Internal Revenue Service

Department of the Treasury

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Transferor =

Sub =

Transferee =

Disregarded Co =

Parent =

Trusts =

Country A =

State A =

State B =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date A =

Date B =

V =

W =

X =

Y =

Z =

Dear Sir/Madam:

This is in response to your October 5, 1998, request for rulings on certain federal income tax consequences of a transaction. Additional information was submitted in letters dated January 28, 1999, April 9, 1999, April 27, 1999, May 29, 1999, June 24, and July 15, 1999. The information submitted is summarized below.

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

Transferor is an accrual method Country A insurance company operating in Country A and the United States. Transferor issues and reinsures various forms of life insurance, annuity, and other insurance products. With respect to its conduct of a trade or business within the United States, Transferor is taxable under § 842(a) of the Internal Revenue Code, and if a domestic company, would qualify as a life insurance company under § 816(a). Transferor's U.S. insurance business is conducted through a branch.

As a foreign corporation engaged in a U.S. insurance business, Transferor is required by state insurance law, for the protection of its policyholders, to deposit the assets associated with its U.S. insurance business with a state officer of one of the

states in which it is carrying on a business, or with corporate trustees in the United States. Accordingly, Transferor has deposited all the assets associated with its U.S. insurance business with the Trusts, which are managed by corporate trustees.

Prior to the Actual Transaction (as described below) on Date B, Transferor owned all the stock of Sub, a State A stock life insurance company. Sub's core businesses are its insurance and annuity business and its managed care business. Prior to Year 1, Sub conducted a small reinsurance business and an individual variable annuity business. Commencing in Year 1, Sub entered an annuity business in the United States, and in Year 2, Sub entered the managed care business and began selling group life insurance and health and disability products as well. Sub currently owns 80 percent or more of the stock (by vote and value) of 12 companies. Prior to the Actual Transaction on Date B, all of Sub's stock was trusteed as a necessary asset of Transferor's U.S. branch insurance business. Transferor's U.S. branch operations continue after the Date B transfer of the Sub stock, but most of Transferor's U.S. insurance business is now conducted through Sub.

Actual Transaction

Transferor incorporated two wholly-owned subsidiaries -- Disregarded Co, a Country A corporation for which Transferor has unlimited liability, and Transferee, a domestic corporation. Transferee is a domestic holding corporation and is not a life insurance company. Transferor created Transferee to facilitate raising capital for Sub and for Sub's U.S. subsidiaries, and to increase Sub's flexibility in managing its business and making acquisitions of life and nonlife businesses.

For Country A tax reasons, Transferor structured the Date B transaction as follows: (1) Transferor incorporated Disregarded Co in Country A and incorporated Transferee in the United States for nominal consideration; (2) Transferor transferred to Disregarded Co all of Transferee's outstanding stock in actual or constructive exchange solely for additional Disregarded Co stock shares; (3) Transferor transferred to Disregarded Co all of Sub's outstanding stock in actual or constructive exchange solely for additional Disregarded Co stock shares; and (4) Disregarded Co transferred to Transferee all of Sub's outstanding stock in actual or constructive exchange solely for additional Transferee common stock shares. At the conclusion of the transaction, Transferor owned all of Disregarded Co's stock, Disregarded Co owned all of Transferee's stock, and Transferee owned all of Sub's stock. This transaction will hereinafter be referred to as the "Actual Transaction."

After the Actual Transaction on Date B, the stock of Sub is no longer a trusteed asset of Transferor's U.S. branch insurance business. In addition, the stock of Transferee is not a trusteed asset of Transferor's U.S. branch insurance business.

In a private letter ruling dated August 27, 1998, the Internal Revenue Service

provided the taxpayer rulings related to a proposed transaction (the "1998 Proposed Transaction") that was similar to the Actual Transaction provided herein. The taxpayer structured the 1998 Proposed Transaction as follows: (1) Transferor would incorporate Transferee for nominal consideration; (2) Transferee would contribute to Transferee a note with a maturity date of 30 days from the date of contribution and a face amount equal to the fair market value of the Sub stock (the "Note"); (3) a market rate of interest would accrue on the Note and would be paid to Transferee by Transferor at maturity (or at satisfaction, if earlier); and (4) within 30 days of such contribution, Transferee would "purchase" all of Sub's outstanding stock from Transferor in full satisfaction of the Note, and would transfer back to Transferor any interest previously paid to Transferee under the Note. In the August 27, 1998 private letter ruling, the Internal Revenue Service included rulings that provided that certain conditions were satisfied, Transferor's transfer of Sub's stock to Transferee would not constitute a "disposition" of part or all of Sub's stock within the meaning of § 1.884-2T(d)(5)(i), and Sub's earnings and profits would be reduced by an amount equal to the earnings and profits allocated to Transferee pursuant to a valid election under § 1.884-2T(d)(4). In addition, the Internal Revenue Service ruled that assuming there were no change in Transferor's use of Transferee's stock, the stock of Transferee would not be a "U.S. asset" of Transferor for purposes of § 884 and § 1.884-1(d)(1), and would not be treated as an "asset used in, or held for use in, the conduct of a trade or business in the United States" for purposes of § 864(c) and § 1.864-4(c). This private letter ruling revokes and replaces the private letter ruling of August 27, 1998.

Previous Transactions

On Date A, and on subsequent occasions continuing through Year 3, Transferor transferred substantially all of the assets used in its U.S. branch to Sub in transactions intended to qualify under § 351. Because both Transferor and Sub were engaged in the conduct of a U.S. life insurance business, the companies had determined that there would be marketing and administrative advantages if their U.S. operations were consolidated in whole or in part. Therefore, the companies decided to embark on a corporate strategy to transfer portions of Transferor's U.S. business to Sub, and to increase Sub's capital and surplus to support such business. In a private letter ruling dated March 20, 1992, the Internal Revenue Service ruled that the transfer occurring on Date A would qualify as a § 351 transfer. Transferor's U.S. branch writes only a minimal amount of new business each year.

For each transfer described in the preceding paragraph, Sub elected under § 1.884-2T(d)(4) to increase its earnings and profits by an allocable portion of Transferor's effectively connected earnings and profits ("ECEP") and non-previously taxed accumulated ECEP. Transferor agreed that, upon the disposition of part or all of the stock or securities that it owns in Sub (or a successor-in-interest), it would treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (1) the amount realized upon such disposition or (2) the

total amount of ECEP and non-previously taxed accumulated ECEP that was allocated to Sub pursuant to § 1.884-2T(d)(4)(ii).

Representations

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

(a) Transferor is a corporation formed under the laws of Country A. Prior to the Actual Transaction, Transferor owned all of the stock of Sub, a State A corporation.

(b) Transferor incorporated Disregarded Co under the laws of Country A and State B. Transferor is the sole owner of Disregarded Co and has unlimited liability with respect to Disregarded Co under its organizational and other corporate documents and within the meaning of § 301.7701-3(b)(2)(ii).

(c) For U.S. federal income tax purposes, Disregarded Co will be disregarded as an entity separate from Transferor under § 301.7701-2(a) and § 301.7701-2(b)(8)(ii)(A).

(d) Disregarded Co will not make an election under § 301.7701-3(c) to be treated as an association for federal income tax purposes.

(e) Disregarded Co will remain a disregarded entity of Transferor for the 60-month period beginning on Date B, except to the extent necessitated by a change in U.S. or Country A law relating to the classification of Disregarded Co as (1) a disregarded entity for U.S. federal income tax purposes, or (2) an unlimited liability State B corporation for Country A purposes.

(f) Transferor incorporated Transferee under U.S. law and is Transferee's sole owner for U.S. federal income tax purposes.

(g) Provided that for federal income tax purposes, Disregarded Co is disregarded as an entity separate from Transferor, and provided that in the Actual Transaction, Transferor is treated as transferring all the outstanding stock of Sub to Transferee in actual or constructive exchange for additional shares of Transferee stock, Transferor's transfer of the Sub stock to Transferee qualifies as a tax-free transfer under § 351.

(h) Transferor is a qualified resident of Country A within the meaning of § 1.884-5.

(i) Transferor has one class of common stock outstanding. Parent, a publicly traded Country A corporation, owns W percent of Transferor's common stock, and approximately X other shareholders (a number of whom are U.S. shareholders) own the remaining Y percent of Transferor's common stock. Transferor has V series of non-voting preferred stock outstanding, with one of those series being publicly traded. Parent owns approximately Z percent in value of the outstanding shares of Transferor's preferred stock.

(j) Transferee will make a valid election to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to Sub pursuant to the prior elections by Transferor under § 1.884-2T(d)(4).

(k) Transferor will attach a statement to its timely filed (including extensions) federal income tax return treating such earnings and profits as if they had been allocated from Transferor to Transferee pursuant to an election under § 1.884-2T(d)(4).

(l) After the Actual Transaction, the Sub stock is not and will not be an asset of the Trusts, is not and will not be carried as an asset on the books of Transferor's U.S. branch, and is not and will not be used in connection with Transferor's U.S. insurance business or any other business.

(m) The Transferee stock held by Transferor is not and will not be an asset of the Trusts, is not and will not be carried as an asset on the books of Transferor's U.S. branch, and is not and will not be used in connection with Transferor's U.S. insurance business or any other business.

(n) Neither Transferor, Transferee, Disregarded Co, nor Sub currently is, or was immediately following the Actual Transaction, a United States real property holding corporation ("USRPHC") as defined in § 897(c)(2).

(o) Neither Transferor, Transferee, Disregarded Co, nor Sub has been a USRPHC at any time during the five-year period ending on Date B, the date of the Actual Transaction.

(p) Except for certain long-term debt securities issued to third parties, and except for Transferor's intent to have the stock of Disregarded Co transferred to a newly formed Country A affiliate of Transferor on or after December 31, 1999, and Disregarded Co's intent to offer to sell less than one percent of the stock of Transferee to member's of Transferee's or Sub's management as a performance incentive, Transferor has no plan or intent to have additional investors, partners, shareholders, or owners in

Transferee, Sub, or Disregarded Co.

(q) For the five taxable years of Sub preceding the Year 4 taxable year, Sub (i) was in existence and was a member of an affiliated group as defined in § 1504(a) without regard to § 1504(b) (though the affiliated group did not file a consolidated return); (ii) was engaged in the active conduct of the insurance business; (iii) did not experience a change in tax character within the meaning of § 1.1502-47(d)(12)(vii); and (iv) did not undergo a disproportionate asset acquisition within the meaning of § 1.1502-47(d)(12)(viii).

(r) As a result of the Actual Transaction, the shareholder of Sub actually or constructively acquired more than 50 percent (by value) of Transferee's stock.

(s) In implementing the Actual Transaction, Transferor did not have a principal purpose to achieve different tax results or consequences under foreign or U.S. law that are inconsistent with the purposes of U.S. tax law.

Rulings

Based solely on the information submitted and on the representations set forth above, and provided that for U.S. federal income tax purposes under § 301.7701-2(a) and § 301.7701-2(b)(8)(ii)(A), Disregarded Co is not treated as an entity separate from Transferor, and that accordingly, Transferor will be treated as transferring the stock of Sub to Transferee in actual or constructive exchange for additional shares of Transferee stock, we rule as follows:

(1) Provided that the Actual Transaction qualifies as an exchange under § 351, and provided: (1) Transferee makes a valid election to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to Sub pursuant to the prior elections by Transferor under § 1.884-2T(d)(4); (2) Transferor attaches a statement to its timely filed (including extensions) federal income tax return treating such earnings and profits as if they had been allocated from Transferor to Transferee pursuant to an election under § 1.884-2T(d)(4); and (3) Transferor attaches a statement to its timely filed (including extensions) federal income tax return agreeing that, upon the disposition of part or all of the stock or securities of either Transferee (or a successor-in-interest) or Disregarded Co (or a successor-in-interest), or upon a direct or indirect disposition of part or all of the stock or securities of Sub (or a successor-in-interest), Transferor shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i):

(a) Transferor's transfer of Sub's stock to Transferee will not constitute a "disposition" of part or all of Sub's stock within the meaning of § 1.884-2T(d)(5)(i); and

(b) Sub's earnings and profits will be reduced by an amount equal to the earnings and profits allocated to Transferee pursuant to a valid election under § 1.884-2T(d)(4).

(2) If Transferor disposes of part or all of the stock or securities of either Transferee (or a successor-in-interest) or Disregarded Co (or a successor-in-interest), or if Transferee disposes of part or all of the stock or securities of Sub (or a successor-in-interest), Transferor shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i).

(3) Assuming there is no change in Transferor's use of Transferee's stock, the stock of Transferee will not be a "U.S. asset" of Transferor for purposes of § 884 and § 1.884-1(d)(1), and will not be treated as an "asset used in, or held for use in, the conduct of a trade or business in the United States" for purposes of § 864(c) and § 1.864-4(c).

(4) Immediately following the Actual Transaction, Transferee and Sub were "eligible corporations" under § 1.1502-47(d)(12), and Transferee may elect under § 1504(c)(2) to treat Sub as an includible corporation within the meaning of § 1504(b) for purposes of filing a consolidated return. See § 1.1502-47(d)(14), Example 12.

The Internal Revenue Service expresses no opinion about the tax treatment of the Actual Transaction under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from the transactions not specifically covered by the above rulings. In particular, no opinion is expressed (i) with respect to the application of § 351 and related provisions to the Actual Transaction; (ii) whether the Sub stock is an asset used in, or held for use in, the conduct of Transferor's U.S. trade or business immediately prior to its transfer to Transferee (§ 1.864-4(c)(2)(iii)); and (iii) other tax consequences to Transferor under § 884 due to Transferor's transfer of Sub stock to Transferee. Also, the Internal Revenue Service expresses no opinion about the eligibility under § 1.1502-47(d)(12) of any of the subsidiary corporations owned by Sub. No opinion has been requested and no opinion is expressed as to whether the Actual Transaction constitutes a direct or indirect distribution out of Transferor's shareholders surplus account, policyholders surplus account, or other accounts within the meaning of § 815.

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

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

Sincerely,

ASSOCIATE CHIEF COUNSEL
(INTERNATIONAL)

By: Charles P. Besecky
Chief, Branch 4