 3 or Controlled.

(t) Immediately after Distribution 1 no person will hold, directly or indirectly, disqualified stock, within the meaning of § 355(d), in Distributing 3 or Controlled that constitutes a 50 percent or greater interest in Distributing 3 or Controlled.

In connection with Distribution 2, the following representations have been made:

(a) Indebtedness, if any, owed by Controlled to Distributing 2 after Distribution 2 will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing 2 will be received by Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(c) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock and securities of controlled corporations, Distributing 3, Sub 5, and Sub 5 A, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(d) The five years of financial information submitted on behalf of Sub 5 is representative of Sub 5's present operations and with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(e) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Sub 5 A will consist of the stock and securities of controlled corporations, Sub 5 B and Sub 5 C, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Distributing 3 will consist of the stock and securities of a controlled corporation, Sub 6, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(g) Immediately after Distribution 2, 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 7, that is engaged in the active conduct of trade or business as defined in § 355(b)(2).

(h) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Sub 7 will consist of the stock and securities of controlled corporations, Sub 7 A, Sub 7 B, and Sub 7 C, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(i) The five years of financial information submitted on behalf of Sub 5 B is representative of Sub 5 B's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial information statements submitted.

(j) The five years of financial information submitted on behalf of Sub 5 C is representative of Sub 5 C's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(k) Following Distribution 2, Distributing 2, through controlled subsidiaries Sub 5, Sub 5 B, Sub 5 C, and Sub 6 and Controlled through Sub 7 A, Sub 7 B, and Sub 7 C, will continue the active conduct of its business independently and with its separate employees.

(l) Distribution 2 is carried out for the corporate business purpose of making possible the External Distribution, the corporate business purposes for which are to resolve substantial "fit and focus" problems and enable Controlled to raise capital on a substantially more cost-effective basis through the Public Offering. Distribution 2 is motivated, in whole or substantial part, by these corporate business purposes.

(m) There is no plan or intention by Distributing 1 to sell, exchange, transfer by gift or otherwise dispose of any of its stock in either Distributing 2 or Controlled after Distribution 2, except pursuant to the External Distribution. Distributing 1 and its subsidiaries will dispose of the Retained Shares pursuant to the standards of Appendix B to Rev. Proc. 96-30.

(n) There is no plan or intention by either Distributing 2 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 2, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(o) There is no plan or intention to liquidate either Distributing 2 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except in the ordinary course of business.

(p) Except for intercompany indebtedness which does not constitute a security and which may arise pursuant to certain intercompany agreements entered into in connection with Distribution 2, no intercorporate debt will exist between Distributing 2 and Controlled at the time of, or subsequent to, Distribution 2.

(q) Immediately before Distribution 2, 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, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account, if any, with respect to its Controlled common stock will be included in income immediately before Distribution 2 to the extent required by applicable regulations (see Treas. Reg. § 1.1502-19).

(r) Except for the Transitional Services Agreements, the licensing agreements with respect to certain intellectual property, and the N Agreement, payments made in connection with continuing transactions, if any, between Distributing 2 and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(s) Immediately after Distribution 2, the gross assets of the businesses actively conducted (as defined in § 355(b)(2)) by each of Sub 5, Sub 5B Sub 5 C, Sub 6, Sub 7 A, Sub 7 B, and Sub 7 C will have a fair market value equal to at least five percent of the total fair market value of each such corporation's gross assets.

(t) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 355(e)), pursuant to which one or more persons will acquire (other than as a result of the distribution) directly or indirectly stock possessing a 50 percent or greater interest (as defined in § 355(e)(4)(A)) of either Distributing 2 or Controlled.

(u) Immediately after Distribution 2 no person will hold, directly or indirectly, disqualified stock, within the meaning of § 355(d), in Distributing 2 or Controlled that constitutes a 50 percent or greater interest in Distributing 2 or Controlled.

In connection with the External Distribution, the following representations have been made:

(a) Indebtedness, if any, owed by Controlled to Distributing 1 after the External Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing 1 will be received by any shareholder as creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 1 will consist of the stock and securities of controlled corporations, Sub 1, Sub 2, and Distributing 2 that are engaged in the active conduct of a trade or business as defined in

§ 355(b)(2).

(d) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 1 will consist of the stock and securities of a controlled corporation, Sub 3, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(e) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 3 will consist of the stock and securities of controlled corporations, Sub 3 A, Sub 3 B, Sub 3 C, Sub 3 D, Sub 3 E, Sub 3 F, Sub 3 G, and Sub 3 H, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) The five years of financial information submitted on behalf of Sub 3 A is representative of Sub 3 A's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(g) The five years of financial information submitted on behalf of Sub 3 B is representative of Sub 3 B's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(h) The five years of financial information submitted on behalf of Sub 3 C is representative of Sub 3 C's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(i) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 3 D will consist of the stock and securities of a controlled corporation, Sub 4, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(j) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 4 will consist of the stock and securities of a controlled corporation, Sub 4 A, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(k) The five years of financial information submitted on behalf of Sub 4 A is representative of Sub 4 A's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(l) The five years of financial information submitted on behalf of Sub 3 E is representative of Sub 3 E's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(m) The five years of financial information submitted on behalf of Sub 3 F is representative of Sub 3 F’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(n) The five years of financial information submitted on behalf of Sub 3 G is representative of Sub 3 G’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(o) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 3 H will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2). Such controlled corporations shall consist of Sub 4 B, Sub 4 C, Sub 4 D, Sub 4 E, and, if Sub 4 G has been acquired by then, Sub 4 G.

(p) The five years of financial information submitted on behalf of Sub 4 B is representative of Sub 4 B’s present operations and, with regard to its businesses, there have been no substantial changes since the date of the last financial statements submitted.

(q) The five years of financial information submitted on behalf of Sub 4 C is representative of Sub 4 C’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(r) The five years of financial information submitted on behalf of Sub 4 D is representative of Sub 4 D’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(s) The five years of financial information submitted on behalf of Sub 4 E is representative of Sub 4 E’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted,

(t) The five years of financial information submitted on behalf of Sub 4 I is representative of Sub 4 I’s present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(u) The five years of financial information submitted on behalf of Sub 2 is representative of Sub 2's present operations and, with regard to such business, there have been no substantial changes since the date of the last financial statements submitted.

(v) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 2 will consist of the stock and securities of controlled corporations, Distributing 3, Sub 5, and Sub 5 A, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(w) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 5 A will consist of the stock and securities of controlled corporations, Sub 5 B and Sub 5 C, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(x) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Distributing 3 will consist of the stock and securities of a controlled corporation, Sub 6, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(y) Immediately after the External 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 7, that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(z) Immediately after the External Distribution, at least 90 percent of the fair market value of the gross assets of Sub 7 will consist of the stock and securities of controlled corporations, Sub 7 A, Sub 7 B, and Sub 7 C, that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(aa) Following the External Distribution, Distributing 1, through controlled subsidiaries Sub 2, Sub 3 A, Sub 3 B, Sub 3 C, Sub 3 E, Sub 3 F, Sub 3 G, Sub 4 A, Sub 4 B, Sub 4 C, Sub 4 D, Sub 4 E, Sub 4 I, Sub 5, Sub 5 B, Sub 5 C and Sub 6, and Controlled, through controlled subsidiaries Sub 7 A, Sub 7 B, and Sub 7 C, will continue the active conduct of its business, independently and with its separate employees.

(bb) The External Distribution is carried out for the corporate business purposes of enhancing the future success of each of Distributing 1's and Controlled's respective business by resolving substantial "fit and focus" problems that have evolved, and are exacerbated by, the operation of both businesses within a single affiliated group of corporations. The External Distribution will also enable Controlled to raise capital on a substantially more cost-effective basis through the Public Offering. The External Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(cc) There is no plan or intention by any Distributing 1 common stock shareholder who owns 5 percent or more of the Distributing 1 common stock, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining common stock shareholder of Distributing 1, to sell, exchange, transfer by gift or otherwise dispose of any of its stock in either Distributing 1 or Controlled after the External Distribution.

(dd) There is no plan or intention by either Distributing 1 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the External Distribution, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(ee) There is no plan or intention to liquidate either Distributing 1 or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the External Distribution, except in the ordinary course of business.

(ff) Except for intercompany indebtedness which does not constitute a security and which may arise pursuant to certain intercompany agreements entered into in connection with the three distributions of Controlled, no intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, the External Distribution.

(gg) Immediately before the External 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, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 1's excess loss account, if any, with respect to its Controlled common stock will be included in income immediately before the External Distribution to the extent required by applicable regulations (see § 1.1502-19).

(hh) Except for the Transitional Services Agreements, the licensing agreements with respect to certain intellectual property and the N Agreement, payments made in connection with continuing transactions, if any, between Distribution 1 and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ii) Immediately after the External Distribution, the gross assets of the businesses actively conducted (as defined in § 355(b)(2)) by each of Sub 3 A, Sub 3 B, Sub 3 C, Sub 3 E, Sub 3 G, Sub 4 A, Sub 4 B, Sub 4 C,

Sub 4 D, Sub 4 E, Sub 4 I, Sub 5, Sub 5 B, Sub 5 C, Sub 6, Sub 7 A, Sub 7 B and Sub 7 C will have a fair market value equal to at least five percent of the total fair market value of such corporation's gross assets. The gross assets of the active business relied upon for purpose of § 355(b)(2)(i) by Sub 2 had a fair market value of approximately $X as of Date Z, representing approximately Y percent of the fair market value of the gross assets of Sub 2. The active business generated net income over the five year period ending on Date Z representing approximately Z percent to A percent of Sub 2's total consolidated net income for the same period. The gross assets of the active business relied upon for purposes of
§ 355(b)(2)(i) by Sub 3 F had a fair market value in excess of $ B as of Date Z, representing approximately 5 percent of the fair market value of the gross assets of Sub 3 F. The active business generated revenues representing approximately C percent to D percent of Sub 3 F's total consolidated revenues over that same period. It employed E employees as of Date Z, representing approximately F percent of total employees of Sub 3 F and its subsidiaries.

(jj) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire (other than as a result of the distribution) directly or indirectly stock possessing a 50 percent or greater interest (as defined in § 355(e)(4)(A)) of either Distributing 1 or Controlled.

(kk) Immediately after the External Distribution no person will hold, directly or indirectly, disqualified stock, within the meaning of § 355(d), in Distributing 1 or Controlled that constitutes a 50 percent or greater interest in Distributing 1 or Controlled.

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

(1) For federal income tax purposes, the distribution of promissory notes by Controlled to Distributing 3, pursuant to step (i), above, and the contribution of $L to Controlled by Distributing 3 pursuant to step (xii), above, will be viewed as a distribution in the amount of the fair market value of the promissory notes less the $L contributed to Controlled.

(2) The amount distributed to Distributing 2 pursuant to step (i) above, shall be treated as a distribution of property to which § 301 applies. Otherwise, no gain or loss will be recognized to (and no amount will be included in the income of) Distributing 2 upon the receipt of Controlled stock from Distributing 3 in Distribution 1 (§ 355(a)(1)).

(3) No gain or loss will be recognized to Distributing 3 upon the distribution of

the stock of Controlled in Distribution 1 (§ 355(c)(1)).

(4) The aggregate basis of the Controlled stock and the Distributing 3 stock in the hands of Distributing 2 immediately after Distribution 1 will be the same as the aggregate basis of the Distributing 3 stock immediately prior to Distribution 1, allocated in proportion to the fair market value of each, in accordance with § 1.358-2(a)(2) (§ 358(b)).

(5) The holding period of the Controlled stock to be received by Distributing 2 in Distribution 1 will include the holding period of the Distributing 3 stock with respect to which the distribution will be made, provided that such stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

(6) As provided in § 312(h), proper allocation of earnings and profits between Distribution 3 and Controlled will be made under § 1.312-10(b).

(7) The amount distributed to Distributing 1 pursuant to step (i), above, shall be treated as a distribution of property to which § 301 applies. Otherwise, no gain or loss will be recognized to (and no amount will be included in the income of) Distributing 1 upon the receipt of Controlled stock in Distribution 2 (§ 355(a)(1)).

(8) No gain or loss will be recognized to Distributing 2 upon the distribution of the Controlled stock to Distributing 1 in Distribution 2 (§ 355(c)(1)).

(9) The aggregate basis of the Controlled stock and the Distributing 2 stock in the hands of Distributing 1 immediately after Distribution 2 will be the same as the aggregate basis of the Distributing 2 stock held immediately prior to Distributing 2, allocated in proportion to the fair market value of each, in accordance with § 1.358-2(a)(2) (§ 358(b)).

(10) The holding period of the Controlled stock to be received by Distributing 1 in Distribution 2 will include the holding period of the Distributing 2 stock with respect to which the distribution will be made, provided that the Distributing 2 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(11) As provided under § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled will be made under § 1.312-10(b).

(12) No gain or loss will be recognized to (and no amount will be included in the income of) Distributing 1 shareholders upon the receipt of Controlled stock in the External Distribution (§ 355(a)(1)).

(13) No gain or loss will be recognized to Distributing 1 upon the distribution of the Controlled stock to Distributing 1 shareholders in the External

Distribution (§ 355(c)(1)).

(14) The aggregate basis of the Controlled stock and the Distributing 1 stock in the hands of Distributing 1 shareholders immediately after the External Distribution will be the same as the aggregate basis of the Distributing 1 stock held immediately prior to the External Distribution, allocated in proportion to the fair market value of each, in accordance with § 1.358-2(a)(2) (§ 358(b)).

(15) The holding period of the Controlled stock to be received by each Distributing 1 shareholder in the External Distribution will include the holding period of the Distributing 1 stock with respect to which the distribution will be made, provided that the Distributing 1 stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).

(16) As provided under § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled will be made under § 1.312-10(b).

(17) Payments made by Distributing 1 to Controlled, or by Controlled to Distributing 1, under the tax sharing agreement or the G agreement regarding liabilities that (i) have arisen or will arise for a taxable period ending on or before the Public Offering, or for a taxable period beginning before and ending after the Public Offering and (ii) do not become fixed or ascertainable until after the Public Offering, will be treated as occurring immediately before the Public Offering (cf. Arrowsmith v. Commissioner, 344 U.S. 6 (1952)) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1C.B. 84).

(18) No gain or loss will be recognized by Distributing 1, Controlled, Distributing 1's Employees, or Controlled’s Employees in connection the (i) Restricted Stock Distribution, (ii) the Cancellation Transaction and (iii) the Controlled Restricted Stock Transaction.

No opinion is expressed as to the tax consequences of the Transitional Services Agreement, the agreement relating to the licensing of certain intellectual property, and the N Agreements.

No opinion was requested and none is expressed concerning which entity is entitled to the deduction under § 83(h), when the restrictions on the Distributing 1 Restricted Stock and the Controlled restricted stock lapse.

Furthermore, no opinion is expressed with respect to the tax treatment of the proposed transaction under other provisions of the Code and regulations or with respect to the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not directly covered by the above rulings.

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

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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

Sincerely,

Charles Whedbee

Charles Whedbee
Senior Technical Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: