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Department of the Treasury
Washington, DC 20224

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

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Refer Reply To:
CC:CORP:B04
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Date:
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Legend

Distributing =

Merger Partner =

Controlled =

Owner A =

Owner B =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Newco 1 =

Newco 2 =

Red DRE =

Red Sub 1 =

Red Sub 2 =

Red Sub 3 =

Red Sub 4 =

Red Sub 5 =

Red Sub 6 =

Red Sub 7 =

Green DRE 1 =

Green DRE 2 =

Green DRE 3 =

Merger Sub =

Controlled Red DRE =

State A =

State B =

State C =

Business A =

Business B =

a =

b =

c =

Dear :

This letter responds to your letter dated August 19, 2016, requesting rulings on certain federal income tax consequences of certain proposed transactions. The information provided in that letter and in subsequent correspondence is summarized below.

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

This letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1, I.R.B. 1, regarding one or more significant issues under sections 332, 355, 357, 358, and 361 of the Internal Revenue Code ("Code"). The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

Facts

Distributing is the common parent of an affiliated group of corporations that file a U.S. consolidated federal income tax return. More than a percent of Distributing's stock is publicly traded and widely held, and less than b percent of its stock, in the aggregate, is owned by Owner A, a State A limited liability company electing to be classified as a corporation, and Owner B, a State A corporation, each a first-tier subsidiary of Distributing. Distributing and its subsidiaries are engaged in Business A and in Business B.

Distributing owns 100 percent of each of Sub 1, Owner A, Owner B, and, indirectly through disregarded entity Red DRE, 100 percent of several domestic and foreign entities (the "Red Subs"). The Red Subs include Red Sub 1, Red Sub 2, Red Sub 3, Red Sub 4, Red Sub 5, Red Sub 6, and Red Sub 7. Sub 1, in turn, owns, indirectly through disregarded entities, 100 percent of Sub 2, which, in turn, owns 100 percent of Sub 3, which, in turn, owns 100 percent of Sub 4. Each of Owner A, Owner B, Sub 1, Sub 2, Sub 3, Sub 4, Red Sub 1, Red Sub 3, Red Sub 4, Red Sub 5, and Red Sub 6 is a member of Distributing's U.S. federal consolidated group.

Distributing owns, directly and indirectly through disregarded entities, 100 percent of the interest in each of a group of disregarded entities (the "Green DREs"). The Green DREs include Green DRE 1, Green DRE 2, and Green DRE 3.

Pursuant to the Proposed Transactions, the Business B assets and operations will be separated from the Business A assets and operations, resulting in two publicly held, worldwide groups (the "Separation").

Shortly after the Separation, Controlled will acquire all of the stock of Merger Partner, an unrelated State C corporation, in exchange for Controlled stock, in a transaction where Controlled's pre-Combination shareholders will retain more than c percent of the stock voting power and value of Controlled (the "Combination").

Proposed Transaction

For what have been represented to be valid business purposes, the following steps have been proposed (the "Proposed Transaction"):

(i) Distributing will form a new corporation ("Controlled"). Controlled will form a merger subsidiary ("Merger Sub").

(ii) Distributing will form directly, and indirectly, certain disregarded entities to separate its Business B from its Business A including the "Controlled Green DREs" and the "Controlled Red DRE".

(iii) Distributing will form Newco 1, a State A limited liability company electing to be classified as a corporation, and Newco 2, a State B corporation.

(iv) The Green DREs will transfer certain intangibles related to Business B to the Controlled Green DREs. Several transactions will be effected to align Distributing's ownership of the Green DREs and the Controlled Green DREs into separate chains. Distributing and Controlled will enter into a cross license agreement with respect to patents to be used in their respective businesses.

(v) Red Sub 7 will make a cash distribution to Red DRE, which will then distribute the cash to Distributing.

(vi) Red DRE will contribute the Red Subs to Controlled Red DRE, and will distribute the membership interests in Controlled Red DRE to Distributing (or sell such interests to Distributing in exchange for a receivable and then extinguish the receivable by distributing it to Distributing).

(vii) Red Sub 7 will transfer its non-Business B assets to Newco 2 for fair market value consideration, and distribute cash (including cash sales proceeds, if any) to Controlled Red DRE, which in turn will distribute such cash to Distributing.

(viii) Sub 1 will make an entity classification election to be treated as disregarded from Distributing (with Sub 1 hereinafter referred to as "DRE 1").

(ix) Sub 2 will make an entity classification election to be treated as disregarded from Distributing (with Sub 2 hereinafter referred to as "DRE 2") (together with the entity classification election by Sub 1 in Step viii, the "Liquidations").

(x) Sub 3 will sell its non-Business B assets to Distributing in exchange for cash.

(xi) Sub 4 will sell its non-Business B assets to Newco 1 in exchange for cash.

The Controlled Contribution

(xii) DRE 1 will distribute the membership interests in DRE 2 to Distributing, and Distributing will contribute such membership interests in DRE 2 and receivables due from Sub 3 to Controlled in exchange for Controlled stock and Controlled's assumption of liabilities (including certain pension liabilities) related to Business B, certain of which will be deductible by (or capitalized into the asset basis of) Controlled. Controlled may, in turn, contribute the receivables due from Sub 3 to Sub 3 (indirectly through DRE 2), in cancellation of the receivables.

(xiii) Distributing will contribute certain historic, directly held Business B assets to Sub 3 in exchange for Sub 3 stock, and then contribute such Sub 3 stock, the Merger Sub stock, and the membership interests in (i) Controlled Red DRE, and (ii) the Controlled Green DREs to Controlled in exchange for (i) Controlled stock, (ii) Controlled

debt (the “Controlled Debt”), and (iii) Controlled’s assumption of liabilities (including certain pension liabilities) related to Business B, certain of which will be deductible by (or capitalized into the asset basis of) Controlled (such contribution, together with the contribution of DRE 2 interests and Sub 3 receivables in Step xii, the “Controlled Contribution” and such deductible (or capitalized) liabilities, together with the deductible (or capitalized) liabilities described in Step xii, the “Deductible Liabilities”). Controlled, in turn, will contribute certain Business B assets received in this step to Sub 3 (indirectly through DRE 2).

(xiv) Controlled will issue third party debt, in exchange for borrowing cash proceeds (the “Controlled Debt Proceeds”).

(xv) Controlled will distribute the Controlled Debt Proceeds to Distributing. Distributing will deposit any Controlled Debt Proceeds into Distributing’s existing, general accounts.

(xvi) Distributing, within 18 months of the receipt of the Controlled Debt Proceeds, will use an amount of cash (from its general accounts) equal to or greater than the amount of the Controlled Debt Proceeds to repay certain existing Distributing debt existing at the time of the receipt of the Controlled Debt Proceeds or subsequently incurred during the 18-month period in the ordinary course of business and/or make shareholder distributions or redemptions (the “Cash Proceeds Purge” and the manner and timing of such repayments, distributions, redemptions, as well as distributions or exchanges of Controlled Debt as described herein, the “Manner of Making Purging Distributions”).

(xvii) One or more investment banks (the “Investment Banks”), acting as principals for their own account, will purchase a portion of the Distributing external debt (such acquisition, the “Investment Bank Tender” and such debt, the “Exchange Debt”). The Investment Banks may finance the Investment Bank Tender, in whole or in part, through secured borrowings (including “repo” transactions) utilizing the Exchange Debt as collateral.

(xviii) Distributing will enter into an exchange agreement (the “Exchange Agreement”) with the Investment Banks no sooner than five days after the Investment Bank Tender pursuant to which the Investment Banks will exchange the Exchange Debt for some or all of the Controlled Debt (the “Controlled Exchange Securities”, and such exchange, the “Investment Bank Debt Exchange”). The Investment Bank Debt Exchange will occur at least 14 days after the Investment Bank Tender. Any remaining Controlled Debt will be distributed to Distributing’s creditors (other than the Investment Banks) and/or Distributing’s shareholders within 18 months of receipt by Distributing (i.e., pursuant to the Manner of Making Purging Distributions). The Investment Banks may hedge various risks related to holding the Distributing debt with third parties.

(xix) Distributing will recapitalize the shares of Distributing stock held by Owner A and Owner B into common shares (or “common-equivalent preferred” shares) of Distributing stock that receive additional Distributing stock (instead of Controlled stock) in connection with the External Distribution (defined below).

(xx) Controlled will recapitalize the existing shares of Controlled common stock held by Distributing by subdividing such shares into a number of shares equal to the number of outstanding shares of Distributing stock (excluding the shares of Distributing stock held by Owner A and Owner B that were recapitalized in Step xix).

The External Distribution

(xxi) Distributing will distribute the Controlled stock to its public shareholders (i.e., excluding Owner A and Owner B) in a partial pro-rata spin-off (the “External Distribution”). Distributing will deliver Controlled shares to an exchange agent on behalf of the Controlled shareholders representing the aggregate of the fractional shares to which they are entitled, and the exchange agent will sell the shares in an open-market transaction and remit the cash proceeds to the shareholders otherwise entitled to receive the fractional shares. Certain continuing relationships between Distributing and Controlled may give rise to payments made between Controlled and Distributing. The cumulative amount (measured on a rolling basis) of the net payments, if any, from Controlled to Distributing will be used pursuant to the Manner of Making Purging Distributions (within 18 months of the receipt by Distributing of each such payment).

(xxii) Distributing will distribute additional Distributing common stock (or additional “common-equivalent preferred” stock) to Owner A and Owner B.

The Combination

(xxiii) Controlled will acquire all of the stock of Merger Partner in a reverse subsidiary merger transaction in which Merger Sub merges with and into Merger Partner, with Merger Partner surviving (the “Combination”). The Combination will result in the Controlled shareholders retaining a direct interest in Controlled of greater than c percent of the voting power and value of all of the Controlled stock.

(xxiv) Following the Combination, Controlled may carry out open-market share repurchases or accelerated share repurchases (the “Share Repurchases”). The Share Repurchases, if consummated, will be motivated by a corporate business purpose, will be made with respect to widely held shares and will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.

Representations

- (a) The Controlled Contribution and the External Distribution will qualify as a reorganization within the meaning of §§ 355 and 368(a)(1)(D).
- (b) Pursuant to the Plan of Reorganization, within 18 months of receipt of the Controlled Debt Proceeds from Controlled, Distributing will use an amount of cash equal to (or greater than) the amount of the Controlled Debt Proceeds pursuant to the Manner of Making Purging Distributions.
- (c) None of the Distributing Exchange Debt will have been issued in anticipation of the External Distribution.
- (d) The Investment Banks acquiring the Distributing Exchange Debt in connection with the Investment Bank Tender will (i) no sooner than the 5th day following the acquisition of the Distributing Exchange Debt, enter into the Exchange Agreement with Distributing to exchange it for Controlled Exchange Securities and (ii) no sooner than the 14th day following the Investment Bank Tender, begin to consummate the Investment Bank Debt Exchange.
- (e) Within 18 months of receipt of the Controlled Debt (including the Controlled Exchange Securities), Distributing will distribute such debt to Distributing's creditors (including the Investment Banks) and/or shareholders.
- (f) The purpose for any exchange or distribution of the Controlled Debt (including the Controlled Exchange Securities) occurring after the External Distribution would be to implement such exchange or distribution efficiently (including the Investment Bank Debt Exchange) and such delay would be expected to be caused by external market conditions.
- (g) The Deductible Liabilities did not result in the creation of, or increase in the basis of, any asset prior to the Controlled Contribution.
- (h) The Deductible Liabilities are accrued liabilities for financial accounting purposes by Distributing, but will not meet the timing requirement for a deduction by Distributing before the Controlled Contribution under Distributing's method of tax accounting. The Deductible Liabilities will meet the timing requirements for a deduction by Controlled after the Controlled Contribution under Controlled's method of tax accounting.
- (i) The Deductible Liabilities assumed by Controlled were incurred in the ordinary course of business and are related to the Business B.
- (j) Any Share Repurchases will not be related to the Proposed Transactions, and are expected to occur at approximately the same times, and to be in the same or a lesser amount, as the Share Repurchases that Merger Partner would have undertaken if the Combination did not occur.

(k) Except for the transfer of DRE 2 to Controlled in the Controlled Contribution, the Liquidations will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the businesses or assets of Sub 1 or Sub 2, if persons holding, directly or indirectly, more than 20 percent in value of the stock of Sub 1 or Sub 2 also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient.

(l) The payment of cash in lieu of fractional shares of Controlled stock is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. No Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled common stock.

Rulings

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

1. The involvement of the Investment Banks in the Investment Bank Tender and the Investment Bank Debt Exchange will not preclude the application of § 361(c)(3) to the Investment Bank Debt Exchange.

2. Provided the Distributing Exchange Debt (or Distributing debt other than the Distributing Exchange Debt in satisfaction of which Controlled Debt is distributed) constitutes “securities” for purposes of §§ 355 and 361, and the Controlled Debt to be transferred in cancellation of the Distributing Exchange Debt (or such other Distributing debt) has comparable terms (e.g., comparable remaining period to maturity, but not necessarily comparable interest rate), the Controlled Debt will constitute “securities” for purposes of §§ 355 and 361 under the principles of Rev. Rul. 2004-78.

3. Distributing’s completion of the Investment Bank Debt Exchange and, if necessary, any distribution of the Controlled Debt to Distributing’s creditors (other than the Investment Banks) and/or Distributing’s shareholders following the date of the External Distribution, will not preclude (i) the Controlled Contribution, (ii) the External Distribution, or (iii) the Investment Bank Debt Exchange from qualifying under §§ 355 and 361.

4. The Cash Proceeds Purge, and any distribution or exchange by Distributing of Controlled debt (including the Investment Bank Exchange), in each case pursuant to the Manner of Making Purging Distributions, will be treated as being distributed pursuant to the Plan of Reorganization for purposes of §§ 361(b) and (c).

5. The Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing assumed by Controlled for purposes of §§ 357(c), 358(d) and

361(b)(3), to the extent payment of the Deductible Liabilities would give rise to a deduction (or be capitalized into basis in assets by Controlled).

6. To the extent that Controlled shareholders are widely held, publicly traded mutual funds that are also Merger Partner shareholders immediately prior to the Combination, for purposes of § 355(e), the increase in direct or indirect (based on the attribution principles under § 318(a)(2)(C)) ownership percentage of Controlled stock by reason of being a Merger Partner shareholder immediately prior to the Combination is offset by the decrease in such ownership percentage by reason of being a Controlled shareholder immediately prior to the Combination, determined without regard to changes in ownership of such funds by their public shareholders.

7. For purposes of § 355(e), in calculating the offset, by reason of being a Controlled shareholder immediately prior to the Combination, of any increase of a shareholder's Controlled stock ownership percentage, Distributing, absent actual knowledge, may rely upon the publicly filed documents reporting ownership as of the closest point in time preceding the Combination that disclose the relevant shareholders' ownership percentage of stock in the relevant corporation.

8. The receipt of cash by a Distributing shareholder in lieu of a fractional share of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional share had been transferred to the Distributing shareholder as part of the External Distribution and had then been disposed of by the Distributing shareholder for the amount of cash in a § 1001(a) sale or exchange. For purposes of § 355(e), the sale of fractional shares in the market will not be treated as acquisitions that are part of the plan that includes the External Distribution.

9. To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the External Distribution for purposes of § 355(e), the Share Repurchases will be treated as being made from all public shareholders (defined as shareholders who are not a "controlling shareholder" or a "ten-percent shareholder" within the meaning of §§ 1.355-7(h)(3) and (14)) of Controlled common stock on a pro rata basis for purposes of testing the effect of the Share Repurchases on the External Distribution under § 355(e).

10. The initial designations of the post-Combination members of the Controlled board of directors will not affect the determination of the total voting power or value of the stock of Controlled acquired within the meaning of § 355(e).

11. The Controlled Contribution will not preclude the Liquidations from qualifying as complete liquidations within the meaning of § 332.

12. Payments from Distributing, or any of its affiliates, to Controlled, or any of its affiliates, or vice versa, under any continuing relationships regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period

ending on or before the External Distribution and (ii) will not become fixed and ascertainable until after the External Distribution, will be treated as occurring immediately before the External Distribution, except for purposes of § 355(g). See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

13. The amount of any other property, within the meaning of § 361(b), received by Distributing from Controlled after the External Distribution and attributable to a taxable period ending on or before the External Distribution will be treated for purposes of §§ 361(b) and (c) as distributed (i) by Controlled to Distributing pursuant to the Plan of Reorganization in an amount equal to the cumulative excess (the “Excess”) of the gross amount of such other property received by Distributing over the gross amount of property transferred by Distributing to Controlled after the External Distribution attributable to a taxable period ending on or before the External Distribution (as measured on a rolling basis, 18 months after each receipt of such other property by Distributing) and (ii) by Distributing pursuant to the Plan of Reorganization, provided that Distributing uses a cumulative amount (measured on a rolling basis) equal to the Excess pursuant to the Manner of Making Purging Distributions (within 18 months from the date of each such receipt).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Proposed Transaction that is not specifically covered by the above rulings.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 61. However, when the criteria in section 11.06 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 62 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Procedural Statements

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: