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Sub A2 =

Sub A3 =

Sub A4 =

LLC B1 =

LLC B2 =

LLC C =

Sub D1 =

Sub D2 =

Sub D3 =

LLC D1 =

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LLC D2 =

GP D =

Controlled Sub =

Controlled LLC =

GP LLC =

LP LLC =

Corp 1 =

Corp 2 =

PS 1 =

LLC 3 =

Sub 1 =

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Sub 2 =

LLC 1 =

LLC 2 =

Business A =

Business B =

Business C =

Business D =

Business P =

Q =

R =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

b =

c =

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<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
<u>k</u>	=
<u>m</u>	=
<u>n</u>	=
<u>p</u>	=
<u>r</u>	=
<u>s</u>	=
<u>t</u>	=
<u>u</u>	=
<u>v</u>	=
<u>w</u>	=
<u>x</u>	=
<u>y</u>	=
<u>z</u>	=
<u>aa</u>	=
Class X	=
Class Y	=

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Dear

This letter responds to your letter dated May 8, 2003, requesting rulings as to the federal income tax consequences of certain proposed transactions. Additional information was submitted in letters dated August 15, August 20, September 8, October 1, October 3, November 3, and November 7, 2003. The information submitted for consideration is summarized below.

### **Summary of Facts**

Distributing, a publicly traded holding company with a single class of voting common stock outstanding, is the common parent of an affiliated group that files a consolidated federal income tax return ("Distributing Group"). Distributing is engaged indirectly in Business A, Business B, Business C, and Business D through its ownership, respectively, of all the outstanding stock of holding companies Sub A, Sub B, Sub C, and Sub D.

Sub A owns all the outstanding stock of Sub A1, Sub A2, Sub A3, and Sub A4, which are corporations engaged in Business A.

Sub B owns all the membership interests of LLC B1 and LLC B2, which are limited liability companies engaged in Business B that are disregarded for federal income tax purposes. LLC B1 and LLC B2 previously were wholly owned corporate subsidiaries of Sub B.

Sub C owns all the membership interests of LLC C, a limited liability company engaged in Business C that is disregarded for federal income tax purposes. LLC C previously was a wholly owned corporate subsidiary of Sub C.

Sub D is a holding company that is engaged indirectly in Business D through its ownership of all the outstanding stock of Sub D1. Sub D1 is engaged directly and indirectly in Business D through its ownership of (i) all the membership interests of LLC D1 and LLC D2, which are limited liability companies that are disregarded for federal income tax purposes and which together own all the outstanding partner interests of Sub D2, and (ii) a b-percent managing general partner interest in GP D, which is a partnership engaged in Business D. Sub D2 is engaged in Business D through its ownership interest in GP D. On Date 6 (which was less than one year ago), in a transaction represented to qualify as a reorganization under § 368(a)(1), Sub D2 converted from a corporation to a limited partnership, which immediately elected to be taxed as a corporation.

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Sub D2 owns a c-percent (at least 80 percent) general partner interest in GP D. The remaining d-percent general partner interest in GP D is owned by Sub D3, a subsidiary of Sub D2. Since joining the Distributing Group more than five years ago, Sub D2 or its predecessor has owned at least e percent (more than 50 percent) of GP D. On Date 3 (which was before Date 6), as a result of a restructuring within the Distributing Group, the general partner interest in GP D of Sub D2's predecessor increased to c percent.

All personnel performing operational functions for GP D have been employees of GP D for each of the past five years. All personnel performing management functions for GP D have been officers of Sub D1 and Sub D2 or its predecessor. With the exception of a few brief periods of time, all of Sub D2 or its predecessor's officers have also been officers of Sub D1 for each of the past five years.

Distributing owns approximately f percent (less than 80 percent) of the stock of Controlled, which has a single class of voting common stock outstanding. The remaining shares of Controlled stock are publicly held. Controlled also has outstanding options ("Controlled Options"), issued pursuant to a non-qualified stock option plan, that could be converted into approximately g newly issued shares of Controlled common stock, representing less than 5 percent of the outstanding Controlled stock.

Controlled is engaged directly in Business P, which has a Q sector and an R sector. Controlled owns all the membership interests of Controlled LLC, which is a limited liability company engaged in Business P that is disregarded for federal income tax purposes. Controlled LLC owns all the membership interests of LLC 1, LLC 2, and LLC 3, which are limited liability companies engaged in Business P that are disregarded for federal income tax purposes.

On Date 1 (which was more than five years ago), Controlled engaged indirectly in both the Q and R sectors of Business P through its ownership of all the outstanding stock of Controlled Sub. Controlled Sub was engaged indirectly in Business P through its ownership of all the outstanding stock of Corp 1 (engaged directly in the Q and R sectors), Sub 1 (engaged directly in the Q sector), and Sub 2 (engaged directly in the R sector). On or about Date 2 (which was after Date 1 and more than three years ago), Controlled Sub acquired all the membership interests of new limited liability companies GP LLC and LP LLC, which were entities disregarded for federal income tax purposes. On Date 2, in a transaction represented to qualify as a reorganization under § 368(a)(1), Corp 1 converted to partnership PS 1, which immediately elected to be taxed as a corporation. GP LLC and LP LLC owned h and k percent, respectively, of PS 1.

On Date 4 (which was less than one year ago), Controlled restructured the entities engaged in Business P in order for Controlled to be engaged directly in Business P

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through disregarded entities. Controlled Sub liquidated into Controlled, in a transaction represented to qualify as a liquidation under § 332, by converting to Controlled LLC. Sub 1 and Sub 2 then liquidated into Controlled LLC, in transactions represented to qualify as liquidations under § 332, by converting to LLC 1 and LLC 2, respectively. PS 1 then liquidated into Controlled LLC, in a transaction represented to qualify as a liquidation under § 332, in two steps: PS 1 converted under state law to Corp 2; and Corp 2 and LP LLC merged under state law with and into GP LLC, with GP LLC surviving. After this merger, GP LLC changed its name to LLC 3.

On Date 1, Distributing owned m shares of Controlled stock, which represented n percent (more than 50 but less than 80 percent) of the outstanding stock of Controlled. From Date 1 to Date 5 (which was after Date 4 and less than one year ago) Controlled periodically redeemed shares of stock held by public shareholders, and issued stock to public shareholders; as a result of these redemptions and issuances, on Date 5 Distributing's m shares represented p percent (more than n but less than 80 percent) of the outstanding Controlled stock.

Distributing has submitted financial information indicating that Sub A1, Sub A2, Sub A3, Sub A4, LLC B1, LLC B2 and their predecessor corporations, LLC C and its predecessor corporation, GP D, and Controlled and its predecessors each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Financial information, including a detailed opinion from an independent investment advisor, indicates that the separation of Controlled from Distributing would positively affect the operations of each corporation. In particular, the separation would (1) eliminate systemic conflicts brought about by Distributing's controlling interest in Controlled, (2) permit sharper focus by Distributing's management on Distributing's core businesses, (3) eliminate influence of Distributing and Controlled on each other's market valuation, and (4) eliminate the influence of Distributing on Controlled's ability to make acquisitions using Controlled stock.

### **Proposed Transactions**

In order to accomplish the separation of Controlled from Distributing, Distributing proposes the following transactions:

(i) Controlled will recapitalize (the "Recapitalization"), as follows: Distributing will acquire all the outstanding stock of a new subsidiary, MergeCo, and will contribute r shares of its Controlled stock to MergeCo. MergeCo will merge with and into Controlled, and Distributing's MergeCo stock will convert to r shares of Controlled Class X stock. The remaining approximately s shares of Controlled stock outstanding (t owned by Distributing

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and approximately u owned by the public) will convert on a one-for-one basis to approximately s shares of Controlled Class Y stock. The Controlled Options will convert on a one-for-one basis to options to acquire Controlled Class Y stock. The Class X stock, voting as a class, will be entitled to elect v of Controlled's w directors; v is x percent (more than 80 percent) of w. The Class Y stock, of which Distributing will own approximately y percent, will be entitled to elect the remaining director. The Class X and Class Y stock owned by Distributing immediately after the Recapitalization will possess in the aggregate more than 80 percent of the total combined voting power of Class X and Class Y stock. The percentage-point excess over 80 percent will be greater than the percentage-point increase, from Date 1 until immediately before the Recapitalization, in the voting power of the Controlled stock held by Distributing. Thus, the amount of Distributing's voting power with respect to Controlled stock at the beginning of the five-year period ending on the date of the proposed distribution plus the total percentage-point increase in Distributing's voting power resulting from the Recapitalization will exceed 80 percent. In conjunction with the planned Recapitalization, Controlled has amended its certificate of incorporation to authorize the shareholders, at any time after the two-year anniversary of the Distribution and on a vote of at least z percent of the outstanding shares of Class X and Class Y stock, to eliminate the difference in voting rights between the two classes.

(ii) Distributing will distribute all of the Class X and Class Y Controlled stock it holds immediately after the Recapitalization pro rata to the Distributing shareholders (the "Distribution"). Immediately before the Distribution, Controlled will issue a pro rata dividend of \$aa per share of Controlled stock.

In connection with the proposed transaction, Distributing and Controlled will enter into several agreements relating to their separation, including an administrative services agreement and an intellectual property agreement.

## **Representations**

### Recapitalization

In connection with the Recapitalization described above in step (i), the following representations have been made:

(a) The Recapitalization is a single, isolated transaction and is not part of a plan to periodically increase the proportional interest of any shareholder in the assets or earning and profits of Controlled.

(b) The fair market value of the Controlled stock held by each shareholder immediately following the Recapitalization will equal the fair market value of the Controlled stock held by such shareholder immediately before the Recapitalization.

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(c) Controlled is not under the jurisdiction of a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(d) There is no plan, intention, or formal or informal understanding to change the capital structure of Controlled to eliminate the two-tiered voting structure of the Controlled Class X and Class Y stock established in the Recapitalization.

(e) Distributing and Controlled each will pay its own expenses, if any, in connection with the Recapitalization.

(f) Controlled has not purchased any shares of its stock from and after Date 5, and will make no purchases of its stock through the date of the Distribution.

#### Distribution

In connection with the Distribution described above in step (ii), the following representations have been made:

(g) During the period from Date 1 to the date of the Distribution, Distributing has made no capital contributions or loans to Controlled, nor has it acquired from Controlled any equity interest for cash or other consideration.

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

(i) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Distributing will consist of the stock of Sub A, Sub B, Sub C, and Sub D, each of which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(j) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub A will consist of the stock of Sub A1, Sub A2, Sub A3, and Sub A4, each of which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(k) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub D will consist of the stock of Sub D1, which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

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(l) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub D1 will consist of the stock of Sub D2, which is engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(m) Immediately after the Distribution, the fair market value of Sub D2's general partner interest in GP D will equal at least five percent of the fair market value of the gross assets of Sub D2.

(n) The five years of financial information submitted on behalf of Businesses A, B, C, D, and P represents their present operations, and regarding each such business, there has been no substantial operational changes since the date of the last financial statements submitted.

(o) Distributing and Controlled each will pay its own expenses, if any, in connection with the Distribution.

(p) Following the Distribution, Distributing and Controlled each will continue the active conduct of its business independently and with its separate employees.

(q) The Distribution is being carried out for the corporate business purposes of (1) eliminating systemic conflicts brought about by Distributing's controlling interest in Controlled, (2) permitting sharper focus by Distributing's management on Distributing's core businesses, (3) eliminating influence of Distributing and Controlled on each other's market valuation, and (4) eliminating the influence of Distributing on Controlled's ability to make acquisitions using Controlled stock. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(r) There is no plan or intention by the shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing or Controlled after the Distribution.

(s) 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 stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696.

(t) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Distribution, except in the ordinary course of business.

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(u) No intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution.

(v) Payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(w) No parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(x) The Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled.

## **Rulings**

### Recapitalization

Based on the facts submitted and representations set forth above, we rule as follows on the Recapitalization described in step (i) above:

(1) The Recapitalization will qualify as a "reorganization" within the meaning of § 368(a)(1)(E). Controlled will be a "party to a reorganization" within the meaning of § 368(b).

(2) Controlled will recognize no gain or loss on the issuance of its Class X stock and Class Y stock in exchange for its outstanding common stock (§ 1032).

(3) Distributing will recognize no gain or loss on the exchange of its Controlled common stock for Controlled Class X stock (through MergeCo) and Controlled Class Y stock (§ 354(a)).

(4) The basis of the Controlled Class X and Class Y stock received in the Recapitalization will equal the basis of the Controlled common stock surrendered in exchange therefor (§ 358(a)(1)).

(5) Distributing's holding period for the Controlled Class X and Class Y stock received in the Recapitalization will include the period during which Distributing held the Controlled common stock surrendered in exchange therefor, provided that the surrendered stock is held as a capital asset on the date of the exchange (§ 1223(1)).

Distribution

Based on the facts submitted and representations set forth above, we rule as follows on the Distribution described in step (ii) above:

(6) Distributing will recognize no gain or loss on the distribution to its shareholders of the Controlled Class X and Class Y stock (§ 355(c)).

(7) The Distributing shareholders will recognize no gain or loss (and no amount will be included in the income of the Distributing shareholders) on the receipt of the Controlled Class X and Class Y stock (§ 355(a)).

(8) The aggregate basis of the Distributing stock and the Controlled Class X and Class Y stock held by each Distributing shareholder will equal the aggregate basis of the Distributing stock in such shareholder's hands immediately before the Distribution, allocated between the Distributing stock, the Controlled Class X stock, and the Controlled Class Y stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).

(9) The holding period of for the Controlled Class X and Class Y stock received by each Distributing shareholder will include the holding period for the Distributing stock on which the distribution is made, provided that the Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).

(10) The earnings and profits of Distributing and Controlled will be allocated in accordance with § 312(h) and Treas. Reg. § 1.312-10(b).

No opinion is expressed about the tax treatment of the transaction under other provisions of the Code and Income Tax Regulations or about the tax treatment of any conditions existing at the time of, or effect resulting from, the transaction that are not specifically covered by the above rulings.

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

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

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

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support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

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

Sincerely,

Michael J. Wilder

Michael J. Wilder

Senior Technician/Reviewer, Branch 1

Office of Associate Chief Counsel

(Corporate)