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June 22, 2004

Legend

Taxpayer A =

Taxpayer B =

Consolidated Group B =

Foreign Parent B =

Common Parent B =

m =

n =

o =

p =

q =

State B =

State Q =

State Z =

Company =

Product =

Newco =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Agreement U =

Agreement V =

Agreement W =

Agreement X =

Agreement Y =

Affiliate C =

Affiliate D =

Affiliate E =

Affiliate F =

Affiliate H =

Entity I =

Entity J =

Affiliate K =

Dear

This letter responds to a letter dated February 13, 2004, submitted jointly on behalf of Taxpayer A and Taxpayer B, requesting a private letter ruling regarding a proposed transaction. Additional information was received in letters dated April 20, May 12, May 26, June 8, June 9, June 16, and June 17, 2004. The material information is summarized below.

Taxpayer A is the common parent of its consolidated group and uses the accrual method of accounting. Taxpayer B, an indirect wholly owned subsidiary of Foreign Parent B, is a member of Consolidated Group B whose common parent is Common Parent B, also an indirect wholly owned subsidiary of Foreign Parent B, and uses the accrual method of accounting. Taxpayer A and Taxpayer B propose to enter into a business combination (the "Transaction") that will result in, among other things, a jointly

created State Z corporation (“Company”) with publicly traded stock. Subsequent to the Transaction, Taxpayer B will own approximately n percent of Company’s stock and the current shareholders of Taxpayer A will own the balance of Company’s stock.

Both Taxpayer A (through its subsidiary Affiliate H) and Taxpayer B are engaged in the domestic manufacture, sale, and distribution of Product. Some of the Product manufactured in the U.S. by Taxpayer B is sold to affiliated corporations that resell such Product in other countries. Taxpayer A and Taxpayer B intend to transfer their respective domestic Product businesses to Company in the Transaction.

Taxpayer A and Taxpayer B have represented that the Transaction serves valid and significant business purposes.

In the Transaction, the following steps have occurred or will occur:

- i. Pursuant to Agreement Y between Taxpayer A and Taxpayer B, on Date 1 Taxpayer A and Taxpayer B jointly created Company by each contributing p dollars (a minimal amount) to Company in exchange for m shares of Company common stock. Company will, in turn, create a wholly owned State Z subsidiary (“Sub”).
- ii. Pursuant to Agreement Y, Taxpayer A will contribute to Company all the stock of Affiliate C in exchange for shares of voting preferred stock of Company with a fair market value equal to the value of the stock of Affiliate C (the “Affiliate C Contribution”).
- iii. Pursuant to Agreement Y, concurrently with step (ii), Affiliate K, a wholly owned subsidiary of Affiliate H, will lend o dollars to Company.
- iv. Pursuant to Agreement X among Taxpayer B, Newco, and Company, immediately after steps (ii) and (iii), Taxpayer B will contribute its plant, equipment, inventory, the stock of Affiliate D, its intellectual property licensee rights from Affiliate D, and a significant portion of its cash (the “Contributed Assets”) to Newco in exchange for all the common stock of Newco (the “Taxpayer B Asset Contribution”). Pursuant to Agreement X, Newco will assume, indemnify, and hold harmless Taxpayer B and its affiliates from certain Taxpayer B noncontingent liabilities (the “Assumed Noncontingent Liabilities”) and all of Taxpayer B’s contingent liabilities related to pending and future Product products liability litigation (the “Assumed Contingent Liabilities”). The Taxpayer B Asset Contribution will comprise substantially all of Taxpayer B’s assets associated with the domestic Product business. Taxpayer B will retain certain foreign business assets, intercompany receivables and payables, excess cash, and Taxpayer B’s shares in Company.
- v. Pursuant to Agreement Y, immediately after the Taxpayer B Asset Contribution, (1) Taxpayer B will contribute to Company its shares in Newco (the “Newco

Stock Contribution”) and (2) Sub will merge into Taxpayer A with Taxpayer A surviving (the “Taxpayer A Merger”). As a result of the Newco Stock Contribution, Newco will become a wholly owned subsidiary of Company and Taxpayer B will own n percent of Company’s common stock. In the Taxpayer A Merger, Taxpayer A shareholders will receive solely Company common stock on a one-for-one basis in exchange for their stock in Taxpayer A, and Company common stock held by Taxpayer A will be canceled. As a result of the Taxpayer A Merger, Taxpayer A will become a wholly owned subsidiary of Company.

- vi. Pursuant to Agreement W among Affiliate E, Affiliate F, Taxpayer A, and Taxpayer B, simultaneously with the Newco Stock Contribution, Foreign Parent B will cause Affiliate E to sell the stock of Affiliate F to Company for o dollars (the “Affiliate F Stock Sale”).
- vii. Pursuant to Agreement Y, immediately after the Newco Stock Contribution and the Taxpayer A Merger, Company will contribute all the shares of Newco to Taxpayer A (the “Post-Effective Time Contribution”). Because Company will own all of Taxpayer A’s shares, no additional shares of Taxpayer A will be issued to Company.
- viii. Pursuant to Agreement Y, immediately after step (vii), Taxpayer A will cause its wholly owned subsidiary, Affiliate H, to merge into Newco with Newco as the surviving corporation (the “Post-Effective Time Merger”).

As a result of the Transaction, Company will own all the stock of Taxpayer A, Affiliate C, and Affiliate F, and Taxpayer A will own all the stock of Newco. Newco will hold the Contributed Assets and all the former Affiliate H assets. Newco will also have assumed the Assumed Noncontingent Liabilities, the Assumed Contingent Liabilities (together, the “Assumed Liabilities”), and the former Affiliate H’s noncontingent and contingent business liabilities. [After the Transaction, Taxpayer A and Taxpayer B expect Company to integrate the two domestic Product businesses by \(i\) consolidating headquarters and manufacturing facilities in State Z, \(ii\) closing headquarters and manufacturing plants located elsewhere, and \(iii\) possibly making other dispositions in light of antitrust requirements. Unless required by regulatory authorities, Company does not otherwise expect to dispose of Contributed Assets that relate to the core of Taxpayer A’s domestic Product business, particularly assets related to marketing or trademarks.](#)

After the Transaction, Foreign Parent B and its remaining affiliates will not retain any Product manufacturing capability within the United States. Under the terms of Agreement U, Foreign Parent B and its remaining affiliates will agree not to manufacture Product within the United States for 10 years following the Transaction. Taxpayer B will retain the right to use certain of the transferred manufacturing-related intellectual property rights within the United States after 10 years. Taxpayer B states that such rights have minimal value. [In addition, although Taxpayer B is retaining the rights to the Taxpayer B trademark, the Contributed Assets will include currently existing inventory,](#)

packaging, and equipment that already bear the Taxpayer B trademark. Therefore, as an accommodation to Company, Taxpayer B will grant a royalty-free license to Newco for a two-year period to use the Taxpayer B trademark on all the Contributed Assets on which the Taxpayer B trademark appears at the time of the Taxpayer B Asset Contribution. Taxpayer A and Taxpayer B believe this accommodation license has negligible value; therefore, Taxpayer B is receiving no separate consideration in exchange for this license.

At the closing of the Transaction Foreign Parent B, Taxpayer B, and Company will enter into Agreement V. Pursuant to Agreement V, Taxpayer B receives certain veto rights regarding the governance of Company. In particular, one of these veto rights pertains to the disposition of certain U.S. trademarks by Company (the trademarks of Affiliate F are not subject to this particular provision).

Taxpayer B represents that Consolidated Group B had aggregate outstanding indebtedness of g dollars as of Date 2 (the Intercompany Debt), all of which is expected to remain outstanding (without paydown) as of the closing date of the Transaction. Furthermore, other than two refinancings since Date 2, neither Taxpayer B nor any other member of Consolidated Group B will have incurred any new indebtedness (except for interest accruing on the Intercompany Debt) or refinanced any of the Intercompany Debt (although there has been repayment of principal and interest owing on the Intercompany Debt) up until the closing date of the Transaction.

Taxpayer B asserts that the Intercompany Debt was not incurred for purposes of, or in contemplation of, the Transaction or acquiring or carrying its Company stock. In addition, Taxpayer B represents that it is able to trace approximately percent of the proceeds of the Intercompany Debt to uses other than the transaction or acquiring or carrying its Company stock. With respect to the portion of the Intercompany Debt that Taxpayer B was unable to trace, Taxpayer B asserts further that the proceeds were not used for the transaction or to acquire or carry its Company stock, but were likely used for Taxpayer B's ongoing working capital needs.

In connection with the Transaction, it has been represented that:

The Taxpayer B Asset Contribution

- (a) In connection with the Taxpayer B Asset Contribution, (i) no stock or securities will be issued for services rendered to or for the benefit of Newco and (ii) no stock or securities will be issued for indebtedness of Newco that is not evidenced by a security or for interest on indebtedness of Newco which accrued on or after the beginning of Taxpayer B's holding period for the debt.
- (b) The patents or patent applications Taxpayer B will transfer to Newco qualify as "property" within the meaning of section 351. Taxpayer B will transfer all

substantial U.S. rights in such patents or patent applications within the meaning of section 1235.

- (c) All U.S. rights, title and interests for each copyright held by Taxpayer B, in each medium of exploitation, will be transferred to Newco.
- (d) Taxpayer B will not retain any significant power, right or continuing interest, within the meaning of section 1253(b), in the U.S. trademarks or trade names being transferred to Newco pursuant to the Taxpayer B Asset Contribution.
- (e) The "technical know-how" that Taxpayer B will transfer to Newco in exchange for stock is "property" within the meaning of Rev. Rul. 64-56, C.B. 1964-1 133, and as such is afforded substantial legal protection against unauthorized disclosure and use under U.S. law. Any services to be performed in connection with the transfer of the "technical know-how" are merely ancillary and subsidiary to the property transfer within the meaning of Rev. Rul. 64-56 or Taxpayer B will be compensated by a fee negotiated at arm's length (in consideration other than stock or securities of Newco unless such stock or securities are identified) for any other services to be performed on behalf of Newco. The "technical know-how" Taxpayer B will transfer to Newco is in the nature of manufacturing techniques, equipment design, information relating to Product and analytical and laboratory techniques. Such "technical know-how" is secret in that it is known only by Taxpayer B and its affiliates and those employees who require such "technical know-how" for use in the conduct of the activities to which it is related and adequate safeguards have been taken to guard the secret against unauthorized disclosure. Such "technical know-how" is original, unique and novel.
- (f) The Taxpayer B Asset Contribution is not the result of the solicitation by a promoter, broker or investment house.
- (g) Taxpayer B will not retain any rights in the Contributed Assets once transferred to Newco, except that Foreign Parent B and its affiliates may continue to use certain manufacturing intellectual property.
- (h) No licenses or leases will be granted in exchange for stock or securities in connection with the Taxpayer B Asset Contribution, except that Newco will have the right to use the Taxpayer B brand name for a period of two years after the Transaction.
- (i) None of the Contributed Assets will be leased back to Taxpayer B or a party related to Taxpayer B except that Taxpayer B will lease some headquarters space from Newco for a fixed period following the Transaction.
- (j) The value of the Newco stock received in exchange for accounts receivable pursuant to the Taxpayer B Asset Contribution will be equal to the net value of

- the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.
- (k) No Assumed Liability was incurred to acquire the stock of Affiliate D being transferred to Newco pursuant to the Taxpayer B Asset Contribution.
 - (l) The adjusted basis and the fair market value of the Contributed Assets will, in each instance, be equal to or exceed the sum of the Assumed Noncontingent Liabilities.
 - (m) The Assumed Liabilities were incurred in the ordinary course of business and are associated with the assets to be transferred.
 - (n) There is no indebtedness between Taxpayer B and Newco and there will be no indebtedness created in favor of Taxpayer B as a result of the Taxpayer B Asset Contribution and Assumption of Liabilities.
 - (o) The Taxpayer B Asset Contribution and assumption of Assumed Liabilities will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
 - (p) All exchanges in connection with Taxpayer B Asset Contribution and assumption of Assumed Liabilities will occur on approximately the same date.
 - (q) There is no plan or intention on the part of Newco to redeem or otherwise reacquire any stock or indebtedness to be issued in the Taxpayer B Asset Contribution.
 - (r) Taking into account any issuance of additional shares of Newco stock, any issuance of stock for services, the exercise of any Newco stock rights, warrants, or subscriptions, a public offering of Newco stock and the sale, exchange, transfer by gift or other disposition of any of the stock of Newco to be received in the Taxpayer B Asset Contribution, Taxpayer B will be in "control" of Newco within the meaning of section 368(c) prior to the Newco Stock Contribution.
 - (s) Taxpayer B will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Newco pursuant to the Taxpayer B Asset Contribution and assumption of Assumed Liabilities.
 - (t) Newco will remain in existence and retain and use the Contributed Assets transferred to it in a trade or business.
 - (u) There is no plan or intention by Newco to dispose of the Contributed Assets other than in the normal course of business operations, except that after the Transaction, Newco will dispose of portions of its plant and headquarters because they will be redundant of the former Affiliate H's plant and headquarters.

- (v) Each of the parties to the Taxpayer B Asset Contribution will pay its own expenses, if any, incurred in connection with the Taxpayer B Asset Contribution, except that Taxpayer B will pay any transfer, real estate transfer, documentary, stamp, recording and other similar taxes incurred in connection with the Taxpayer B Asset Contribution.
- (w) Newco will not be an investment company within the meaning of section 351(e)(1) and section 1.351-1(c)(1)(ii) of the regulations.
- (x) Taxpayer B is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (y) Newco will not be a "personal service corporation" within the meaning of section 269A.
- (z) The parties intend to execute Agreement X, on or prior to the closing of the Transaction, substantially in the form of the Agreement X that was submitted with the original submission.

The Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger

- (aa) In connection with the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger, (i) no stock or securities will be issued for services rendered to or for the benefit of Company and (ii) no stock or securities will be issued for indebtedness of Company that is not evidenced by a security or for interest on indebtedness of Company which accrued on or after the beginning of the holding period for the debt.
- (bb) The Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger are not the result of the solicitation by a promoter, broker or investment house.
- (cc) None of Taxpayer A, Taxpayer B or the Taxpayer A shareholders will retain any rights in the property transferred to Company pursuant to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger.
- (dd) No Company stock will be received in exchange for accounts receivable pursuant to the Affiliate C Contribution, Newco Stock Contribution, and Taxpayer A Merger.
- (ee) No debt relating to the stock of Affiliate C, Newco or Taxpayer A and no liabilities of Taxpayer A, Taxpayer B or the Taxpayer A shareholders will be assumed pursuant to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger and the shares of Affiliate C, Newco and Taxpayer A are not being transferred to Company subject to any debt.

- (ff) There is no indebtedness between Taxpayer A and Company, between Taxpayer B and Company, or between the Taxpayer A shareholders and Company and there will be no indebtedness created in favor of Taxpayer A, Taxpayer B or the Taxpayer A shareholders as a result of the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger.
- (gg) The Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (hh) All exchanges in connection with the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger will occur on approximately the same date.
- (ii) There is no plan or intention on the part of Company to redeem or otherwise reacquire any stock or indebtedness to be issued in the Affiliate C Contribution, Newco Stock Contribution or Taxpayer A Merger.
- (jj) Taking into account any issuance of additional shares of Company stock, any issuance of stock for services, the exercise of any Company stock rights, warrants, or subscriptions, a public offering of Company stock and the sale, exchange, transfer by gift or other disposition of any of the stock of Company to be received in the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger, Taxpayer A, Taxpayer B and the former Taxpayer A shareholders, together, will be in "control" of Company within the meaning of section 368(c).
- (kk) Taxpayer A, Taxpayer B and the Taxpayer A shareholders will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Company pursuant to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger.
- (ll) Company will remain in existence and retain and use the property transferred to it pursuant to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger in a trade or business.
- (mm) There is no plan or intention by Company to dispose of the property transferred to it pursuant to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger other than (1) in the normal course of business operations and (2) pursuant to the Post-Effective Time Contribution.
- (nn) Each of the parties to the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger will pay its own expenses, if any, incurred in connection with the Affiliate C Contribution, Newco Stock Contribution and Taxpayer A Merger, except that Taxpayer A and Taxpayer B will pay 50 percent each of certain regulatory filing costs and Company will pay all transfer, real estate transfer, documentary, stamp, recording and other similar taxes incurred in connection

with the Affiliate C Contribution, the Newco Stock Contribution and the Taxpayer A Merger.

- (oo) Company will not be an investment company within the meaning of section 351(e)(1) and section 1.351-1(c)(1)(ii) of the regulations.
- (pp) Neither Taxpayer A nor Taxpayer B is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (qq) Company will not be a "personal service corporation" within the meaning of section 269A.

The Affiliate C Contribution

- (rr) The fair market value of the Company stock received by Affiliate C's sole shareholder, Taxpayer A, will be approximately equal to the fair market value of the Affiliate C stock surrendered in the exchange.
- (ss) Taxpayer A has no plan or intention to sell, exchange, or otherwise dispose of a number of shares of Company stock received in the transaction that would reduce its ownership of Company stock to a number of shares having a value, as of the date of the Affiliate C Contribution, of less than percent of the value of all of the formerly outstanding stock of Affiliate C as of the same date. Moreover, shares of Affiliate C redeemed or disposed of prior or subsequent to the Affiliate C Contribution will be considered in making this representation.
- (tt) Affiliate C has no plan or intention to issue additional shares of its stock that would result in Company losing control of Affiliate C within the meaning of section 368(c).
- (uu) Company has no plan or intention to liquidate Affiliate C; to merge Affiliate C into another corporation; to cause Affiliate C to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or otherwise dispose of any of the Affiliate C stock acquired in the transaction, except for transfers described in section 368(a)(2)(C).
- (vv) Neither Company nor any person related to Company within the meaning of section 1.368-1(e) of the regulations, has any plan or intention to, or will, redeem or otherwise acquire any shares of stock of Company at any time after, or in connection with, the Affiliate C Contribution, or has any plan or intention to cause any other person or entity to acquire any such stock.
- (ww) Company, Affiliate C, and Taxpayer A will pay their respective expenses, if any, incurred in connection with the transaction.

- (xx) Company will acquire Affiliate C stock solely in exchange for Company voting stock. For purposes of this representation, Affiliate C stock redeemed for cash or other property furnished by Company will be considered as acquired by Company. Further, no liabilities of Affiliate C or Taxpayer A will be assumed by Company, nor will any of the Affiliate C stock be subject to any liabilities.
- (yy) At the time of the transaction, Affiliate C will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Affiliate C that, if exercised or converted, would affect Company's acquisition or retention of control of Affiliate C, as defined in section 368(c).
- (zz) Company does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Affiliate C.
- (aaa) Following the transaction, Affiliate C will continue its historic business or use a significant portion of its historic business assets in a business.
- (bbb) No two parties to the Affiliate C Contribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (ccc) There will be no dissenters to the Affiliate C Contribution.
- (ddd) On the date of the Affiliate C Contribution, the fair market value of the assets of Affiliate C will exceed the sum of its liabilities plus the liabilities, if any, to which its assets are subject.
- (eee) None of the Company stock that will be received by Taxpayer A in the Affiliate C Contribution will be section 306 stock.

The Taxpayer A Merger

- (fff) The Taxpayer A Merger is being effected pursuant to the laws of State Q. As a result of the operation of such laws, all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Sub will become the assets and liabilities of Taxpayer A.
- (ggg) The fair market value of the Company stock received by each Taxpayer A shareholder will be approximately equal to the fair market value of the Taxpayer A stock surrendered in the exchange.
- (hhh) Following the Taxpayer A Merger, Taxpayer A will hold at least percent of the fair market value of its net assets and at least percent of the fair market value of its gross assets and at least percent of the fair market value of Sub's net assets and at least percent of the fair market value of Sub's gross assets held immediately prior to the transaction. For purposes of this representation, amounts paid by Taxpayer A or Sub to dissenters, amounts used by Taxpayer A

- or Sub to pay reorganization expenses, and all redemptions and distributions (except for regular normal dividends) made by Taxpayer A will be included as assets of Taxpayer A or Sub, respectively, immediately prior to the transaction.
- (iii) Prior to the Taxpayer A Merger, Company will be in control of Sub within the meaning of section 368(c).
 - (jjj) Taxpayer A has no plan or intention to issue additional shares of its stock that would cause Company to lose control of Taxpayer A within the meaning of section 368(c).
 - (kkk) Neither Company nor any person related to Company within the meaning of section 1.368-1(e) of the regulations, has any plan or intention to, or will, redeem or otherwise acquire any shares of stock of Company at any time after, or in connection with, the Taxpayer A Merger, or has any plan or intention to cause any other person or entity to acquire any such stock other than certain repurchases that are permitted under certain sections of Agreement V.
 - (lll) Company has no plan or intention to liquidate Taxpayer A, to merge Taxpayer A with or into another corporation, to sell or otherwise dispose of the stock of Taxpayer A except for transfers of stock to corporations controlled by Company, or to cause Taxpayer A to sell or otherwise dispose of any of its assets or any of the assets acquired from Sub, except for dispositions made in the ordinary course of business or transfers of assets to a corporation controlled by Company.
 - (mmm) Sub will have no liabilities assumed by Taxpayer A and will not transfer to Taxpayer A any assets subject to liabilities in the Taxpayer A Merger.
 - (nnn) Following the Taxpayer A Merger, Taxpayer A will continue its historic business or use a significant portion of its historic business assets in a business.
 - (ooo) Company, Sub, Taxpayer A, and the Taxpayer A shareholders will pay their respective expenses incurred in connection with the transaction.
 - (ppp) There is no intercorporate indebtedness existing between Company and Taxpayer A or between Sub and Taxpayer A that was issued, acquired, or will be settled at a discount.
 - (qqq) In the transaction, shares of Taxpayer A stock representing control of Taxpayer A, as defined in section 368(c), will be exchanged solely for voting stock of Company. For purposes of this representation, shares of Taxpayer A stock exchanged for cash or other property originating with Company will be treated as outstanding Taxpayer A stock on the date of the transaction.
 - (rrr) At the time of the transaction, Taxpayer A will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any

person could acquire stock in Taxpayer A that, if exercised or converted, would affect Company's acquisition or retention of control of Taxpayer A, as defined in section 368(c).

- (sss) Company does not own, nor has it owned during the past five years, any shares of the stock of Taxpayer A.
- (ttt) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (uuu) On the date of the transaction, the fair market value of the assets of Taxpayer A will exceed the sum of its liabilities plus the amount of liabilities, if any, to which the assets are subject.
- (vvv) Taxpayer A is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

The Post-Effective Time Contribution.

- (www) In connection with the Post-Effective Time Contribution, (i) no stock or securities will be issued for services rendered to or for the benefit of Taxpayer A and (ii) no stock or securities will be issued for indebtedness of Taxpayer A that is not evidenced by a security or for interest on indebtedness of Taxpayer A which accrued on or after the beginning of the holding period for the debt.
- (xxx) The Post-Effective Time Contribution is not the result of the solicitation by a promoter, broker or investment house.
- (yyy) Company will not retain any rights in the property transferred to Taxpayer A pursuant to the Post-Effective Time Contribution.
- (zzz) No Taxpayer A stock will be received in exchange for accounts receivable pursuant to the Post-Effective Time Contribution.
- (aaaa) No liabilities of Company will be assumed pursuant to the Post-Effective Time Contribution and the shares of Newco are not being transferred to Taxpayer A subject to any debt.
- (bbbb) There is no indebtedness between Company and Taxpayer A and there will be no indebtedness created in favor of Company as a result of the Post-Effective Time Contribution.
- (cccc) The Post-Effective Time Contribution will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (dddd) All exchanges in connection with the Post-Effective Time Contribution will occur on approximately the same date.

- (eeee) There is no plan or intention on the part of Taxpayer A to redeem or otherwise reacquire any stock or indebtedness to be issued in the Post-Effective Time Contribution.
- (ffff) Taking into account any issuance of additional shares of Taxpayer A stock, any issuance of stock for services, the exercise of any Taxpayer A stock rights, warrants, or subscriptions, a public offering of Taxpayer A stock and the sale, exchange, transfer by gift or other disposition of any of the stock of Taxpayer A to be received in the Post-Effective Time Contribution, Company will be in "control" of Taxpayer A within the meaning of section 368(c) immediately after the Post-Effective Time Contribution.
- (gggg) Company will receive stock, securities or other property approximately equal to the fair market value of the property transferred to Taxpayer A pursuant to the Post-Effective Time Contribution.
- (hhhh) Taxpayer A will remain in existence and retain and use the property transferred to it pursuant to the Post-Effective Time Contribution in a trade or business.
- (iiii) There is no plan or intention by Taxpayer A to dispose of the property transferred to it pursuant to the Post-Effective Time Contribution other than in the normal course of business operations.
- (jjjj) Each of the parties to the Post-Effective Time Contribution will pay its own expenses, if any, incurred in connection with the Post-Effective Time Contribution.
- (kkkk) Taxpayer A will not be an investment company within the meaning of section 351(e)(1) and section 1.351-1(c)(1)(ii) of the regulations.
- (llll) Company is not under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.
- (mmmm) Taxpayer A will not be a "personal service corporation" within the meaning of section 269A.

The Post-Effective Time Merger

- (nnnn) Taxpayer A, as sole shareholder of Newco, will receive no additional Newco stock as a result of the Post-Effective Time Merger.
- (oooo) The Post-Effective Time Merger is being effected pursuant to the merger laws of State Z and State B. As a result of the operation of such laws, all the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Affiliate H will become the assets and liabilities of Newco.

- (pppp) Newco will acquire at least percent of the fair market value of the net assets and at least percent of the fair market value of the gross assets held by Affiliate H immediately prior to the Post-Effective Time Merger. For purposes of this representation, amounts used by Affiliate H to pay its reorganization expenses and all redemptions and distributions (except for regular, normal dividends) made by Affiliate H immediately preceding the Post-Effective Time Merger will be included as assets of Affiliate H held immediately prior to the Post-Effective Time Merger.
- (qqqq) After the Post-Effective Time Merger, Taxpayer A will be in control of Newco within the meaning of section 368(a)(2)(H).
- (rrrr) Neither Newco nor any person related to Newco within the meaning of section 1.368-1(e) of the regulations, has any plan or intention to, or will, redeem or otherwise acquire any shares of stock of Newco at any time after, or in connection with, the Post-Effective Time Merger, or has any plan or intention to cause any other person or entity to acquire any such stock.
- (ssss) Newco has no plan or intention to sell or otherwise dispose of any of the assets of Affiliate H acquired in the Post-Effective Time Merger, except for dispositions made in the ordinary course of business, transfers described in section 368(a)(2)(C), or dispositions described in section I.E of the February 13, 2004 submission (regarding the integration of Taxpayer A's and Taxpayer B's domestic Product business).
- (tttt) The liabilities of Affiliate H assumed by Newco plus the liabilities, if any, to which the transferred assets are subject, were incurred by Affiliate H in the ordinary course of its business and are associated with the assets transferred.
- (uuuu) Following the Post-Effective Time Merger, Newco will continue the historic business of Affiliate H or use a significant portion of Affiliate H's historic business assets in a business.
- (vvvv) At the time of the Post-Effective Time Merger, Newco will not have outstanding any warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock in Newco that, if exercised or converted, would affect Taxpayer A's acquisition or retention of control of Newco, as defined in section 368(a)(2)(H).
- (wwww) Newco, Affiliate H and Taxpayer A will pay their respective expenses, if any, incurred in connection with the Post-Effective Time Merger.
- (xxxx) There is no intercorporate indebtedness existing between Newco and Affiliate H that was issued, acquired, or will be settled at a discount.

(yyyy) No two parties to the Post-Effective Time Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(zzzz) The fair market value of the assets of Affiliate H transferred to Newco will equal or exceed the sum of the liabilities assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(aaaaa) The total adjusted basis of the assets of Affiliate H transferred to Newco will equal or exceed the sum of the liabilities to be assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(bbbbb) Affiliate H is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

Treatment of Payments Made by Newco to Satisfy the Assumed Liabilities

(ccccc) The U.S. Product business conducted using the Contributed Assets is the source of the Assumed Contingent Liabilities.

(dddd) Company expects to consolidate the corporate headquarters of Newco and Affiliate H, to transfer certain manufacturing equipment currently used by Taxpayer B, and to terminate certain Taxpayer B and Affiliate H employees. In addition, it is possible that antitrust regulators may require Taxpayer B or Company to make certain dispositions in order to complete the Transaction. Any such dispositions, however, will be made by Company solely to achieve business synergies or to comply with regulatory requirements while allowing it to operate Taxpayer B's historic U.S. Product business.

(eeee) Newco will assume, indemnify, and hold harmless Taxpayer B for all of the Assumed Liabilities.

(ffff) The fair market value of the Assumed Noncontingent Liabilities will be less than Taxpayer B's basis in the Contributed Assets.

(gggg) Neither the Assumed Contingent Liabilities nor the contingent liabilities assumed in the Post-Effective Time Merger are susceptible of precise valuation, and neither Taxpayer B nor Taxpayer A maintains an accounting reserve with respect to such liabilities.

(hhhh) The value of the Newco stock received by Taxpayer B pursuant to the Taxpayer B Asset Contribution and thereafter contributed to Company pursuant to the Newco Stock Contribution will be substantial relative to the basis and fair market value of the Contributed Assets.

(iiii) Taxpayer B has no plan or intention to dispose of its interest in Company following the Transaction.

- (jjjjj) Taxpayer B and Taxpayer A have valid business purposes for entering into the Transaction.
- (kkkkk) Newco will not assume liabilities arising from the sale of Product outside the U.S., except for sales through a consignee located in _____ and except to the extent such liabilities relate to the Product business conducted in the U.S. by Taxpayer B. For example, if Taxpayer B is adjudged to have liability (e.g., for product claims) with respect to Product manufactured by Taxpayer B in the U.S. but sold by Taxpayer B subsidiaries or affiliates or third parties outside the U.S. (including at PXs), Newco will assume those liabilities.
- (lllll) The all-events test of section 461 (minus economic performance) will have been satisfied prior to the Taxpayer B Asset Contribution for all of the Assumed Noncontingent Liabilities.

Rulings Requested Under Section 246A

- (mmmmm) The Intercompany Debt was incurred by Taxpayer B for its ongoing cash management activities in the ordinary course of business or for corporate purposes unrelated to the acquisition of "portfolio stock" within the meaning of section 246A.
- (nnnnn) Other than shares of Entity I held by Consolidated Group B from Date 3 until Date 5 and a minority interest in Entity J held by Consolidated Group B from Date 4 until Date 5, neither Taxpayer B nor any other member of the Consolidated Group B has ever owned any "portfolio stock" as such term is defined in section 246A.
- (ooooo) Other than two refinancings, since Date 2, neither Taxpayer B nor any other member of the Consolidated Group B has incurred any indebtedness (except for interest accruing on the existing Consolidated Group B debt) or refinanced any existing Consolidated Group B debt (although there has been repayment of principal and interest owing on the existing Consolidated Group B group debt).

Affiliate F Stock Acquisition

- (ppppp) Neither Affiliate F nor Company will make any adjustments to its accumulated earnings and profits as a result of the Transaction.

Rulings

Based solely on the information submitted and on the representations set forth above, we rule that:

1. The Taxpayer B Asset Contribution and Newco's assumption of the Assumed Liabilities qualifies as a section 351 exchange. Taxpayer B will not recognize gain or loss as a result of the Taxpayer B Asset Contribution and Newco's assumption of the Assumed Liabilities (sections 351(a) and 357).
2. Taxpayer B's basis in its Newco stock will equal its basis in the Contributed Assets, decreased by the amount of the Assumed Liabilities that have been incurred (within the meaning of section 461) on or before the closing date of the Transaction. Taxpayer B will not be required to reduce its basis in its Newco stock as a result of Newco's assumption of the Assumed Contingent Liabilities (section 358).
3. Taxpayer B's holding period in its Newco stock will include the period for which Taxpayer B held the Contributed Assets, provided the Contributed Assets were held by Taxpayer B as capital assets or property described in section 1231 (section 1223(1)).
4. Newco will not recognize gain or loss on its receipt of the Contributed Assets solely in exchange for common stock of Newco (section 1032(a)).
5. The basis of the Contributed Assets in the hands of Newco will, in each instance, be the same as the basis of such assets in the hands of Taxpayer B (section 362(a)).
6. The holding period of the Contributed Assets received by Newco will, in each instance, include the period such assets were held by Taxpayer B immediately before the Taxpayer B Contribution (section 1223(2)).
7. The Newco Stock Contribution, the Affiliate C Contribution, and the Taxpayer A Merger, together, qualify as a section 351 exchange.
8. Taxpayer B will not recognize gain or loss as a result of the Newco Stock Contribution (section 351(a)).
9. Taxpayer B's basis in its Company stock received in the Newco Stock Contribution will equal its basis in its Newco stock transferred in exchange therefor (section 358(a)(1)).
10. Taxpayer B's holding period in its Company stock received in the Newco Stock Contribution will include the holding period for which Taxpayer B held its Newco stock, provided the Newco stock was held by Taxpayer B as a capital asset or property described in section 1231 (section 1223(1)).
11. Company will not recognize gain or loss upon its receipt of the Newco stock solely in exchange for common stock of Company (section 1032(a)).

12. The basis of the Newco stock in the hands of Company will be the same as the basis of such stock in the hands of Taxpayer B (section 362(a)).
13. The holding period of the Newco shares received by Company will, in each instance, include the period such shares were held by Taxpayer B immediately before the Newco Stock Contribution (section 1223(2)).
14. The Affiliate C Contribution will qualify as a reorganization under section 368(a)(1)(B).
15. Taxpayer A will not recognize gain or loss upon its receipt of Company voting preferred stock solely in exchange for stock of Affiliate C in the Affiliate C Contribution (section 354(a)(1)).
16. Taxpayer A's basis in its Company voting preferred stock will equal its basis in its Affiliate C stock transferred in exchange therefor (section 358(a)(1)).
17. Taxpayer A's holding period in its Company voting preferred stock will include the holding period for which Taxpayer A held its Affiliate C stock, provided the Affiliate C stock was held by Taxpayer A as capital assets or property described in section 1231 (section 1223(1)).
18. Company will not recognize gain or loss upon the receipt of Affiliate C stock solely in exchange for Company voting preferred stock (section 1032(a)).
19. The basis of Affiliate C stock in the hands of Company will be the same as the basis of such stock in the hands of Taxpayer A immediately before the Affiliate C Contribution (section 362(b)).
20. Company's holding period in the Affiliate C stock received in the Affiliate C Contribution will include the period such stock was held by Taxpayer A immediately before the Affiliate C Contribution (section 1223(2)).
21. The Taxpayer A Merger will qualify as a reorganization under section 368(a)(1)(A). The reorganization will not be disqualified because voting stock of Company is used in the merger (section 368(a)(2)(E)).
22. Taxpayer A's shareholders will not recognize gain or loss upon their receipt of Company stock solely in exchange for Taxpayer A stock in the Taxpayer A Merger (section 354(a)(1)).
23. Each Taxpayer A shareholder's basis in its Company stock received in the Taxpayer A Merger will equal its basis in its Taxpayer A stock transferred in exchange therefor (section 358(a)(1)).
24. Each Taxpayer A shareholder's holding period in its Company stock received in the Taxpayer A Merger will include the holding period for which such shareholder

- held its Taxpayer A stock, provided the Taxpayer A stock was held by such shareholder as capital assets or property described in section 1231 (section 1223(1)).
25. No gain or loss will be recognized by Taxpayer A upon the receipt of assets of Sub in exchange for stock of Taxpayer A (section 1032(a)).
 26. No gain or loss will be recognized by Company on the receipt of Taxpayer A stock solely in exchange for Sub stock (section 354(a)).
 27. No gain or loss will be recognized by Sub upon the transfer of its assets to Taxpayer A and the assumption by Taxpayer A of liabilities, if any, of Sub (sections 361(a) and 357(a)).
 28. Taxpayer's A's basis in each Sub asset will equal the basis of that asset in the hands of Sub immediately before the Taxpayer A Merger (section 362(b)).
 29. Taxpayer A's holding period for each Sub asset will include the period during which that asset was held by Sub (section 1223(2)).
 30. The affiliated group of corporations filing a consolidated federal income tax return of which Taxpayer A is the common parent immediately before the Taxpayer A Merger will remain in existence after consummation of the Taxpayer A Merger, with Company as the common parent (section 1.1502-75(d)(3)).
 31. For purposes of Treas. Reg. 1.1502-31 and 1.1502-33, the Taxpayer A Merger will be a group structure change. Company's basis in the stock of Taxpayer A immediately after the Taxpayer A Merger will equal the sum of (a) Company's basis in the stock of Sub immediately before the Taxpayer A Merger and (b) Taxpayer A's net asset basis, within the meaning of Treas. Reg. 1.1502-31(c), subject to any adjustments under Treas. Reg. 1.1502-31(d) (section 1.1502-31(b)(2)).
 32. Immediately after Company becomes the new common parent, the earnings and profits of Company will be adjusted to reflect the earnings and profits of Taxpayer A immediately before Taxpayer A ceases to be the common parent as if Company had succeeded to the earnings and profits of Taxpayer A in a transaction described in section 381(a) (section 1.1502-33(f)).
 33. The Affiliate F Stock Acquisition is a sale of the Affiliate F stock by Affiliate E to Company, and not a transaction described in section 304.
 34. The Post-Effective Time Contribution qualifies as a section 351 exchange. Company will not recognize gain or loss as a result of the Post-Effective Time Contribution (section 351(a)).

35. Company's basis in its Taxpayer A stock immediately after the Post-Effective Time Contribution will equal its basis in its Taxpayer A stock prior to the Post-Effective Time Contribution increased by Company's basis in its Newco stock (section 358(a)(1)).
36. Company's holding period in its Taxpayer A stock constructively received in exchange for Newco stock in the Post-Effective Time Contribution will include the holding period for which Company held its Newco stock, provided the Newco stock was held by Taxpayer A as capital assets or property described in section 1231 (section 1223(1)).
37. Taxpayer A will not recognize gain or loss upon the receipt of Newco stock solely in constructive exchange for its stock in the Post-Effective Time Contribution (section 1032(a)).
38. The Post-Effective Time Merger qualifies as a reorganization under section 368(a)(1)(A) and under section 368(a)(1)(D).
39. Affiliate H will not recognize gain or loss as a result of the Post-Effective Time Merger (sections 361(a) and 357).
40. Affiliate H will not recognize gain or loss upon the distribution of Newco stock to Taxpayer A in the Post-Effective Time Merger (section 361(c)).
41. Newco will not recognize gain or loss upon the receipt of assets of Affiliate H in the Post-Effective Time Merger (section 1032(a)).
42. Newco's basis in the assets of Affiliate H received in the Post-Effective Time Merger will, in each instance, equal the basis of such assets in the hands of Affiliate H immediately before the Post-Effective Time Merger (section 362(b)).
43. Newco's holding period for each asset of Affiliate H received in the Post-Effective Time Merger will include the period during which such asset was held by Affiliate H (section 1223(2)).
44. Taxpayer A's basis in its Newco stock immediately after the Post-Effective Time Contribution and Post-Effective Time Merger will equal Company's basis in the Newco stock prior to the Post-Effective Time Contribution increased by Taxpayer A's basis in its Affiliate H stock immediately prior to the Post-Effective Time Merger (sections 362(a) and 358(a)(1)).
45. The holding period Taxpayer A will have in the stock of Newco received in the Post-Effective Time Contribution will include the period during which Company held the stock of Newco (section 1223(2)). The holding period Taxpayer A will have in the stock of Newco constructively received in exchange for the stock of Affiliate H in the Post-Effective Time Merger will include the period during which

Taxpayer A held the stock of Affiliate H, provided the Affiliate H stock was held by Taxpayer A as a capital asset or property described in section 1231 (section 1223(1)).

46. Pursuant to sections 381(a) and 1.381(a)-1, Newco will succeed to and take into account the items of Affiliate H described in section 381(c) (including as specified below), subject to the provisions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder. Pursuant to section 1.381(b)-1, the tax year of Affiliate H will end on the effective date of the Post-Effective Time Merger.
47. To the extent that any Assumed Liabilities and any liabilities assumed in the Post-Effective Time Merger have not been incurred (within the meaning of section 461) on or before the closing date of the Transaction, Newco will be entitled, following the Transaction, to the same tax treatment in respect of payments made to satisfy such Assumed Liabilities and such liabilities assumed in the Post-Effective Time Merger that Taxpayer B or Affiliate H would have been entitled to in the absence of the Transaction (Rev. Rul. 95-74 (as to Assumed Liabilities); section 381 (as to liabilities assumed in the Post-Effective Time Merger)).
48. Taxpayer B will not recognize gain upon Newco's payment of the Assumed Liabilities.
49. Taxpayer B's dividends received deduction under section 243 with respect to dividends paid on Company stock will not be limited by section 246A. However, no opinion is expressed if new debt is issued that is directly attributable to Taxpayer B's Company stock.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to the tax consequences of: (i) the sharing of certain expenses described in representation (nn), (ii) the treatment of Taxpayer A shareholders, if any, who both (a) are a debtor in a Title 11 or similar case and (b) use Company stock received in the Taxpayer A Merger to satisfy indebtedness, and (iii) the licensing to Newco of Taxpayer B's brand name, as described above and referred to in representation (h).

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

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

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling letter may be modified or revoked if temporary or final regulations are issued under section 246A or section 7701(f) which are inconsistent with any conclusion in the ruling. See section 11.04, Rev. Proc. 2004-1, 2004-1 I.R.B. 1, 46. However, for modifications or revocations based on reasons other than a change in facts as described in section 11.05 of Rev. Proc. 2004-1, when the criteria in section 11.06 are satisfied, a ruling is not revoked or modified retroactively, except in rare and unusual circumstances.

Sincerely,

Stephen P. Fattman

Stephen P. Fattman
Special Counsel to the Associate
Chief Counsel (Corporate)
Office of Associate Chief Counsel

(Corporate)