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Distributing =

Controlled =

Sub 1 =

Shareholder A =

Business A =

Segment A =

Segment B =

Date A =

Date B =

Financial Adviser =

a =

b =

c =

d =

e =

Sub 2 =

Sub 3 =

Sub 4 =

F Sub 1 =

F Sub 2 =

F Sub 3 =

F Sub 4 =

F Sub 5 =

F Sub 6 =

F Sub 7 =

F Sub 8 =

F Sub 9 =

F Sub 10 =

F Sub 11 =

F Sub 12 =

F Sub 13 =

F Sub 14 =

F Sub 15 =

F Sub 16	=
F Sub 17	=
F Sub 18	=
F Sub 19	=
F Sub 20	=
F Sub 21	=
F Sub 22	=
F Sub 23	=
Country A	=
Country B	=
Country C	=

We respond to your February 12, 2001 request for rulings on certain federal income tax consequences of a proposed (and partially consummated) transaction. Additional information was submitted in letters dated March 26, April 12 (two letters), and June 7, 2001. The information submitted is summarized below.

Summary of Facts

Distributing is the common parent of a group of corporations whose includible affiliates join in filing a consolidated federal income tax return. Distributing owns directly all of the outstanding stock of newly formed Controlled. Before the transaction described below, Distributing owned directly all of the outstanding stock of Sub 1, Sub 2, and Sub 3. Sub 1 owned directly all of the common stock of F Sub 1. Sub 1, Sub 2, Sub 3 and Controlled are domestic corporations. In addition, before the transaction described below, (i) Sub 2 owned directly all of the outstanding stock of F Sub 18 and F Sub 20, and d percent of the outstanding stock of F Sub 17, (ii) Sub 3 owned directly all of the outstanding stock of F Sub 22 and F Sub 16, and (iii) F Sub 1 owned directly all of the outstanding stock of F Sub 3, F Sub 4, F Sub 6, F Sub 11, F Sub 13, and F Sub 23. All F Subs are foreign corporations.

Distributing has one class of common stock outstanding. The common stock is publicly traded. To the best of Distributing's knowledge on Date A, Shareholder A was the only shareholder that held five percent or more of its stock by vote or value. Shareholder A is not an active participant in the management of Distributing or

Controlled.

Distributing conducts Business A directly which consists of Segment A and Segment B. You have submitted financial information indicating that the conduct of Business A has generated gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Controlled has one class of common shares outstanding, all of which are held by Distributing. Sub 1 has shares of common stock and Class B non-voting common stock outstanding, all of which are held by Distributing. Distributing formed Sub 1 on Date B by contributing certain assets in exchange for Sub 1 stock in a transaction intended to qualify under § 351 of the Internal Revenue Code; since then, Distributing has periodically contributed certain assets to Sub 1 in exchange for Sub 1 common stock or Class B non-voting common stock in transactions also intended to qualify under § 351.

To fund operations and capital expenditures, and to satisfy the Offering Commitment (defined below), Distributing and Controlled propose to raise additional capital through an initial public offering of up to 20 percent of the Controlled stock (the "Offering"). Financial Adviser has concluded that an offering accompanied by an announced intention to distribute Controlled stock subsequent to the Offering will raise significantly more funds per share (net of transaction costs) and will be more advantageous than (i) an offering of Distributing stock under its existing corporate structure, and (ii) an offering of Controlled stock as a controlled subsidiary of Distributing without an announced intention to distribute Controlled stock subsequent to the Offering.

Distributing believes it can best serve Segment A and Segment B by creating two independent companies. Distributing's management has concluded that operating Segment A and Segment B within the same corporate group is a poor fit and creates significant systemic and managerial problems that make it desirable to separate the two segments (the "Fit and Focus Purpose").

Proposed Transaction

The following steps have been proposed by Distributing to separate Segment A and Segment B (Distributing has indicated that some of the following steps have been consummated):

The Foreign Restructuring:

- (i) F Sub 3 will transfer certain of its assets and liabilities to a newly formed subsidiary, F Sub 2. F Sub 3 will then distribute 100 percent of the stock of F Sub 2 to F Sub 1.
- (ii) F Sub 4 will undergo a demerger, in accordance with local law, into two independent companies: F Sub 4 and F Sub 5.

- (iii) F Sub 1 will transfer 100 percent of its stock in F Sub 6 to newly-formed F Sub 7, a wholly-owned subsidiary of F Sub 1, in exchange for two classes of stock, Class A and Class B.
- (iv) F Sub 6 will undergo a demerger, in accordance with local law, into two independent companies: F Sub 6 and F Sub 9. F Sub 6 will reorganize in accordance with local law to become F Sub 8. The rights inherent in the Class A shares of stock to be issued by F Sub 7 constitute ownership of the stock of F Sub 8. The rights inherent in Class B shares to be issued by F Sub 7 constitute ownership of the stock of F Sub 9.
- (v) Certain assets owned by F Sub 11 will be transferred to a newly-formed F Sub 12, a wholly-owned subsidiary of F Sub 1, in exchange for cash payments over a period of b years.
- (vi) F Sub 13 will transfer certain of its assets and liabilities to a new subsidiary, F Sub 14, in exchange for cash. F Sub 13 also will transfer certain of its assets to a branch of F Sub 1 in Country A, in exchange for a lump sum cash payment and cash payments over a period of b years.
- (vii) The branch of F Sub 1 in Country A will lease certain of its assets to F Sub 14 for c days in exchange for cash. Upon expiration of the lease, F Sub 14 will purchase these assets with cash.
- (viii) F Sub 13 will distribute 100 percent of its stock in F Sub 14 to F Sub 1.
- (ix) Following the transactions described above, F Sub 1 will undergo a demerger into two independent companies in accordance with local law: (i) F Sub 1 will hold all of the shares of F Sub 2, F Sub 4, F Sub 23, F Sub 14, and F Sub 11, and the Class A shares of F Sub 7 representing ownership of F Sub 8, and (ii) F Sub 15 will hold all of the shares of F Sub 5, F Sub 12, F Sub 3, F Sub 13, and F Sub 10 and the Class B shares of F Sub 7 representing ownership of F Sub 9.
- (x) Sub 2 will distribute its ownership of d percent of the stock of F Sub 17 to Distributing.
- (xi) Sub 2 will form a wholly-owned subsidiary Sub 4. Sub 2 will transfer certain of the assets and liabilities of its branches in Country B and Country C to Sub 4 in exchange for cash.
- (xii) F Sub 18 will transfer certain of its assets and liabilities to a newly-formed F Sub 19, a wholly-owned subsidiary of Sub 4 in exchange for cash.
- (xiii) F Sub 20 will transfer certain of its assets and liabilities to a newly-formed F Sub 21, a wholly-owned subsidiary of Sub 4 in exchange for cash.
- (xiv) Sub 2 will distribute its stock of Sub 4 to Distributing.

The Domestic Restructuring:

- (xv) Sub 1 will merge upstream into Distributing (the “Sub 1 Liquidation”).
- (xvi) Distributing will contribute certain of its assets used in connection with Segment B (including Sub 2, Sub 15 and certain assets previously held by Sub 1) together with related liabilities (the “Contribution”) to Controlled in constructive exchange for stock of Controlled and a commitment by Controlled (the “Offering Commitment”) to transfer to Distributing a dollars of proceeds (the “Cash Payment”) from the Offering. As part of this exchange Distributing will transfer to Controlled certain rights to patents, know how, trademarks and trade names, while Distributing will continue to use certain patents, know how, trademarks and trade names in its core business. For example, Distributing will transfer to Controlled certain know-how called e while continuing to use e in its core business.
- (xvii) Controlled will make the Offering. After the closing of the Offering, Controlled will satisfy the Offering Commitment by making the Cash Payment to Distributing. Controlled will use the remaining proceeds to fund operations and capital expenditures.
- (xviii) Distributing will transfer the Cash Payment to its creditors.
- (xix) Distributing will distribute the Controlled common stock pro rata to the holders of Distributing’s common stock (the “Distribution”).

Following the Distribution, Distributing and Controlled will (i) provide each other certain transitional services under a services agreement, (ii) provide each other certain limited research and manufacturing services, and (iii) serve as the exclusive distributor for the other’s products under certain circumstances, pursuant to transitional intercompany agreements.

Distributing and Controlled have issued or will issue stock options as compensation to officers, employees, and directors (the “Compensatory Options”). In connection with the Distribution, Controlled will issue Controlled options to holders of Distributing options as compensation for the decrease in Distributing option value caused by the Distribution.

Representations

Distributing has made the following representations concerning the Sub 1 Liquidation:

- (a) Distributing, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of each class of Sub 1 stock.
- (b) No shares of Sub 1 stock will have been redeemed during the 3 years preceding

the adoption of the plan of complete liquidation of Sub 1.

- (c) All distributions from Sub 1 to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 1.
- (d) As soon as the first liquidating distribution has been made, Sub 1 will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
- (e) Sub 1 will retain no assets following the final liquidating distribution.
- (f) Except as described above, Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.
- (g) Except as described above, no assets of Sub 1 have been or will be disposed of by Sub 1 or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to adoption of the plan of liquidation.
- (h) Except as described above, the liquidation of Sub 1 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, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (i) Prior to adoption of the liquidation plan, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the liquidation plan.
- (j) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (k) There is no intercorporate debt existing between Distributing and Sub 1 and none has been canceled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan.
- (l) Sub 1 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed Sub 1 Liquidation have been fully disclosed.

Distributing has made the following representations concerning the Contribution and the Distribution:

- (n) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (o) No part of the stock of Controlled to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (p) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (q) The gross assets of the business relied upon by each of Distributing and Controlled to satisfy the active trade or business test of § 355(b) will in each case have a fair market value that is equal to or greater than five percent of the total fair market value of the gross assets of such corporation at the time of the Distribution.
- (r) Following the transaction, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of the integrated activities of the business conducted by Distributing prior to consummation of the transaction.
- (s) The Distribution is carried out for one or more of the following corporate business purposes: the Offering and the Fit and Focus Purpose. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (t) Distributing expects that the Offering will occur on or before 1 year following the Distribution.
- (u) There is no plan or intention by any shareholder who owns five percent or more of the stock of Distributing, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder of Distributing, to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the transaction.
- (v) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than (i) through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705, and (ii) certain repurchases of restricted stock from employees, independent contractors or directors pursuant to restricted stock plans of Distributing and Controlled.

- (w) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation into 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.
- (x) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus the amount of the Cash Payment.
- (y) The liabilities assumed in the transaction (as determined under § 357(d)) and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (z) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.
- (aa) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (bb) Other than intercompany payables and receivables between Distributing and Controlled incurred in the ordinary course of business or in connection with the transitional intercompany agreements, no intercorporate debt will exist between Distributing or any of its subsidiaries and Controlled at the time of, or subsequent to, the Distribution.
- (cc) 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. Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution to the extent required under applicable regulations (see § 1.1502-19).
- (dd) Except for certain transitional services that will be provided at cost, payments made in connection with all continuing transactions, if any, between Distributing and its subsidiaries and Controlled and its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (ee) Neither Distributing nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ff) The 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 directly or indirectly stock possessing 50 percent or more of the total combined voting

power of all classes of stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

Rulings

Based solely on the information submitted and representations made, we rule as follows:

Concerning the Sub 1 Liquidation:

- (1) The Sub 1 Liquidation will qualify as a distribution by Sub 1 to Distributing in complete liquidation of Sub 1 under § 332 and § 1.332-2(d).
- (2) No income, gain or loss will be recognized by Distributing on receiving the assets and liabilities of Sub 1 in the Sub 1 Liquidation (§ 332(a)).
- (3) No income, gain or loss will be recognized by Sub 1 on the Sub 1 Liquidation (§§ 336(d)(3), 337(a) and 337(b)).
- (4) The basis Distributing will have in each asset received from Sub 1 as a result of the Sub 1 Liquidation equals the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Liquidation (§ 334(b)(1)).
- (5) The holding period Distributing will have in each asset received from Sub 1 as a result of the Sub 1 Liquidation includes the period during which that asset was held by Sub 1 (§ 1223(2)).
- (6) Distributing will succeed to and take into account the items of Sub 1 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a); § 1.381(a)-1).
- (7) Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of the Sub 1 Liquidation (§ 381(c)(2)(A); § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 1 or Distributing will be used only to offset earnings and profits accumulated after the date of the Sub 1 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 1's earnings and profits are reflected in Distributing's earnings and profits, the Sub 1 earnings and profits to which Distributing succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)).

Concerning the Contribution and the Distribution:

- (8) The Contribution by Distributing to Controlled, followed by the distribution of the Controlled stock to Distributing's shareholders will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be a "party to the reorganization" within the meaning of § 368(b).
- (9) No gain or loss will be recognized by Distributing in the Contribution (§§ 361(a)

and 357(a)).

- (10) No gain or loss will be recognized by Distributing upon the receipt of the Cash Payment from Controlled, followed by the transfer, in connection with the Contribution and Distribution, of the Cash Payment to Distributing's creditors. (§ 361(b)(3)).
- (11) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (12) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (13) The holding period of each asset received by Controlled in the Contribution will include the holding period of that asset in the hands of Distributing (§ 1223(2)).
- (14) Distributing will recognize no gain or loss on its distribution of the Controlled stock to the Distributing shareholders (§ 361(c)(1)).
- (15) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders on the Distribution, except with respect to cash received in lieu of fractional shares (§ 355(a)(1)).
- (16) The aggregate basis of the Distributing stock and the stock of Controlled (including fractional shares deemed issued and redeemed for cash) in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately before the Distribution. This aggregate basis will be allocated between the Distributing and Controlled stock in proportion to the fair market values of the Distributing and Controlled stock immediately after the Distribution in accordance with § 1.358-2(a)(2) (§§ 358(a)(1), (b) and (c)).
- (17) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock on which the Distribution will be made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- (18) Proper allocation of earnings and profits between Distributing and Controlled will be made under §§ 1.312-10(a) and 1.1502-33.

We express no opinion about the tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings. In particular, we express no opinion about the transfer of certain rights to patents, know how, trademarks and trade names from Distributing to Controlled as described in step (xvi) of the Proposed Transaction, including whether these transfers are, in fact, property (See Rev. Rul. 69-156, 1969-1 C.B. 101). No opinion is expressed regarding whether any or all of the above-

referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) and the regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition, notwithstanding any other provision of the Code.

No opinion has been requested and none is provided about the federal income tax consequences of (1) the issuance of Controlled compensatory options to holders of Distributing compensatory options, as described above, or (2) the Foreign Restructuring (steps (i) through (xiv)). Also, no opinion is expressed about the application of § 367(b) (i.e., § 1.367(b)-5(c)) to the Foreign Restructuring.

The rulings contained in this letter are predicated upon the 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 materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See § 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 46, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in § 12.05 of Rev. Proc. 2001-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

It is important that a copy of this ruling letter be attached to the federal income tax return of each party involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to the power of attorney on file in this office, a copy of this letter has been sent to each of your authorized representatives.

Sincerely yours,
Associate Chief Counsel (Corporate)

By: *Filiz A. Serbes*
Chief, Branch 3