Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
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Parent =

Distributing =

Controlled =

Division I =
Division II

Subsidiary A =
Susidiary B =
Subsidiary C =
Subsidiary D =
Susidiary E =
Subsidiary F =
Subsidiary G =
Susidiary H =
Subsidiary I =
Subsidiary J =
Susidiary K =
Subsidiary L =
Subsidiary M =
Susidiary N =

LLC ss =
LLC tt =
LLC uu =
LLC vv =
LLC ww =
LLC xx =
LLC yy =
LLC zz =

Partnership =

MergerCo1 =

MergerCo2 =

Business 1 =
Business 2 =
Business 3 =

State A =
State B =

Financial Advisor =

Assets q = Business

Assets r =

Amount X =
Amount Y =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Date 13 =

Year 1 =
Year 3 =

z =

aa =

Dear

This letter responds to your letter dated September 17, 2001, which requests rulings on certain Federal income tax consequences of a proposed and partially completed transaction. Additional information was submitted in letters dated October 19, 2001, December 12, 2001, January 4, 2002, January 15, 2002, January 21, 2002,

and January 24, 2002. The information submitted for our review is summarized below.

Parent, a publicly traded State A corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Parent Group"). Parent has one class of publicly held common stock outstanding and, prior to step (18) of the transaction described below, had one class of nonvoting preferred stock (the "Preferred Stock") outstanding.

The Parent Group, as a whole, is engaged in Business 1, Business 2 and Business 3, as well as various other regulated and unregulated businesses.

Prior to the transaction described below, Parent wholly owned Subsidiary A, Subsidiary B, Subsidiary C, Subsidiary H, Subsidiary I, Subsidiary K, Subsidiary L, Subsidiary J, and LLC ss, a limited liability company that is disregarded as a separate entity from its owner for Federal tax purposes. Subsidiary A wholly owned Subsidiary D, Subsidiary E, Subsidiary F, and Subsidiary G.

Prior to the transaction described below, Parent was directly engaged, through Division I, in Business 1, Business 2, and Business 3. Subsidiaries A, B, C, D, H, I, L, J, E, F, and G were each engaged in one or more of these businesses and other businesses, either directly or indirectly through controlled entities.

We have received financial information indicating that each of Business 2 and Business 3, as conducted by Parent and its subsidiaries, has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Parent has determined that the Parent Group needs to raise significant amounts of capital to fund the operations and growth of its businesses through the equity markets. Based on advice provided by Financial Advisor, Parent has determined that capital would be raised more efficiently if certain of its businesses were separated into two groups of corporations. Specifically, Financial Advisor has advised that the separation of these businesses will enable the Parent Group to raise significantly more funds per share with regard to a public offering of the stock of Controlled (as described below) than would a public offering of Controlled stock if Controlled remained as a subsidiary of Distributing.

To accomplish these goals, the following transaction, which is partially consumated, has been proposed:

(1) On Date 1, Parent formed Controlled as a wholly owned State B subsidiary. Controlled has a single class of common stock outstanding.

(2) On Date 2, Controlled formed LLC tt as a wholly owned limited liability company that will be disregarded as a separate entity from its owner for Federal tax purposes.

(3) On Date 2, Date 3, and Date 4, respectively, LLC tt formed LLC uu, LLC vv and LLC ww as wholly owned limited liability companies that will be disregarded as separate entities from their owners for Federal tax purposes.

(4) On Date 5, Parent formed Distributing as a wholly owned State B subsidiary.

(5) Effective as of Date 6, Parent transferred to Controlled, in constructive exchange for additional stock of Controlled and the assumption by Controlled of certain liabilities, (i) its Business 2 assets and operations, (ii) its interests in LLC ss, (iii) the stock of Subsidiaries B, C, G, H, I, J and L, (iv) an option to acquire any remaining stock of Subsidiary M held by Controlled after Step (28) below from LLC xx, (v) less than all substantial rights in certain intellectual property interests, and (vi) other miscellaneous assets that are subject to a transitional agreement (the "Contributions"). Subsidiary M and LLC xx were formed as described in steps (14) and (15) below, respectively. The option to acquire Subsidiary M will not become exercisable until Year 3.

(6) Effective as of Date 6, Controlled contributed its Business 2 assets and operations and all of its member interests in LLC ss to LLC tt.

(7) Effective as of Date 6, LLC tt contributed various of its Business 2 assets and operations to LLC uu and the remainder of its Business 2 assets and operations to LLC vv.

(8) Effective as of Date 6, Subsidiary A sold the stock of Subsidiaries E, F, and G, which had nominal value, to Controlled for a nominal amount of cash.

(9) Effective as of Date 6, Subsidiary D contributed its Division II assets to Subsidiary N.

(10) Effective as of Date 6, Subsidiary D transferred the stock of Subsidiary N to Subsidiary A in a taxable distribution.

(11) Effective as of Date 6, MergerCo1, a newly formed wholly owned subsidiary of Controlled, merged with and into Subsidiary D in an all cash-merger pursuant to which Subsidiary D survived as a direct subsidiary of Controlled and Subsidiary A received cash.

(12) On Date 7, Controlled declared a stock split with respect to its common stock.

(13) On Date 8, Controlled issued slightly less than 20 percent of its stock in an initial public offering (the "Controlled IPO"). Fifty percent of the proceeds from the IPO in excess of Amount X were contributed to Subsidiary B and used by Subsidiary B to retire indebtedness owed to Parent. Parent contributed to the capital of Controlled the remaining indebtedness owed by Controlled and Subsidiary B to Parent, except for

certain indebtedness owed to Parent which will be repaid on or prior to the Distribution (as defined below).

(14) On Date 9, Parent formed Subsidiary M as a wholly owned subsidiary.

(15) On Date 10, Distributing formed LLC xx as a wholly owned State B limited liability company that will be disregarded as a separate entity from its owner for Federal tax purposes.

(16) On Date 11, LLC xx formed MergerCo2 as a wholly owned subsidiary.

(17) On Date 12, Distributing reincorporated in State A by merging into a newly formed State A corporation wholly owned by Parent.

(18) On Date 13, Parent redeemed the Preferred Stock, which represented less than z percent of the value of the outstanding stock of Parent on that date.

(19) Subsidiary M will form LLC yy and LLC zz as wholly owned limited liability companies that will be disregarded as entities separate from their owners for Federal tax purposes. LLCs yy and zz will then form Partnership. LLC yy will have a one percent general partnership interest in Partnership and LLC zz will have a 99 percent limited partner interest in Partnership.

(20) Parent will contribute its Division I assets engaged in Business 1 to Subsidiary M, which will in turn contribute one percent of such assets to LLC yy and 99 percent of such assets to LLC zz. LLC yy and LLC zz will then contribute such assets to Partnership.

(21) Parent will contribute Assets q to Subsidiary K and Assets r to Distributing.

(22) MergerCo2 will merge with and into Parent. Pursuant to the merger, Parent's common stock will be converted into common stock of Distributing on a one-share-for-one-share basis, and the Distributing stock held by Parent will be cancelled. Distributing will succeed Parent as the common parent of the former Parent Group.

(23) Parent will convert to a limited liability company under State A law and will be disregarded as an entity separate from its owner for Federal tax purposes.

(24) Distributing will assume approximately Amount Y of outstanding indebtedness of Parent. In connection with this assumption, Parent will distribute to LLC xx (i) the outstanding stock of all of Parent's wholly owned subsidiaries except for certain financing partnerships (the "Distributed Subsidiaries") and (ii) all its Controlled stock. LLC xx will, in turn, distribute the stock of the Distributed Subsidiaries and all of its Controlled stock to Distributing.

(25) Distributing will recontribute the stock of the Distributed Subsidiaries to LLC xx.

(26) Distributing will distribute all of its stock in Controlled (which will be greater than 80 percent of Controlled's outstanding stock) pro rata to Distributing's shareholders (the "Distribution"), except that in lieu of distributing fractional shares of Controlled common stock, Distributing will aggregate all such fractional share interests, sell the aggregated shares, and remit the proceeds to the Distributing shareholders entitled to fractional shares.

(27) As a result of certain changes in the requirements of credit rating agencies, it is likely that Controlled will need to raise additional equity capital to improve its liquidity and demonstrate its available credit capacity subsequent to the Distribution. Such a transaction would involve the issuance by Controlled of either debt or stock that would be convertible into Controlled common stock (the "Post-Distribution Offering"). It is anticipated that the debt or stock issued in the Post-Distribution Offering will be convertible into an amount of Controlled common stock that represents less than aa percent of all the outstanding Controlled common stock.

(28) In Year 1, which is the same year in which the Distribution will occur, either (i) Subsidiary M will issue not more than 20 percent of its stock in a public offering, or (ii) Distributing will distribute a stock dividend of not more than 20 percent of Subsidiary M's stock to Distributing's shareholders (the "Subsidiary M Stock Dividend").

(29) In Year 3, Controlled's option to purchase the remaining stock of Subsidiary M held by LLC xx will become exercisable.

Parent, Distributing, Controlled, and their affiliated subsidiaries have also entered into an agreement (the "Tax Sharing Agreement") governing the allocation of tax benefits and liabilities arising on or attributable to periods before the date of the Distribution.

The following representations have been made with respect to the proposed transaction:

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

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

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

(d) Immediately after the Distribution, the gross assets of Distributing's Business 3 will have a fair market value equal to or greater than five percent of the fair market value of all of Distributing's gross assets.

(e) Immediately after the Distribution, the gross assets of Controlled's Business 2 will have a fair market value equal or greater than five percent of the fair market value of all of Controlled's gross assets.

(f) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and each with its separate employees, except that (i) two individuals will serve on the Board of Directors for both Distributing and Controlled, with one of those individuals serving as Chairman of the Board for both companies for a transitional period of time, and (ii) Parent, Distributing and Controlled will provide certain services to one another through their respective employees.

(g) The Distribution is carried out to enable the Parent Group to raise capital on a more efficient basis in the Controlled IPO. The Distribution is motivated, in whole or in substantial part, by this corporate business purpose.

(h) There is no plan or intention by any shareholder who owns five percent or more of the stock of Parent (or Distributing as successor to Parent), and the management of Parent, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Distributing or Controlled after the Distribution, except for limited sales by Distributing's employee stock ownership plan of various shares of Controlled common stock in order to satisfy requirements under the Internal Revenue Code and the accompanying regulations.

(i) 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 Distribution, other than through stock purchases meeting the requirements of Section 4.05(1)(b) of Rev. Proc. 96-30.

(j) There is no plan or intention to liquidate Distributing or Controlled, to merge either of these corporations with any other corporation, or to sell or otherwise dispose of the assets of either of these corporations after the transaction, except for the disposition by Controlled of various investment and inactive assets constituting less than one percent of the value of Controlled's assets after the Distribution.

(k) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Parent in the Contributions will equal or exceed the sum of the liabilities assumed (as determined under Section 357(d)). The liabilities assumed in the Contributions (as determined under Section 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.

(l) Neither Parent nor Distributing have accumulated its receivables or made extraordinary payment of its payables in anticipation of the proposed transaction.

(m) Except for certain obligations arising under regulatory requirements, certain debts which are expected to be repaid prior to the Distribution, and obligations which may arise under service agreements entered into among Parent, Distributing and Controlled, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution. The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(n) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account by Distributing as required by the applicable intercompany transaction regulations. Furthermore, Distributing's excess loss account, if any, with respect to the stock of Controlled and any excess loss account with respect to the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution (see Treas. Reg. § 1.1502-19).

(o) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on the terms and conditions arrived at by the parties at arm's length, except for payments made under a tax sharing arrangement and payments made for the provision of various technical, customer support, corporate support, and other services provided pursuant to certain other transitional service arrangements, which will generally be provided at cost.

(p) Neither Distributing nor Controlled are investment companies as defined in Section 368(a)(2)(F)(iii) and (iv).

(q) The Distribution is not part of a plan or series of related transactions (within the meaning of Section 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 of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(r) Cash distributed in lieu of fractional shares will be provided through a sale by Distributing of aggregated fractional shares of Controlled common stock. The sale of fractional shares (i) is merely a method of rounding off fractional share interests, (ii) is undertaken solely for the purpose of avoiding the expense and inconvenience of

issuing and transferring fractional shares, and (iii) does not represent separately bargained for consideration. The method used for handling fractional share interests is intended to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled common stock.

(s) The Distribution will occur by the later of (i) the last day of the sixth month beginning after the date of the Controlled IPO or (ii) the last day of the third month beginning after the receipt of a favorable private letter ruling regarding the Distribution.

(t) The formation of Distributing in step (4) above, the reincorporation of Distributing in step (17), the merger of MergerCo2 into Parent in step (22) above, and the conversion of Parent to a limited liability company in step (23) above will collectively constitute either a single reorganization within the meaning of Section 368(a)(1)(F) or two reorganizations within the meaning of section 368(a)(1)(F).

(u) None of the limited liability companies formed in steps (2), (3), (15), (19) or (23) above will elect to be taxed as an association for Federal income tax purposes.

Based solely on the information submitted and the representations as set forth above it is held as follows:

(1) The Contributions followed by the Distribution will qualify as a reorganization under Section 368(a)(1)(D). Parent and Controlled will each be a “party to a reorganization” within the meaning of Section 368(b).

(2) Parent will recognize no gain or loss upon the Contributions to Controlled in exchange for Controlled common stock and the assumption by Controlled of certain liabilities. (Section 361(a)).

(3) Controlled will recognize no gain or loss upon the issuance of stock in connection with the Contributions. (Section 1032(a)).

(4) The basis of the assets received by Controlled in the Contributions will be the same as the basis of such assets in the hands of Parent immediately prior to the Contributions. (Section 362(b)).

(5) The holding period of the assets received by Controlled in the Contributions will include the period during which such assets were held by Parent. (Section 1223(2)).

(6) Distributing will recognize no gain or loss on the distribution of all of the stock of Controlled to its shareholders in the Distribution. (Section 361(c)).

(7) As provided in Section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e).

(8) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing's shareholders on their receipt of the Controlled common stock in the Distribution. (Section 355(a)). Section 355(a)(3)(B) will not treat as "other property" any part of the Controlled stock considered issued by Controlled to Distributing in constructive exchange for intellectual property interests.

(9) If a Distributing shareholder receives cash as the result of Distributing's sale of a fractional share of Controlled common stock on behalf of the shareholder, the shareholder will recognize gain or loss in an amount equal to the difference between the basis of the fractional share interest and the amount of cash received. If the fractional share interest is a capital asset in the hands of the shareholder, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code. (Sections 1221 and 1222).

(10) The basis of the Distributing and Controlled stock in the hands of Distributing's shareholders will be the same as the basis of Distributing's stock held immediately before the Distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2). (Section 358(a)(1) and (b)(2)).

(11) The holding period of the Controlled common stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock held by such shareholder immediately before the Distribution, provided that such shareholder held the Distributing stock as a capital asset on the date of the Distribution. (Section 1223(1)).

(12) Payments made under the Tax Sharing Agreement entered into by Parent, Distributing, Controlled and their affiliated subsidiaries regarding liabilities that (a) relate to periods or a portion of a period ending on or before the Distribution and (b) will not become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution.

(13) If the Subsidiary M Stock Dividend occurs, the Subsidiary M stock distributed will be treated as "other property" within the meaning of Section 356(b)(2), and certain of the above rulings must be modified accordingly.

No opinion is expressed 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, no opinion is expressed (and no ruling was requested) regarding the following:

(a) The tax treatment of the transfer of intellectual property in the Contributions (except as set forth in ruling (8) above);

(b) The tax treatment of the contributions to the capital of Controlled and Subsidiary B described in step (13) and the transfers and assumptions described in steps (24) and (25);

(c) The tax treatment of the collective effects of steps (4), (17), (22) and (23); and

(d) The validity of any election under Treas. Reg. § 301.7701-3 made by any entity involved in the transaction.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(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.

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

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

Sincerely Yours,
Michael J. Wilder
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)