

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:5-PLR-115187-99
Date:
February 4, 2000

In re:

- Distributing =
- Old Controlled =
- Controlled =
- Holding 1 =
- Holding 2 =
- Holding 3 =
- Sub 1 =
- Sub 2 =
- Sub 3 =
- Sub 4 =
- Sub 5 =
- Sub 6 =
- Sub 7 =
- Partnership =
- FSub 0 =
- FSub 1 =

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FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

Newco 1 =

Newco 1A =

Newco 2 =

Newco 3 =

Newco 4 =

Newco 5 =

Business A =

Business B =

a =

b =

c =

d =

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e =
f =
g =
h =
i =
j =
k =
l =
m =
n =
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q =
r =
u =
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x =
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aa =
Shareholder P =

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Shareholder Q =

State A =

State B =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country G =

Country H =

Country I =

Country J =

Country K =

Country L =

Country M =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

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Brand =

Exchange =

Dear :

This is in reply to a letter dated September 14, 1999, requesting rulings as to the federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Distributing, a domestic corporation incorporated in State A, has outstanding one class of stock, which is publicly traded voting common stock. Shareholder P owns a percent and Shareholder Q owns b percent of Distributing's outstanding shares.

Distributing is engaged directly and through affiliated entities in Business A and Business B in the United States and various foreign countries. Financial information has been received indicating that each of Distributing's businesses has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

Distributing owns (i) all of the outstanding stock of Sub 2, a domestic corporation engaged in Business B, (ii) c percent of the outstanding stock of FSub 2, a Country C holding corporation, (iii) d percent of the outstanding stock of FSub 6, a Country D corporation engaged in both Business A and Business B, (iv) e percent of the outstanding stock of FSub 9, a Country G corporation engaged in both Business A and Business B, and (v) all of the outstanding stock of domestic holding companies: Holding 1, Holding 2, and Holding 3.

FSub 2 owns all of the outstanding stock of two Country C subsidiaries, FSub 3, which is engaged in Business A, and FSub 4, which is engaged in Business B. Until its recent sale to an unrelated person, FSub 2 also owned all of the outstanding stock of FSub 5, a Country C corporation engaged in Business B.

Holding 1 is a State B holding company for five second- and third-tier domestic and foreign subsidiaries engaged in Business A.

Holding 2 is a State B holding company for two second-tier subsidiaries and two other lower-tier subsidiaries. Holding 2 holds (i) a \$f receivable reflecting intercompany loans to Distributing (the "Distributing Debt"); (ii) a \$g receivable reflecting intercompany loans to Sub 3 (the "Sub 3 Debt"), (iii) a constantly fluctuating intercompany account balance running from Distributing (the "Intercompany Account"); and (iv) approximately h percent of the shares of X, a publicly-traded domestic corporation (the "X Shares").

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Holding 2 owns all of the outstanding stock of Sub 3, a domestic corporation engaged in Business B. Sub 3 and certain of its foreign affiliates have recently sold some of their Business B operations to unrelated persons. Sub 3 owns all of the outstanding stock of Old Controlled, a State B corporation. The sole asset of Old Controlled is i percent of FSub 0, a Country A corporation engaged in Business B. Sub 3 also owns all of the outstanding stock of Controlled, a State A corporation that was formed on Date A. As described below, prior to the distribution of Controlled to Distributing's shareholders, Old Controlled will be merged into Controlled. References to "Controlled" will be to the reincorporated entity unless the context requires otherwise.

Holding 2 also owns all of the outstanding stock of Sub 1, a domestic corporation. Sub 1 currently owns (i) approximately j percent of the outstanding stock of Y, a publicly-traded domestic corporation (the "Y Shares"), (ii) approximately k percent of the outstanding stock of Z, another publicly-traded domestic corporation (the "Z Shares"), (iii) l percent of the outstanding stock of FSub 2; and (iv) an m percent interest in Partnership, a Country B entity that the taxpayer represents is a foreign partnership for U.S. tax purposes. Partnership is directly engaged in Business B in Country B, and also owns all of the stock of several foreign subsidiaries which are engaged in Business B. Partnership also owns all of the stock of FSub 1, a Country B corporation that is a holding company for two Country B Business A subsidiaries.

Holding 3, a State B holding company, owns (i) an n percent interest in Partnership (the remaining m percent being owned by Sub 1), (ii) l percent of the outstanding stock of FSub 9 (the remaining e percent being owned by Distributing), (iii) o percent of the outstanding stock of FSub 0 (the remaining i percent being owned by Controlled), (iv) p percent of the outstanding stock of FSub 2 (the remaining stock being owned by Distributing @ percent) and Sub 1 (l percent)), and (v) c percent of the outstanding stock of FSub 6 (the remaining d percent being owned by Distributing).

Holding 3 also owns q percent of the outstanding stock of FSub 8, a Country E corporation (the remaining r percent being owned by Sub 3). FSub 8 is directly engaged in both Business A and Business B. FSub 8 owns all of the outstanding stock of FSub 7, a Country F corporation, except for nominal shares owned by Directors of FSub 7 to comply with local law requirements. FSub 7 is engaged in both Business A and Business B.

Holding 3 owns almost all of the outstanding stock of FSub 10, a Country M corporation. Distributing owns the balance of the FSub 10 stock. FSub 10 owns all of the outstanding stock of FSub 11, also a Country M corporation. FSub 10 intends to sell all of its FSub 11 stock to Holding 1 for cash prior to the spin-off of the stock of Controlled to Distributing's shareholders.

Business A and Business B are fundamentally different businesses. Moreover, in terms of sales volume and profitability, Business A has shown dramatic increases in recent years, whereas Business B has been experiencing significant decreases and a

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substantial loss of market share. Based on various internal reports, the management of Distributing has determined that being able to provide direct equity incentives to employees of Business B in Business B is an especially important element of any effort to improve profitability and regain market share for that business.

By separating Business B into a stand-alone public company, the new Business B entity will be able to establish a separate ESOP which will cover approximately x domestic employees. It also will permit implementation of other equity-based programs necessary to attract, better motivate, and retain senior management and other key personnel who move to or join Controlled after it is a stand-alone company.

Distributing's management has determined that it is not possible to provide the same opportunities for direct equity incentives to Business B employees while that business remains part of the Distributing group. Since § 409(I) prohibits an ESOP from holding stock in a subsidiary of a publicly traded company, the equity incentives presently available to Business B employees through the Distributing ESOP are tied only indirectly to the performance of Business B. The motivational impact of these incentives, moreover, is lessened by the fact that they are subject to the vagaries and the market's perception of another business in which the Business B employees play no role. By making Controlled a stand-alone Business B company, Business B employees will have a direct and exclusive linkage to Business B. At the same time, the Distributing ESOP and other equity-based incentives now available to Business A employees will become linked solely to Business A -- and that is expected to have a positive motivational effect on many Business A employees who now feel that the value of their Distributing stock is being held down by the lagging performance of Business B. Accordingly, Distributing's management and Board of Directors propose to separate Business A and Business B.

Internal Restructuring and Spin-off

The following internal restructuring transactions will occur within the Distributing group in order to set the stage for the separation of Business A from Business B via the spin-off of the stock of Controlled to Distributing's shareholders (the "Spin-off").

(i) Reincorporation of Old Controlled

Prior to the Spin-off, Old Controlled will reincorporate from State B to State A by merger into Controlled (the "Reincorporation Merger").

(ii) Country B Restructuring

Partnership will sell all the stock of its Business B subsidiaries to Newco 1, a newly-formed Country B entity, which Taxpayer represents will constitute a partnership for U.S. income tax purposes. Newco 1 will have as its partners Holding 3 (q percent)

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and Controlled \textcircled{r} percent). Concurrently, Partnership will sell its directly conducted Business B net assets to a newly-formed Country B corporation, Newco 1A, all of the stock of which will be owned by Newco 1. The cash proceeds will be applied by Partnership to pay down existing debt and to completely redeem Holding 3's \textcircled{n} percent Partnership interest. It is anticipated that part of the redemption consideration will be paid with funds loaned to Partnership by Distributing. Prior to the redemption of Holding 3's Partnership interest, Distributing will contribute cash to the Partnership in exchange for an \textcircled{r} percent interest, with the result that the Partnership will continue after the Spin-off with Sub 1 (\textcircled{q} percent) and Distributing \textcircled{r} percent) as its partners. Partnership will also continue to own the stock of FSub 1 after the Spin-off.

(iii) Country C Restructuring

FSub 2 will distribute all of the stock of FSub 4 to Holding 3 in complete redemption of Holding 3's \textcircled{p} percent stock interest in FSub 2. After the distribution of the FSub 4 stock, FSub 2 will be owned \textcircled{u} percent by Distributing and \textcircled{v} percent by Sub 1. FSub 2 will continue to conduct Business A operations through FSub 3.

(iv) Country D Restructuring

FSub 6 currently intends to sell its Business B operations for cash to a newly-formed, wholly owned Country D subsidiary of Holding 3 ("Newco 2"). Alternatively, Business B in Country D may be terminated either before the Spin-off by FSub 6, or after by Newco 2. In either case, prior to the Spin-off, Holding 3 will distribute all of its stock interest in FSub 6 to Distributing.

(v) Country E/Country F Restructuring

FSub 7 will sell its Business A operations for cash to a new wholly owned subsidiary of Holding 1 ("Newco 3"). Holding 3 and Sub 3 will each transfer to Holding 1 and Sub 1, respectively, portions of their FSub 8 stock reflecting the relative value of FSub 8's Business A operations. FSub 8 will then divide into separate Business A and Business B companies pursuant to the laws of Country E. Specifically, FSub 8 will transfer its entire stock interest in FSub 7, and its Business B net assets, to a new Country E corporation ("Newco 4") having the same shareholders as FSub 8 with identical proportionate shareholdings. Holding 1 and Sub 1 will then exchange their Newco 4 shares for the FSub 8 shares owned by Holding 3 and Sub 3. This will result in (i) Holding 3 (\textcircled{q} percent) and Sub 3 \textcircled{r} percent) owning all of the stock of Newco 4, which will solely conduct Business B; (ii) Holding 1 (\textcircled{q} percent) and Sub 1 \textcircled{r} percent) owning all of the stock of FSub 8, which will solely conduct Business A; and (iii) FSub 7 (then conducting solely the Business B), becoming a subsidiary of Newco 4.

(vi) Distribution of Controlled Stock to Holding 2

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Following the above transactions, Sub 3 will distribute all of the stock of Controlled to Holding 2, the sole shareholder of Sub 3.

(vii) Merger of Holding 2 into Distributing

Pursuant to the laws of State A and State B, Holding 2 will merge with and into Distributing (the "Merger"). In the Merger, all assets and liabilities of Holding 2 will be transferred to Distributing by operation of law. The Intercompany Account running from Distributing to Holding 2 will be extinguished incident to the Merger. Distributing will obtain direct ownership of all of the stock of Controlled, Sub 1, and Sub 3 as a result of the Merger. Both the Distributing Debt and the X Shares will be transferred to Sub 1 by Holding 2 as a contribution to capital immediately prior to the Merger.

(viii) Country G Restructuring

Immediately following the Merger, Distributing will contribute a portion of its FSub 9 stock to Controlled, resulting in Controlled and Holding 3 having a combined stock ownership interest in FSub 9 equal in value to the FSub 9 Business B operations. Holding 3 and Controlled will each transfer all of their stock in FSub 9 to a newly-formed Country G corporation ("Newco 5") in exchange for Newco 5 common stock of proportionate value. FSub 9 will transfer Business B to Newco 5 in exchange for Newco 5 preferred stock. FSub 9 will issue a note to Newco 5 in complete redemption of the FSub 9 common stock held by Newco 5; and Newco 5 will issue to FSub 9 a note of equal value in redemption of the Newco 5 preferred stock held by FSub 9. The two notes will then be offset against one another and canceled, resulting in Distributing owning all of the stock of FSub 9 (which will conduct only Business A), and Holding 3 and Controlled in the aggregate owning all of the stock of Newco 5, which will conduct only Business B.

(ix) Other Post-Merger Transfers/Debt Assumption

Following the Merger and the Country G restructuring, Distributing will transfer to Holding 3 the Sub 3 Debt and all of the stock of Sub 2. Distributing will then transfer the stock of Holding 3 to Sub 3. Distributing will transfer to Controlled all of the stock of Sub 3. Controlled will assume Distributing's liabilities with respect to newly-placed debt ("New Debt"), reflecting the portion of non-assumable existing debt of Distributing which is considered attributable to Business B. Distributing will use the proceeds from the New Debt to pay down some existing debt, to bolster working capital needs, and for other corporate purposes.

(x) Asset Substitution

Prior to the Spin-off and the shareholder record date for the receipt of Controlled stock, Distributing will substitute other assets of equal fair market value for the

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Distributing common stock currently held by the Trust, in accordance with the terms of the Trust agreement. After the substitution, and as of the record date for the Spin-off, the Trust will not be a shareholder of Distributing and, therefore, will not be entitled to receive Controlled stock in the Spin-off. Following the Spin-off, Distributing's management may replace some or all of the substituted Trust assets with shares of stock of Distributing. Under the Trust agreement, any such resubstitution must be effectuated on an equal fair market value basis, determined with reference to the then value of the Distributing stock and the replaced assets.

(xi) Recapitalization of Controlled

Controlled will be recapitalized. The recapitalization will result in an increase in the number of shares of Controlled stock outstanding, so as to allow for the distribution of a certain number of shares of Controlled stock for each outstanding share of Distributing stock.

(xii) Spin-off

Distributing will distribute all of the stock of Controlled on a pro rata basis to all of its shareholders. Controlled will adopt a shareholders' rights plan similar to Distributing's plan.

(xiii) Controlled ESOP

A separate non-leveraged ESOP will be established by Controlled for its employees. It is expected that the Controlled ESOP will result in Business B employees owning outright, in the aggregate, approximately percent of the Controlled voting stock within 1 year following the distribution of the stock of Controlled, and approximately percent within 5 years. This will result in approximately \$ aggregate employee ownership after 1 year and almost \$ after 5 years.

In Date B, Distributing established a Rabbi Trust (the "Trust"), which is a "grantor trust" under § 671 of the Internal Revenue Code, that currently holds percent of the outstanding common stock of Distributing.

On Date C, Distributing adopted a shareholders' rights plan, which provides its shareholders with the opportunity to purchase shares of Distributing in the event of certain unsolicited offers to buy Distributing.

Approximately percent of Distributing's shares are held by Distributing employees subject to a substantial risk of forfeiture under § 83(c)(1) of the Internal Revenue Code ("Restricted Shares").

It is contemplated that Distributing and Controlled will enter into a Tax Sharing

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Agreement, which will set forth the method by which undetermined tax liabilities will be allocated between the parties. In addition, such agreement will prohibit both Distributing and Controlled from engaging in certain post-Spin-off transactions. It is also contemplated that Distributing will provide certain administrative services to Controlled following the distribution.

Controlled will assume Distributing's liabilities with respect to the New Debt (reflecting that portion of the non-assumable existing debt of Distributing attributable to Business B). In setting the aggregate amount of New Debt and existing indebtedness to be maintained by Controlled at the time of the Spin-off (the "Target Indebtedness"), the Controlled group will have an agreed cash balance as of the date of the Spin-off (the "Target Cash Position"), to be determined in accordance with accounting practices historically employed by Distributing.

As soon as reasonably practicable after the Spin-off, Controlled's actual cash position will be determined as of 11:59 p.m. on the date of the Spin-off. To the extent that Controlled's cash position is less than the Target Cash Position, Distributing will pay to Controlled cash in an amount equal to the shortfall. To the extent the cash position of Controlled exceeds the Target Cash Position, Controlled will pay to Distributing cash in an amount equal to the excess.

On the date immediately preceding the Spin-off, Distributing will be the common parent of an affiliated group of corporations filing a consolidated federal income tax return (the "Distributing Group") that includes certain domestic corporations having foreign branches, within the meaning of § 1.367(a)-6T(g) of the Temporary Income Tax Regulations, that are treated as "separate units," within the meaning of § 1.1503-2(c)(3), and "dual resident corporations," within the meaning of § 1.1503-2(c)(2). Taxpayer represents that each of the following domestic corporations with foreign branches that are treated as separate units and dual resident corporations may have a "dual consolidated loss," within the meaning of § 1.1503-2(c)(5), on the date of the Spin-off, including: (i) Sub 4, a wholly owned subsidiary corporation of Holding 3 having a foreign branch in Country H, (ii) Sub 5, a wholly owned subsidiary corporation of Holding 3 having a foreign branch in Country, (iii) Sub 6, a wholly owned subsidiary corporation of Holding 3 having a foreign branch in Country J, (iv) Sub 2 having a foreign branch in Country K, and (v) Sub 7, a wholly owned subsidiary corporation of Holding 3 having a foreign branch in Country L. Immediately following the Spin-off, each of Sub 2, Sub 4, Sub 5, Sub 6, and Sub 7, together with their respective foreign branches, will no longer be members of the Distributing Group.

Representations

In connection with these transactions, the following representations are made.

A. Regarding the Country E/Country F Restructuring

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The following representations are made in connection with the following deemed transactions arising out of the Country E/Country F Restructuring: (i) the transfer of the FSub 8 Business B net assets and the stock of FSub 7 by FSub 8 to Newco 4; (ii) the pro rata distribution of the Newco 4 stock by FSub 8 to Holding 3 and Sub 3 ("Internal Spin 1"); (iii) the distribution of its g percent FSub 8 stock interest by Holding 3 to Distributing ("Internal Spin 2"); and (iv) the contribution of such FSub 8 stock by Distributing to Holding 1:

- (a) The total adjusted basis and fair market value of the assets transferred by FSub 8 to Newco 4 will each equal or exceed the sum of the liabilities assumed plus any liabilities taken subject to by Newco 4 in connection with the transfer.
- (b) The liabilities assumed by Newco 4 in the transaction, 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.
- (c) No part of the Newco 4 stock to be distributed by FSub 8 will be received by Holding 3 and Sub 3 as a creditor, employee, or in any capacity other than that of a shareholder in the corporation.
- (d) The 5 years of financial information submitted on behalf of FSub 8 is representative of the corporation's present operations and, with regard to such corporation, there have been no substantial operational changes since the last financial statements submitted.
- (e) The 5 years of financial information submitted on behalf of Newco 4 is representative of present operations of Business B as conducted during such periods by FSub 8 and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following Internal Spin 1, FSub 8 and Newco 4 will each continue the active conduct of their respective business independently and with their own separate employees.
- (g) The distribution of the stock of Newco 4 is designed to facilitate the subsequent distribution of the stock of Controlled by Distributing, and thereby to accomplish the following corporate business purpose: to more effectively motivate Business B employees (both rank and file and managerial) through establishing the Controlled ESOP and otherwise offering compensation packages which include equity interests tied solely and directly to the performance of Business B; and to correspondingly better motivate Business A employees by providing equity-based

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compensation (through the Distributing ESOP and otherwise) tied directly and primarily to the performance of Business A. The distribution of the stock of Newco 4 is motivated, in whole or substantial part, by this corporate business purpose.

- (h) There is no plan or intention on the part of Holding 3 or Sub 3 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either FSub 8 or Newco 4 after Internal Spin 1 except for (i) Holding 3's distribution of the FSub 8 stock to Distributing pursuant to Internal Spin 2, and (ii) Sub 3's transfer of its r percent of the FSub 8 stock to Sub 1.
- (i) There is no plan or intention by either FSub 8 or Newco 4, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.
- (j) There is no plan or intention to liquidate either FSub 8 or Newco 4, to merge either corporation with 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.
- (k) No intercorporate debt will exist between FSub 8 and Newco 4 at the time of, or subsequent to, Internal Spin 1.
- (l) Payments made in connection with all continuing transactions, if any, between FSub 8 and Newco 4 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) No two parties to Internal Spin 1 are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (n) Immediately prior to Internal Spin 2, Holding 3 will own q percent of the outstanding stock of FSub 8, and all of such stock will be distributed to Distributing pursuant to Internal Spin 2. No assets will be transferred by Holding 3 to FSub 8, and no liabilities of Holding 3 will be assumed or taken subject to by FSub 8, in connection with Internal Spin 2.
- (o) No part of the FSub 8 stock to be distributed by Holding 3 pursuant to Internal Spin 2 will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder in the corporation.
- (p) The 5 years of financial information submitted on behalf of FSub 8 is representative of the corporation's present operations and, with regard to such corporation, there have been no substantial operational changes

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since the date of the last financial statements submitted.

- (q) Following Internal Spin 2, Holding 3 and FSub 8 will each continue the active conduct of their respective businesses independently and with their own separate employees. If necessary to meet the then applicable requirements of § 355(b), Holding 3 will acquire a 5-year active business from one of its subsidiaries through a nontaxable transaction.
- (r) The distribution of the stock of FSub 8 pursuant to Internal Spin 2 is designed to facilitate the subsequent distribution of the stock of Controlled by Distributing, and thereby to accomplish the following corporate business purpose: to more effectively motivate Business B employees (both rank and file and managerial) through establishing the Controlled ESOP and otherwise offering compensation packages which include equity interests tied solely and directly to the performance of Business B; and to correspondingly better motivate Business A employees by providing equity-based compensation (through the Distributing ESOP and otherwise) tied directly and primarily to the performance of Business A. The distribution of the stock of FSub 8 is motivated, in whole or substantial part, by this corporate business purpose.
- (s) There is no plan or intention on the part of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in either Holding 3 or FSub 8 after Internal Spin 2, except for the contributions by Distributing, prior to the Spin-off, of all of its FSub 8 stock to Holding 1 and the Holding 3 stock to Controlled.
- (t) There is no plan or intention by either Holding 3 or FSub 8, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.
- (u) There is no plan or intention to liquidate either Holding 3 or FSub 8, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except for the distribution by Holding 3, prior to the Spin-off, of its stock interest in FSub 6 to Distributing, and except in the ordinary course of business.
- (v) No intercorporate debt will exist between Holding 3 and FSub 8 at the time of, or subsequent to, Internal Spin 2.
- (w) Payments made in connection with all continuing transactions, if any, between Holding 3 and FSub 8 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

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- (x) No two parties to Internal Spin 2 are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (y) No stock or securities will be issued for services rendered to or for the benefit of Holding 1 in connection with the contribution of the FSub 8 stock by Distributing to Holding 1 following Internal Spin 2; and no stock or securities will be issued for indebtedness of Holding 1.
- (z) The FSub 8 stock was not received by Distributing as part of a plan of liquidation of another corporation. The transfer is not the result of a solicitation by a promoter, broker, or investment house. The transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (aa) Distributing will not retain any rights in the FSub 8 stock transferred to Holding 1.
- (bb) Holding 1 will not assume or take subject to any liabilities of Distributing in connection with the transfer of the FSub 8 stock to Holding 1 following Internal Spin 2.
- (cc) There is no indebtedness between Distributing and Holding 1, and there will be no indebtedness created in favor of Distributing as a result of the transfer of the FSub 8 stock to Holding 1.
- (dd) Distributing will be in “control” of Holding 1, within the meaning of § 368(c), immediately after the constructive exchange of the FSub 8 stock for Holding 1 stock. Distributing has no plan or intention to dispose of any Holding 1 stock.
- (ee) There is no plan or intention on the part of Holding 1 to redeem or otherwise reacquire any of the stock to be constructively issued in exchange for the FSub 8 stock contributed by Distributing.
- (ff) The fair market value of the stock of Holding 1 constructively received by Distributing in exchange for the FSub 8 stock will be approximately equal to the aggregate fair market value of the FSub 8 stock.
- (gg) Holding 1 will remain in existence. The transferred property will be used in a trade or business by Holding 1 or another member of the Distributing group. There is no plan or intention by Holding 1 to dispose of the FSub 8 stock.
- (hh) Each of the parties to the proposed transaction will pay its own expenses,

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if any, incurred in connection with the transaction.

- (ii) Holding 1 is not an “investment company” within the meaning of § 351(e) and §1.351-1(c)(1)(ii) of the Income Tax Regulations.
- (jj) Holding 1 will not be a “personal service corporation” within the meaning of § 269A.
- (kk) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock constructively received by Distributing in exchange for the FSub 8 stock will not satisfy any indebtedness of Distributing.
- (ll) Each of FSub 8, FSub 7 and Newco 4 will have been a “controlled foreign corporation” (“CFC”), within the meaning of § 957(a), at all times during the 5-year period immediately preceding the date of Internal Spin 1; FSub 8, FSub 7 and Newco 4 will each be a CFC immediately thereafter.
- (mm) With respect to each of FSub 8, FSub 7 and Newco 4, each of Holding 3 and Sub 3 will be a U.S. shareholder, within the meaning of § 7.367(b)-2(b), on the date immediately preceding Internal Spin 1, and immediately thereafter.
- (nn) Neither FSub 8, nor FSub 7 will be a passive foreign investment company (“PFIC”), within the meaning of § 1297(a), on the date immediately preceding Internal Spin 1, or immediately thereafter.
- (oo) FSub 8 will have been a CFC, within the meaning of § 957(a), at all times during the 5-year period immediately preceding the date of Internal Spin 2; and FSub 8 will be a CFC immediately thereafter.
- (pp) With respect to FSub 8, each of Holding 3 and Sub 3 will be a U.S. shareholder, within the meaning of § 7.367(b)-2(b), on the date immediately preceding Internal Spin 2; and Distributing will be a U.S. shareholder immediately thereafter.
- (qq) FSub 8 will not be a PFIC, within the meaning of § 1297(a), on the date immediately preceding Internal Spin 2 or immediately thereafter.

B. Regarding the Reincorporation Merger

The following representation is made in connection with the Reincorporation Merger:

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To the best of the knowledge and belief of the taxpayer, the Reincorporation Merger will qualify as a tax-free reorganization under § 368(a)(1)(F).

C. Regarding the Distribution of Controlled Stock to Holding 2

The following representations are made in connection with the distribution by Sub 3 to Holding 2 of all of the stock of Controlled ("Internal Spin 3"):

- (a) Immediately prior to Internal Spin 3, Sub 3 will own all of the outstanding stock of Controlled, and all of such stock will be distributed to Holding 2 pursuant to Internal Spin 3. No assets will be transferred by Sub 3 to Controlled, and no liabilities of Sub 3 will be assumed or taken subject to by Controlled, in connection with Internal Spin 3.
- (b) No part of the Controlled stock to be distributed by Sub 3 pursuant to Internal Spin 3 will be received by Holding 2 as a creditor, employee, or in any capacity other than that of a shareholder in the corporation.
- (c) The 5 years of financial information submitted on behalf of Sub 3 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) The 5 years of financial information submitted on behalf of Controlled (and its subsidiary, FSub 0) 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.
- (e) Following Internal Spin 3, Sub 3 and Controlled (through FSub 0) will each continue the active conduct of their respective business independently and with their own separate employees. Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of stock in a corporation that is engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (f) The distribution of the stock of Controlled pursuant to Internal Spin 3 is designed to enable Distributing to ultimately distribute to its shareholders the stock of a holding company entity, which bears the well-known "Brand" name and can be listed on the Exchange under that name. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (g) There is no plan or intention on the part of Holding 2 to sell, exchange,

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transfer by gift, or otherwise dispose of any stock in either Sub 3 or Controlled after Internal Spin 3, except for the subsequent transfer of the Sub 3 stock and the Controlled stock to Distributing pursuant to the Merger.

- (h) There is no plan or intention by either Sub 3 or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.
- (i) There is no plan or intention to liquidate either Sub 3 or Controlled, to merge either corporation with any other corporation (except insofar as such corporations will become wholly owned subsidiaries of Distributing pursuant to the Merger), or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- (j) No intercorporate debt will exist between Sub 3 and Controlled at the time of, or subsequent to, Internal Spin 3.
- (k) Payments made in connection with all continuing transactions, if any, between Sub 3 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (l) No two parties to Internal Spin 3 are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (m) Immediately before the distribution of Controlled stock pursuant to Internal Spin 3, items of income, gain, loss, deduction, and credit, and any excess loss account with respect to the Controlled stock, will be taken into account as required by the applicable intercompany transaction regulations.

D. Regarding the Transfer of the X Shares and the Distributing Debt

The following representations are made in connection with the transfer, prior to the Merger, of the X Shares and the Distributing Debt by Holding 2 to Sub 1:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Sub 1 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub 1.
- (b) Neither the Distributing Debt nor the X Shares were received by Holding 2 as part of a plan of liquidation of another corporation.

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- (c) Holding 2 will not retain any rights in the X Shares or the Distributing Debt.
- (d) The transfer of the X Shares and the Distributing Debt by Holding 2 to Sub 1 is not the result of a solicitation by a promoter, broker or investment house. The transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. All exchanges will occur on approximately the same date.
- (e) Sub 1 will not assume any liabilities of Holding 2, and the Distributing Debt and the X Shares will not be transferred subject to any liabilities of Holding 2.
- (f) There is no indebtedness between Sub 1 and Holding 2, and there will be no indebtedness created in favor of Holding 2 as a result of the transaction.
- (g) Holding 2 will be in "control" of Sub 1, within the meaning of § 368(c), immediately after the constructive exchange of the Distributing Debt and the X Shares for Sub 1 stock. Except for the distribution of the Sub 1 stock constructively received by Distributing incident to the Merger, there is no plan or intention to dispose of any Sub 1 stock.
- (h) There is no plan or intention on the part of Sub 1 to redeem or otherwise reacquire any of the stock to be constructively issued in exchange for the Distributing Debt and the X Shares.
- (i) The fair market value of the stock of Sub 1 constructively received by Holding 2 in exchange for the Distributing Debt and the X Shares will be approximately equal to the aggregate fair market value of the Distributing Debt and the X Shares.
- (j) Sub 1 will remain in existence. The property transferred will be used in a trade or business by Sub 1 or another member of the Distributing group.
- (k) There is no plan or intention by Sub 1 to dispose of the transferred property other than in the ordinary course of business, except for the required disposition by Date D of a portion of the X Shares, pursuant to the agreement under which such shares were acquired. The Distributing Debt will be repaid by Distributing to Sub 1 in accordance with its terms.
- (l) Each of the parties to the proposed transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (m) The transfer of the Distributing Debt and the X Shares by Holding 2 to

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Sub 1 will not result, directly or indirectly, in “diversification of Holding 2’s interests” within the meaning of §1.351-1(c)(1)(i) and (c)(5).

- (n) Sub 1 will not be a “personal service corporation” within the meaning of § 269A.
- (o) Holding 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368 (a) (3)(A)), and the stock constructively received by Holding 2 in exchange for the Distributing Debt and X Shares will not satisfy any indebtedness of Holding 2.

E. Regarding the Merger

The following representations are made in connection with the merger of Holding 2 with and into Distributing:

- (a) Distributing, on the date of adoption of the plan of complete liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Holding 2 stock.
- (b) No shares of Holding 2 stock will have been redeemed during the 3 years preceding the adoption of the plan of complete liquidation of Holding 2.
- (c) All distributions from Holding 2 to Distributing pursuant to the plan of complete liquidation will be made within a single taxable year of Holding 2.
- (d) As soon as the first liquidating distribution has been made, Holding 2 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 sole shareholder.
- (e) Holding 2 will retain no assets following the final liquidating distribution.
- (f) Holding 2 will not have acquired assets in any nontaxable transaction at any time, except for (i) certain intercompany receivables previously held by Distributing and contributed in late Date E to Holding 2 in a transaction qualifying under § 351; (ii) additional shares of X Shares received on Date F, as the result of a stock split with respect to such shares; and (iii) acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.
- (g) No assets of Holding 2 have been, or will be, disposed of by either Holding 2 or Distributing, except for (i) the pre-Merger transfer of the

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Distributing Debt and the X Shares by Holding 2 to Sub 1; (ii) the post-Merger transfer of the Sub 3 Debt by Distributing to Holding 3; (iii) Holding 2's market sales, from time to time, of portions of its X Shares; (iv) required dispositions of additional X Shares by Date D pursuant to the agreement under which such shares were acquired; (v) dispositions in the ordinary course of business; and (vi) dispositions occurring more than 3 years prior to adoption of the plan of complete liquidation.

- (h) Except for the post-Merger transfers by Distributing of (i) the Sub 3 Debt to Holding 3, and (ii) the Sub 3 stock to Controlled, liquidation of Holding 2 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the business or assets of Holding 2, if persons holding, directly or indirectly, more than 20 percent in value of the Holding 2 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 Holding 2 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) Holding 2 does not hold, and will not hold at the time of the liquidation, any assets representing earned but unreported income.
- (k) The fair market value of the assets of Holding 2 will exceed its liabilities both at the date of adoption of the plan of complete liquidation and immediately prior to the time the liquidating distribution is made.
- (l) There is no intercorporate debt existing between Distributing and Holding 2, and none has been canceled, forgiven, or discounted, except for (i) the Distributing Debt, which will be transferred to Sub 1 by Holding 2 as a contribution to capital immediately prior to the Merger, (ii) the Intercompany Account, which will be extinguished incident to the Merger, and (iii) transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan.
- (m) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
- (n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed liquidation of

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Holding 2 have been fully disclosed.

F. Regarding the Country G Restructuring

The following representations are made in connection with the deemed transfer of Country G Business B net assets by FSub 9 to Newco 5, and the subsequent deemed distribution of the Newco 5 stock to Holding 3 and Controlled in complete redemption of their FSub 9 stock ("Internal Split"):

- (a) The total adjusted basis and fair market value of the assets transferred by FSub 9 to Newco 5 will each equal or exceed the sum of the amount of the liabilities assumed plus any liabilities taken subject to by Newco 5 in connection with the transfer.
- (b) The liabilities assumed in the transaction, 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.
- (c) The fair market value of the Newco 5 stock to be received by Controlled and Holding 3 will in each instance be approximately equal to the fair market value of the FSub 9 stock surrendered by such shareholders in the exchange.
- (d) No part of the Newco 5 stock to be distributed by FSub 9 will be received by Holding 3 or Controlled as a creditor, employee, or in any capacity other than that of a shareholder in FSub 9.
- (e) The 5 years of financial information submitted on behalf of FSub 9 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.
- (f) The 5 years of financial information submitted on behalf of Newco 5 is representative of the present operations of Business B as conducted during such periods by FSub 9 and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) Following the transaction, FSub 9 and Newco 5 will each continue the active conduct of their respective businesses independently and with their own separate employees.
- (h) The distribution of the stock of Newco 5 is designed to facilitate the subsequent distribution of the stock of Controlled by Distributing, and

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thereby to accomplish the following corporate business purpose: to more effectively motivate Business B employees (both rank and file and managerial) through establishing the Controlled ESOP and otherwise offering compensation packages which include equity interests tied solely and directly to the performance of Business B; and to correspondingly better motivate Business A employees by providing equity-based compensation (through the Distributing ESOP and otherwise) tied directly and primarily to the performance of Business A. The distribution of the stock of Newco 5 is motivated, in whole or substantial part, by this corporate business purpose.

- (i) There is no plan or intention by the shareholders of FSub 9 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either FSub 9 or Newco 5 after the transaction.
- (j) There is no plan or intention by either FSub 9 or Newco 5, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.
- (k) There is no plan or intention to liquidate either FSub 9 or Newco 5, to merge either corporation with any other corporation, or to sell or otherwise to dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- (l) No intercorporate debt will exist between FSub 9 and Newco 5 at the time of, or subsequent to, the distribution of the Newco 5 stock.
- (m) Payments made in connection with all continuing transactions, if any, between FSub 9 and Newco 5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (o) Each of FSub 9 and Newco 5 will have been a CFC, within the meaning of § 957(a), at all times during the 5-year period immediately preceding the date of the Internal Split and FSub 9 and Newco 5 will each be a CFC immediately thereafter.
- (p) With respect to FSub 9 and Newco 5, each of Distributing, Holding 3 and Controlled will be a U.S. shareholder, within the meaning of § 7.367(b)-2(b), on the date immediately preceding the Internal Split. Immediately thereafter, each of Holding 3 and Controlled will be a U.S. shareholder with respect to Newco 5, and Distributing will be a U.S. shareholder with

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respect to FSub 9.

- (q) FSub 9 will not be a PFIC, within the meaning of § 1297(a), on the date immediately preceding the Internal Split or immediately thereafter.

G. Regarding the Spin-off and Prior Asset Transfers

The following representations are made in connection with (i) the post-Merger transfer by Distributing to Controlled of the Sub 3 stock and a portion of the FSub 9 stock (the "Spin-off Assets"), (ii) the assumption by Controlled of the New Debt; and (iii) the subsequent distribution by Distributing to its shareholders of the Controlled stock:

- (a) The total adjusted basis and fair market value of the Spin-off Assets and the stock of Sub 2 and Holding 3 transferred (and constructively transferred) to Controlled by Distributing will equal or exceed the amount of the New Debt. No other liabilities of Distributing will be assumed or taken subject to by Controlled in connection with the transfers of the Spin-off Assets, other than certain deferred unfunded employee benefit obligations which are attributable to Business B employees and the payment of which would give rise to a deduction.
- (b) The liabilities assumed by Controlled in the transaction, 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.
- (c) Except to the extent that the receipt of Controlled stock by holders of Restricted Shares may be considered compensatory for federal income tax purposes, no part of the Controlled stock 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 in the corporation. The total number of shares of Controlled stock to be distributed in respect of the Restricted Shares will represent less than 20 percent of the Controlled stock outstanding immediately after the distribution.
- (d) The 5 years of financial information submitted on behalf of Distributing is representative of the corporation's present operations (except insofar as such information relates to directly and indirectly conducted non-Business A businesses previously spun off or otherwise disposed of by Distributing during such period), and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The 5 years of financial information submitted on behalf of Controlled (and

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its subsidiary, FSub 0) 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.

- (f) Following the Spin-off, Distributing and Controlled (through FSub 0 and Sub 3) will each continue the active conduct of their respective business independently and with their own separate employees. Immediately after the distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of stock in controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (g) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to more effectively motivate Business B employees (both rank and file and managerial) through establishing the Controlled ESOP and otherwise offering compensation packages which include equity interests tied solely and directly to the performance of Business B; and, correspondingly, to better motivate Business A employees by providing equity-based compensation (through the Distributing ESOP and otherwise) tied directly and primarily to the performance of Business A. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.
- (h) There is no plan or intention by any shareholder who owns 5 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 remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after the Spin-off, except for certain dispositions by the Trustees of Distributing's 401(k) plan and retirement plan, and Controlled's 401(k) plan and retirement plan (qualified plans under § 401(a)), as mandated by the terms of those plans.
- (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 transaction, other than through (i) stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30; and (ii) probable purchases from trustees of Distributing's or Controlled's 401(k) plans or retirement Plans, respectively, as permitted under the terms of such plans.
- (j) There is no plan or intention to liquidate either Distributing or Controlled,

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to merge either corporation with any other corporation (except as to Controlled, incident to the Merger of Holding 2 into Distributing prior to the Spin-off), or to sell or otherwise to dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

- (k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock, other than debt obligations created in the ordinary course of business in accordance with terms of agreements between Distributing and Controlled.
- (l) Immediately before the distribution of the stock of Controlled, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, any Distributing excess loss account with respect to the stock of Controlled will be included in income immediately before the distribution.
- (m) Except for certain corporate support services (e.g., benefit plan administration) to be provided by Distributing to Controlled on a fully allocated cost basis, payments made in connection with all continuing transactions between Distributing and Controlled or Controlled affiliates will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (o) Any share purchase rights attached to the stock of Controlled in the distribution will not be traded apart from the stock of Controlled before the occurrence of certain triggering events. Before the occurrence of such events, the share purchase rights may be redeemed by Controlled. At the time the Controlled stock is issued to Distributing, and at the time of the distribution, the likelihood that the share purchase rights would be exercised will be both remote and uncertain.
- (p) The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional share interests is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled stock.
- (q) Neither Distributing nor Controlled will have been a "United States real

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property holding corporation" ("USRPHC"), within the meaning of § 897(c)(2), at any time during the 5-year period immediately preceding the date of the Spin-off. Neither Distributing nor Controlled will be a USRPHC immediately thereafter.

- (r) Neither Distributing nor Controlled contemplate that there will be any outbound transfers of property to a foreign corporation in an exchange described in § 367(a).
 - (s) Neither Distributing nor its domestic subsidiaries contemplate that they will transfer, directly or indirectly, any intangible property to a foreign corporation in an exchange described in § 367(d).
 - (t) Neither Distributing nor its domestic subsidiaries contemplate that there will be any transfers of property to a foreign partnership which would be subject to the reporting requirements of § 6038B, except for transfers of cash by Distributing to Partnership, and by Holding 3 and Controlled to Newco 1, in connection with the Country B Restructuring.
 - (u) No entity involved in any of the proposed transactions is treated as a "disregarded entity" for U.S. federal income tax purposes under § 301.7701-3. Nor is any such entity treated as a "hybrid" or "reverse hybrid" for U.S. federal income tax purposes and for applicable foreign law income tax purposes, except for (i) Partnership (a hybrid which is treated as a corporation for Country B income tax purposes and as a partnership for U.S. income tax purposes), and (ii) Newco 1 (a hybrid which will be similarly treated for Country B and U.S. income tax purposes).
 - (v) The distribution of the stock of Controlled pursuant to the Spin-off 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 or total value of all classes of stock of Distributing or Controlled.
 - (w) In the event that the cash position of Controlled exceeds the Target Cash Position, the entire excess amount that Controlled must pay to Distributing will be used by Distributing to pay off or reduce indebtedness to outside creditors. No portion of such excess amount will be used to pay off or reduce any indebtedness of Distributing to its subsidiaries or other affiliates.
- H. Regarding the Constructive Transfer by Distributing of the Sub 2 Stock and the Holding 3 Stock to Controlled

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The following representations are made in connection with the constructive transfer by Distributing, prior to the Spin-off, of the Sub 2 stock and the Holding 3 stock to Controlled:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Controlled in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Controlled.
- (b) The constructive transfer of the Sub 2 stock and the Holding 3 stock by Distributing to Controlled is not the result of a solicitation by a promoter, broker, or investment house.
- (c) Distributing will not retain any rights in the Sub 2 stock or the Holding 3 stock transferred to Controlled.
- (d) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing (which will include in addition to the Spin-off Assets, the stock in Sub 2 and Holding 3) will equal or exceed the amount of the New Debt. No other liabilities of Distributing will be assumed or taken subject to by Controlled in connection with the transfer of the Spin-off Assets and the stock of Sub 2 and Holding 3, other than certain deferred unfunded employee benefit obligations that are attributable to Business B employees and the payment of which would give rise to a deduction.
- (e) The liabilities assumed by Controlled in the transactions, and the liabilities to which the stock of Sub 2 and Holding 3 are subject, were incurred in the ordinary course of business and associated with these assets.
- (f) There is no indebtedness between Distributing and Controlled, and there will be no indebtedness created in favor of Distributing as a result of the transaction.
- (g) The transfers will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (h) All exchanges will occur on approximately the same date.
- (i) There is no plan or intention on the part of Controlled to redeem or otherwise reacquire any of the stock to be constructively issued in exchange for the Sub 2 stock and the Holding 3 stock.
- (j) Distributing will be in "control" of Controlled, within the meaning of § 368(c), immediately after the constructive exchange of the Sub 2 stock

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and the Holding 3 stock for Controlled stock. Distributing has no plan or intention to dispose of any Controlled stock other than in the Spin-off.

- (k) The fair market value of the stock of Controlled constructively received by Distributing in exchange for the Sub 2 stock and the Holding 3 stock will be approximately equal to the aggregate fair market value of the Sub 2 stock and the Holding 3 stock.
 - (l) Controlled will remain in existence. The transferred property will be used in a trade or business by Controlled or another member of the Controlled group. There is no plan or intention by Controlled to dispose of the Sub 2 stock and the Holding 3 stock, other than the constructive transfers by Controlled of the Sub 2 stock and the Holding 3 stock to Sub 3, followed by the constructive transfer by Sub 3 of the Sub 2 stock to Holding 3.
 - (m) Each of the parties to the proposed transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
 - (n) Controlled is not an “investment company” within the meaning of § 351(e) and §1.351-1(c)(1)(ii).
 - (o) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock constructively received by Distributing in exchange for the Sub 2 stock and the Holding 3 stock will not satisfy any indebtedness of Distributing.
 - (p) Controlled will not be a “personal service corporation” within the meaning of § 269A.
- I. Regarding the Constructive Transfer by Controlled of the Sub 2 Stock and the Holding 3 Stock to Sub 3

The following representations are made in connection with the constructive transfer, prior to the Spin-off, of the Sub 2 stock and the Holding 3 stock by Controlled to Sub 3:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Sub 3 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Sub 3.
- (b) The constructive transfer of the Sub 2 stock and the Holding 3 stock by Controlled to Sub 3 is not the result of a solicitation by a promoter, broker or investment house.

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- (c) Controlled will not retain any rights in the Sub 2 stock or the Holding 3 stock transferred to Sub 3.
- (d) Sub 3 will not assume any liabilities of Controlled, and the Sub 2 stock and the Holding 3 stock will not be transferred to Sub 3 subject to any liabilities of Controlled.
- (e) There is no indebtedness between Controlled and Sub 3, and there will be no indebtedness created in favor of Controlled as a result of the transaction.
- (f) The transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (g) There is no plan or intention on the part of Sub 3 to redeem or otherwise reacquire any of the stock to be constructively issued in exchange for the Sub 2 and the Holding 3 stock.
- (h) Controlled will be in “control” of Sub 3, within the meaning of § 368(c), immediately after the constructive exchange of the Sub 2 stock and the Holding 3 stock for Sub 3 stock. Controlled has no plan or intention to dispose of any Sub 3 stock.
- (i) The fair market value of the stock of Sub 3 constructively received by Controlled in exchange for the Sub 2 stock and the Holding 3 stock will be approximately equal to the aggregate fair market value of the Sub 2 stock and the Holding 3 stock.
- (j) Sub 3 will remain in existence. The transferred property will be used in a trade or business by Sub 3 or another member of the Controlled group.
- (k) There is no plan or intention by Sub 3 to dispose of the Sub 2 stock (other than the constructive transfer of the Sub 2 stock to Holding 3) or the Holding 3 stock.
- (l) Each of the parties to the proposed transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (m) Sub 3 is not an “investment company” within the meaning of § 351(e) and §1.351-1(c)(1)(ii).
- (n) Controlled is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock constructively received by Controlled in exchange for the Sub 2 stock and the Holding 3

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stock will not satisfy any indebtedness of Controlled.

- (o) Sub 3 will not be a “personal service corporation” within the meaning of § 269A.

J. Regarding the Constructive Transfer of the Sub 2 Stock by Sub 3 to Holding 3

The following representations are made in connection with the constructive transfer, prior to the Spin-off, of the Sub 2 stock by Sub 3 to Holding 3:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Holding 3 in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Holding 3.
- (b) The transfer is not the result of a solicitation by a promoter, broker, or investment house.
- (c) Sub 3 will not retain any rights in the Sub 2 stock transferred to Holding 3.
- (d) Holding 3 will not assume any liabilities of Sub 3, and the Sub 2 stock will not be transferred to Holding 3 subject to any liabilities of Sub 3.
- (e) There is no indebtedness between Sub 3 and Holding 3, and there will be no indebtedness created in favor of Sub 3 as a result of the transaction.
- (f) The transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (g) There is no plan or intention on the part of Holding 3 to redeem or otherwise reacquire any of the stock to be constructively issued in exchange for the Sub 2 stock.
- (h) Sub 3 will be in “control” of Holding 3, within the meaning of § 368(c), immediately after the constructive exchange of the Sub 2 stock for Holding 3 stock. Sub 3 has no plan or intention to dispose of any Holding 3 stock.
- (i) The fair market value of the stock of Holding 3 constructively received by Sub 3 in exchange for the Sub 2 stock will be approximately equal to the aggregate fair market value of the Sub 2.
- (j) Holding 3 will remain in existence. The transferred property will be used in a trade or business by Holding 3 or another member of the Holding 3

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group.

- (d) There is no plan or intention by Holding 3 to dispose of the Sub 2 stock.
- (l) Each of the parties to the proposed transaction will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (m) Holding 3 is not an “investment company” within the meaning of § 351(e) and §1.351-1(c)(1)(ii).
- (n) Sub 3 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock constructively received by Sub 3 in exchange for the Sub 2 stock will not satisfy any indebtedness of Sub 3.
- (o) Holding 3 will not be a “personal service corporation” within the meaning of § 269A.

Rulings

A. Regarding the Country E/Country F Restructuring (Internal Spins 1 and 2 and the Transfer of FSub 8 Stock)

With regard to Internal Spins 1 and 2, including the transfer of the FSub 8 stock to Holding 1 following Internal Spin 2, based solely on the information submitted and on the representations set forth above, and provided that Distributing, Holding 3 and FSub 8, if required to file a U.S. federal income tax return, each satisfy the requirements of paragraph (c)(1) of § 1.367(b)-1 and paragraphs (c)(2) and (d) of § 7.367(b)-1, it is held as follows:

1. The transfers by Holding 3 and Sub 3 of portions of their FSub 8 stock to Holding 1 and Sub 1, respectively, followed by the transfer of the net assets of the Country E Business B by FSub 8 to Newco 4, and the exchanges of FSub 8 stock held by Holding 1 and Sub 1 for Newco 4 stock held by Holding 3 and Sub 3, will be disregarded for federal income tax purposes and treated instead as if: (i) FSub 8 transferred stock of FSub 7 and the Country E Business B assets to Newco 4 in exchange for all the stock of Newco 4 and Newco 4's assumption of the Country E Business B liabilities; (ii) FSub 8 distributed the Newco 4 stock pro rata to Holding 3 and Sub 3 (Internal Spin 1); (iii) Holding 3 distributed the FSub 8 stock to Distributing (Internal Spin 2); and (iv) Distributing contributed the FSub 8 stock to Holding 1 in constructive exchange for Holding 1 stock.

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2. The transfer by FSub 8 to Newco 4 of the FSub 7 stock and the Country E Business B assets (the "Internal Spin 1 Assets"), in exchange for the stock of Newco 4 and the assumption of the Country E Business B liabilities, followed by the distribution of the stock of Newco 4 to Holding 3 and Sub 3 will qualify as a reorganization within the meaning of § 368(a)(1)(D). FSub 8 and Newco 4 will each be "a party to a reorganization" within the meaning of § 368(b).
3. No gain or loss will be recognized by FSub 8 upon the transfer of the Internal Spin 1 Assets to Newco 4, solely in exchange for stock of Newco 4 and the assumption of the Country E Business B liabilities by Newco 4 (§ 361(a) and 357(a)).
4. No gain or loss will be recognized by Newco 4 upon the receipt of the Internal Spin 1 Assets in exchange for the stock of Newco 4 (§ 1032(a)).
5. The basis of the Internal Spin 1 Assets received by Newco 4 will be the same as the basis of such assets in the hands of FSub 8 immediately before their transfer to Newco 4 (§ 362(b)).
6. The holding period of the Internal Spin 1 Assets transferred to Newco 4 will include the period during which such assets were held by FSub 8 (§ 1223(2)).
7. No gain or loss will be recognized by (and no amount will be included in the income of) Holding 3 and Sub 3 upon the receipt of the Newco 4 stock (§ 355(a)(1)).
8. No gain or loss will be recognized by FSub 8 upon the distribution of all the stock of Newco 4 to Holding 3 and Sub 3 (§ 361(c)(1)).
9. The basis of the FSub 8 stock and the Newco 4 stock in the hands of Holding 3 and Sub 3 immediately after the distribution will be the same as the basis of the FSub 8 stock held immediately before the distribution, allocated in proportion to the fair market values of the FSub 8 stock and Newco 4 stock in accordance with § 1.358-2(a)(2) and (a)(4) (§ 358(a) and (b)(2)).
10. The holding period of the Newco 4 stock received by Holding 3 and Sub 3 shareholders will include the holding period of the FSub 8 stock with respect to which the Newco 4 stock is distributed, provided that such stock is held as a capital asset on the date of the distribution (§ 1223(1)).
11. FSub 8's distribution of all its Newco 4 stock to Holding 3 and Sub 3 is a

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distribution to which § 7.367(b)-10(c) applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied. However, if the effective date of FSub 8's distribution of all its Newco 4 stock to Holding 3 and Sub 3 occurs after February 22, 2000, or if an effective election is made under § 1.367(b)-6(a)(2), then such distribution is a distribution that is subject to § 1.367(b)-5(c).

12. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing upon the receipt of the FSub 8 stock distributed by Holding 3 pursuant to Internal Spin 2 (§ 355(a)(1)).
13. No gain or loss will be recognized by Holding 3 upon the distribution of the FSub 8 stock to Distributing pursuant to Internal Spin 2 (§ 355(c)).
14. The basis of the Holding 3 stock in the hands of Distributing immediately after the distribution will be the same as the Holding 3 stock held immediately before the distribution, allocated in proportion to the fair market values of the Holding 3 and FSub 8 stock in accordance with § 1.358-2(a)(2) and (a)(4) (§ 358(a) and (b)(2)).
15. The basis of the FSub 8 stock in the hands of Distributing shall be the lesser of the adjusted basis of that stock in the hands of Holding 3 or the basis allocated to FSub 8's stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).
16. The holding period of the FSub 8 stock received by Distributing will be the greater of the holding period of the FSub 8 stock in the hands of Holding 3 or the holding period of Holding 3 stock in the hands of Distributing (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).
17. Section 1248(f)(1) will not be applicable to the distribution by Holding 3 of the FSub 8 stock to Distributing (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).
18. If Distributing does not recognize any gain under § 1248 by virtue of the contribution of the stock of FSub 8 to the capital of Holding 1, the earnings and profits of FSub 8, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such foreign corporations beginning after December 31, 1962 and during the period FSub 8 was a CFC, shall be attributable to such stock now held by Holding 1 (§ 1.1248-1(a)(1)).
19. Distributing will not recognize gain or loss upon the transfer of the FSub 8 stock, immediately after Internal Spin 2, to Holding 1 solely in constructive

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exchange for stock of Holding 1 (§ 351(a)).

20. Distributing's basis in the stock of Holding 1 constructively received in the transaction will be the same as the basis of the FSub 8 stock transferred in exchange therefor (§ 358(a)).
21. Distributing's holding period for the stock of Holding 1 constructively received in the transaction will include the period during which the FSub 8 stock exchanged therefor was held by Distributing, provided that such property was a capital asset on the date of the exchange (§ 1223(1)).
22. Holding 1 will recognize no gain or loss upon its receipt of the FSub 8 stock from Distributing in constructive exchange for its stock (§ 1032(a)).
23. Holding 1's basis in the FSub 8 stock will be the same as the basis of such property in the hands of Distributing immediately prior to the exchange, as determined under ruling 15. above (§ 362(a)).
24. Holding 1's holding period for the FSub 8 stock will include the period during which such property was held by Distributing, as determined under ruling 16., above.

B. Regarding the Reincorporation Merger

With regard to the Reincorporation Merger, based solely on the information submitted and on the representation set forth above, it is held as follows:

Neither (i) Internal Spin 3, (ii) the transfer by Distributing to Controlled of the Spin-off Assets and the stock of Sub 2 and Holding 3, nor (iii) the Spin-off will prevent the Reincorporation Merger from qualifying as a reorganization under § 368(a)(1)(F).

C. Regarding the Distribution of Controlled Stock to Holding 2 (Internal Spin 3)

With regard to Internal Spin 3, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. No gain or loss will be recognized by (and no amount will be included in the income of) Holding 2 upon the receipt of the stock of Controlled distributed by Sub 3 pursuant to Internal Spin 3 (§ 355(a)(1)).
2. No gain or loss will be recognized by Sub 3 upon the distribution of the stock of Controlled to Holding 2 pursuant to Internal Spin 3 (§ 355(c)).

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3. The basis of the stock of Sub 3 and Controlled in the hands of Holding 2 immediately after the distribution will be the same as the Sub 3 stock held immediately before the distribution, allocated in proportion to the fair market values of the stock of Sub 3 and Controlled in accordance with § 1.358-2(a)(2) and (a)(4) (§ 358(a) and (b)(2)).
4. The holding period of the Controlled stock received by Holding 2 will include the holding period of the Sub 3 stock with respect to which the Controlled stock is distributed, provided that such stock is held as a capital asset on the date of the distribution (§ 1223(1)).

D. Regarding the Transfer of the X Shares and the D Debt

With regard to the transfer by Holding 2 to Sub 1 of the Distributing Debt and the X Shares, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. Holding 2 will not recognize gain or loss upon the transfer of the Distributing Debt and the X Shares to Sub 1 solely in constructive exchange for voting common stock of Sub 1 (§ 351(a) and (c)).
2. Holding 2's basis in the stock of Sub 1 constructively received in the transaction will be the same as the aggregate basis of the Distributing Debt and the X Shares transferred in exchange therefor (§ 358(a)).
3. Holding 2's holding period for the stock of Sub 1 constructively received in the transaction will include the period during which the property exchanged was held by Holding 2, provided that such property was a capital asset on the date of the exchange (§ 1223(1)).
4. Sub 1 will recognize no gain or loss upon its receipt of the Distributing Debt and the X Shares from Holding 2 in constructive exchange for its stock (§ 1032 (a)).
5. Sub 1's basis in the Distributing Debt and the X Shares will be the same as the basis of such property in the hands of Holding 2 immediately prior to the exchange (§ 362(a)).
6. Sub 1's holding period for the Distributing Debt and the X Shares will include the period during which such property was held by Holding 2 (§ 1223(2)).

E. Regarding the Merger

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With regard to the Merger, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. For federal income tax purposes, the merger of Holding 2 with and into Distributing will be treated as a complete liquidation of Holding 2 into Distributing within the meaning of § 332(a) (§ 1.332-2(d)).
2. Distributing will recognize no gain or loss on its receipt of the assets of Holding 2 distributed pursuant to the Merger (§ 332(a)).
3. Distributing's basis in each asset received in complete liquidation of Holding 2 will be the same as the basis of such asset in the hands of Holding 2 immediately before the Merger (§ 334(b)).
4. Distributing's holding period for each asset received in complete liquidation of Holding 2 will include the period during which Holding 2 held such asset. (§ 1223(2)).
5. Holding 2 will recognize no gain or loss on the distribution of its assets to Distributing in complete liquidation pursuant to the Merger (§§ 336(d)(3), 337(a), and (b)).
6. Distributing will succeed to and take into account the items of Holding 2 described in § 381(c) and the regulations thereunder, subject to applicable conditions and limitations specified in §§ 381, 382, 383 and 384 (§ 381(a); § 1.381(a)-1).
7. Distributing will succeed to and take into account the earnings and profits of Holding 2 as of the date of the Merger. Any deficit in earnings and profits of Holding 2 or Distributing will be used only to offset earnings and profits accumulated after the date of the Merger (§ 381(c)(2); §1.381(c)(2)-1).

F. Regarding the Country G Restructuring (Internal Split)

With regard to the Internal Split, based solely on the information submitted and on the representations set forth above, and provided that Holding 3 and FSub 9, if required to file a U.S. federal income tax return, each satisfy the requirements of paragraph (c)(1) of § 1.367(b)-1 and paragraphs (c)(2) and (d) of § 7.367(b)-1, it is held as follows:

1. The (i) transfers of FSub 9 stock to Newco 5 by Holding 3 and Controlled (after the transfer by Distributing to Controlled of a portion of its FSub 9 stock), (ii) transfer of the Country G Business B net assets by FSub 9 to

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Newco 5 in exchange for Newco 5 preferred stock, and (iii) issuance of offsetting Newco 5 and FSub 9 notes in connection with the subsequent redemption of such preferred stock and the FSub 9 common stock held by Newco 5, will all be disregarded for federal income tax purposes and treated instead as if (x) FSub 9 transferred the Country G Business B assets to Newco 5 in exchange for all of the Newco 5 stock and Newco 5's assumption of the Country G Business B liabilities; and (y) such Newco 5 stock was then distributed to Holding 3 and Controlled in exchange for their respective stock interests in FSub 9.

2. The transfer by FSub 9 to Newco 5 of the assets of the Country G Business B in exchange for the stock of Newco 5 and the assumption of the Country G Business B liabilities, followed by the distribution of the Newco 5 stock to Holding 3 and Controlled pursuant to the Internal Split, will qualify as a reorganization within the meaning of § 368(a)(1)(D). FSub 9 and Newco 5 will each be "a party to a reorganization" within the meaning of § 368(b).
3. No gain or loss will be recognized by FSub 9 upon the transfer of the Country G Business B assets to Newco 5 solely in exchange for stock of Newco 5 and the assumption of the Country G Business B liabilities by Newco 5 (§§ 361(a) and 357(a)).
4. No gain or loss will be recognized by Newco 5 upon the receipt of the Country G Business B assets in exchange for the stock of Newco 5 (§ 1032(a)).
5. The basis of the Country G Business B assets received by Newco 5 will be the same as the basis of such assets in the hands of FSub 9 immediately before their transfer to Newco 5 (§ 362(b)).
6. The holding period of the Country G Business B assets transferred to Newco 5 will include the period during which such assets were held by FSub 9 (§ 1223(2)).
7. No gain or loss will be recognized by (and no amount will be included in the income of) Holding 3 and Controlled upon the receipt of Newco 5 stock in exchange for their FSub 9 stock (§ 355(a)(1) and (a)(2)).
8. No gain or loss will be recognized by FSub 9 upon the distribution of the Newco 5 stock to Holding 3 and Controlled in exchange for their FSub 9 stock (§ 361(c)(1)).
9. The basis of the Newco 5 stock in the hands of Holding 3 and Controlled

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immediately after the distribution will be the same as their basis in the FSub 9 stock exchanged therefor (§ 358(a)(1)).

10. The holding period of the Newco 5 stock received by Holding 3 and Controlled pursuant to the Internal Split will include the holding period of the FSub 9 stock exchanged therefor, provided that such stock is held as a capital asset on the date of the exchange (§ 1223(1)).
11. FSub 9's distribution of all of its Newco 5 stock to Holding 3 and Controlled is a distribution to which § 7.367(b)-10(c) applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied. However, if the effective date of FSub 9's distribution of all its Newco 5 stock to Holding 3 and Controlled occurs after February 22, 2000, or if an effective election is made under § 1.367(b)-6(a)(2), then such distribution is a distribution that is subject to § 1.367(b)-5(c).

G. Regarding the Spin-off and Prior Asset Transfers

With regard to (i) the transfer by Distributing to Controlled of the Spin-off Assets, (ii) the assumption by Controlled of the New Debt, and (iii) the subsequent distribution of the Controlled stock by Distributing to its shareholders, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. The transfer by Distributing to Controlled of the Spin-off Assets in constructive exchange for stock of Controlled and the assumption of the New Debt by Controlled, followed by the distribution of the stock of Controlled to Distributing's shareholders, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
2. No gain or loss will be recognized by Distributing upon the transfer of the Spin-off Assets to Controlled solely in exchange for stock of Controlled and the assumption of the New Debt by Controlled (§§ 361(a) and 357(a)).
3. No gain or loss will be recognized by Controlled upon the receipt of the Spin-off Assets in exchange for the stock of Controlled (§ 1032(a)).
4. The basis of the Spin-off Assets received by Controlled will be the same as the basis of such assets in the hands of Distributing immediately before their transfer to Controlled (§ 362(b)).
5. The holding period of the Spin-off Assets transferred to Controlled will include the period during which such assets were held by Distributing

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(§ 1223(2)).

6. No gain or loss will be recognized to (and no amount will be included in the income of) Distributing's shareholders who are not holders of Restricted Shares upon the receipt of the Controlled stock, including fractional share interests deemed received (§ 355(a)(1)). Provided that, at the time of the distribution, the share purchase rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of any share purchase rights attached to Controlled stock by Distributing or its shareholders will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by either Distributing, Controlled or the Distributing shareholders (Rev. Rul. 90-11, 1990-1 C.B. 10).
7. No gain or loss will be recognized to Distributing upon the distribution of all the stock of Controlled to the Distributing shareholders, including fractional share interests deemed received and any share purchase rights associated with the distributed Controlled stock (§ 361(c)(1)).
8. The basis of the Distributing stock and the Controlled stock in the hands of Distributing's shareholders immediately after the distribution (including fractional share interests deemed received) will be the same as the basis of the Distributing stock held by such shareholders immediately before the distribution, allocated in proportion to the fair market values of the Distributing and Controlled stock in accordance with § 1.358-2(a)(2) and (a)(4) (§ 358(a) and (b)(2)).
9. The holding period of the Controlled stock received by the Distributing shareholders (including fractional share interests deemed received) will include the holding period of the Distributing stock with respect to which the Controlled stock is distributed, provided that such stock is held as a capital asset on the date of the distribution (§ 1223(1)).
10. Where cash is received by a Distributing shareholder in lieu of fractional share interests of Controlled stock, such share will be treated as having been disposed of by such shareholder in a sale or exchange, and the gain (or loss) will be treated as a capital gain (or loss), provided such stock was held as a capital asset by the selling Distributing shareholder (§ 1001).
11. Proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with § 1.312-10(a) of the regulations (§ 312(h)).

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12. Payments made by Distributing to Controlled or by Controlled to Distributing under the Tax Sharing Agreement that (i) have arisen or will arise for a taxable period ending before the distribution or for a taxable period beginning on or before and ending after the distribution, and (ii) will not become fixed and ascertainable until after the distribution, will be treated as occurring immediately before the distribution.
13. Provided Controlled and its subsidiaries are members of an affiliated group for purposes of § 1504, they will be permitted to elect to file consolidated returns after the distribution of the Controlled stock.
14. Payments made after the Spin-off to effectuate the agreement of the parties with respect to the Target Indebtedness and the Target Cash Position will be treated as occurring immediately before and in conjunction with the Spin-off. Distributing will not recognize gain or income in respect of any such payment received from Controlled (§ 361(b)(3)).

H. Regarding the Constructive Transfer by Distributing of the Sub 2 Stock and the Holding 3 Stock to Controlled

With regard to the constructive transfer by Distributing of the Sub 2 Stock and the Holding 3 stock to Controlled, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. Distributing will not recognize gain or loss upon the constructive transfer of the Sub 2 stock and the Holding 3 stock to Controlled solely in constructive exchange for voting common stock of Controlled (§ 351(a); 357(a) pursuant to ruling G.2. above).
2. Distributing's basis in the stock of Controlled constructively received in the transaction will be the same as the basis of the Sub 2 stock and the Holding 3 stock transferred in exchange therefor (§ 358(a)).
3. Distributing's holding period for the stock of Controlled constructively received in the transaction will include the period during which the property exchanged was held by Distributing provided that such property was a capital asset on the date of the exchange (§ 1223(1)).
4. Controlled will recognize no gain or loss upon its receipt of the Sub 2 stock and the Holding 3 stock from Distributing in constructive exchange for its stock (§ 1032 (a)).
5. Controlled's basis in the Sub 2 stock and the Holding 3 stock will be the

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same as the basis of such property in the hands of Distributing immediately prior to the exchange (§ 362(a)).

6. Controlled's holding period for the Sub 2 stock and the Holding 3 stock will include the period during which such property was held by Distributing (§ 1223(2)).

I. Regarding the Constructive Transfer by Controlled of the Sub 2 Stock and the Holding 3 Stock to Sub 3

With regard to the constructive transfer by Controlled of the Sub 2 Stock and the Holding 3 stock to Sub 3, based solely on the information submitted and on the representations set forth above, it is held as follows:

1. Controlled will not recognize gain or loss upon the constructive transfer of the Sub 2 stock and the Holding 3 stock to Sub 3 solely in constructive exchange for voting common stock of Sub 3 (§ 351(a)).
2. Controlled's basis in the stock of Sub 3 constructively received in the transaction will be the same as the basis of the Sub 2 stock and the Holding 3 stock transferred in exchange therefor (as determined under ruling H.5., above) (§ 358(a)).
3. Controlled's holding period for the stock of Sub 3 constructively received in the transaction will include the period during which the property exchanged was held by Controlled (as determined under ruling H.6., above), provided that such property was a capital asset on the date of the exchange (§ 1223(1)).
4. Sub 3 will recognize no gain or loss upon its receipt of the Sub 2 stock and the Holding 3 stock from Controlled in constructive exchange for its stock (§ 1032 (a)).
5. Sub 3's basis in the Sub 2 stock and the Holding 3 stock will be the same as the basis of such property in the hands of Controlled immediately prior to the exchange (as determined under ruling H.5., above) (§ 362(a)).
6. Sub 3's holding period for the Sub 2 stock and the Holding 3 stock will include the period during which such property was held by Controlled (as determined under ruling H.6., above) (§ 1223(2)).

J. Regarding the Constructive Transfer by Sub 3 of the Sub 2 Stock to Holding 3

With regard to the constructive transfer by Sub 3 of the Sub 2 stock to Holding 3,

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

1. Sub 3 will not recognize gain or loss upon the constructive transfer of the Sub 2 stock to Holding 3 solely in constructive exchange for voting common stock of Holding 3 (§ 351(a)).
2. Sub 3's basis in the stock of Holding 3 constructively received in the transaction will be the same as the basis of the Sub 2 stock transferred in exchange therefor (as determined under ruling H.5., above) (§ 358(a)).
3. Sub 3's holding period for the stock of Holding 3 constructively received in the transaction will include the period during which the property exchanged was held by Sub 3 (as determined under ruling H.6., above), provided that such property was a capital asset on the date of the exchange (§ 1223(1)).
4. Holding 3 will recognize no gain or loss upon its receipt of the Sub 2 stock from Sub 3 in constructive exchange for its stock (§ 1032 (a)).
5. Holding 3's basis in the Sub 2 stock will be the same as the basis of such property in the hands of Sub 3 immediately prior to the exchange (as determined under ruling I.5., above) (§ 362(a)).
6. Holding 3's holding period for the Sub 2 stock will include the period during which such property was held by Sub 3 (as determined under ruling I.6., above) (§ 1223(2)).

Distributing understands that the National Office of the Internal Revenue Service has, as requested by Distributing, considered and ruled on the transactions described in steps (v) through (ix), and (xii). Distributing acknowledges that all other transactions leading up to or occurring simultaneously with steps (v) through (ix), and (xii) including, but not limited to, transactions involving foreign corporations, have not been reviewed or ruled on by the National Office of the Internal Revenue Service, except in connection with the rulings set forth above.

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.

No opinion is expressed about the tax treatment of the proposed transaction

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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 with regard to (i) whether the Reincorporation Merger is a tax-free reorganization under § 368(a)(1)(F); (ii) the transfer of Sub 3's r percent stock interest in FSub 8 incident to the Country E/Country F restructuring; (iii) the transfer of the Sub 3 Debt by Distributing to Holding 3; (iv) the Recapitalization of Controlled; (v) whether gain recognized is characterized as subpart F income by FSub 7 from the sale of Business A operations or by certain foreign affiliates of Sub 3 on the sale of Business B operations; (vi) whether Newco 1 will be treated as a partnership for U.S. federal income tax purposes; (vii) the tax consequences of the Country B, Country C, and Country D Restructuring including (a) whether gain recognized is characterized as subpart F income by FSub 2 from the sale of its stock in FSub 5 or by FSub 6 from the sale of its Business B operations, and (b) the extent to which gain recognized by each of FSub 2 and Holding 3 on their respective distributions of FSub 4 and FSub 6 stock to Holding 3 and Distributing, respectively, will be recharacterized as ordinary income in accordance with § 1248(a) or § 1248(f)(1); (viii) the applicability of any transfer pricing issues under § 482 in connection with the continuing transactions, if any, or other transactions contemplated in the ruling request; (ix) the applicability of § 1503(d) (regarding the disallowance or recapture of a "dual consolidated loss") to any dual resident corporation (a) that is no longer a member of the Distributing Group by reason of the Spin-off, or (b) that is involved in a putative triggering event in connection with any internal restructuring transaction; and (x) the applicability of § 304 to the sale of the FSub 11 stock by FSub 10 to Holding 3 .

Finally, no opinion is expressed as to whether any or all of the above-referenced foreign corporations are PFICs (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 PFICs, 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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling letter may be revoked or modified upon the issuance of temporary or final regulations (or a notice with respect to their future issuance). See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in section 12.05 of Rev. Proc. 2000-1 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)

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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 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, copies of this letter are being sent to your authorized representatives.

Sincerely yours,
Assistant Chief Counsel Corporate
Filiz A. Serbes
Assistant to the Chief, Branch 5