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Date:

July 20, 2005

Legend:

Distributing =

Corporation X =

Merger Sub =

Finance Sub =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

LP =

Business A =

Business B =

Business C =

Business C-1 =

Business D =

Business E =

Activity A =

Activity B =

Common A =

Common B =

Preferred C =

Common M =

Common N =

Preferred O =

Preferred P =

Common S =

Common T =

Common U =

Preferred V =

A =

B =

C =

D =

E =

F =

G =

H =

a =

b =

c =

d =

e =

f =

g =

h =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Period 4 =

Period 5 =

Dear :

This letter responds to your April 6, 2005 request for rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of

Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

### Summary of Facts

Distributing is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the “Distributing Group”). Distributing has outstanding two series of voting common stock, Common A and Common B, and one class of preferred stock, Preferred C. Common A is publicly traded and listed on an exchange; Common B and Preferred C are neither publicly traded nor listed on an exchange. Shares of Common A stock and Common B stock are identical in all material respects, except voting power and the consequences of certain transfers.

Based on public securities filings, Distributing believes that A and B were the only persons as of Date 1 who beneficially owned five percent or more of the outstanding Common A stock. Following the Merger (defined below) and immediately before the Distribution, it is expected that only C will beneficially own five percent or more of the Common S stock (described below). As of Date 2, the Common B stock was owned by D, E, and F. As of Date 2, the Preferred C stock was owned by E, G, and H.

Distributing wholly owns Sub 1, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, and Sub 17 (collectively, the “Directly Owned Business C Subs”); Sub 23, Sub 24, and Sub 25 (collectively, the “Inactive Subs”); Sub 18, Sub 22, Sub 26, and Finance Sub. Distributing also wholly owns Controlled, a corporation that was recently formed to serve as a holding company in the Proposed Transactions. In addition, Distributing owns all of the common stock of Sub 2 and Sub 9. Members of the Distributing Group (including Sub 27) own all of the only other class of Sub 2 stock, which consists of two series of voting preferred stock. LP, a partnership for federal income tax purposes all of whose partners are members of the Distributing Group, owns all of the only other class of Sub 9 stock, which is voting preferred stock possessing less than 20 percent of the total combined voting power of the Sub 9 stock. Sub 2 wholly owns Sub 19 and Sub 20, and Sub 20 wholly owns Sub 21. The Directly Owned Business C Subs, together with Sub 9, Sub 19 and Sub 21, are referred to as the “Business C Operating Subs”; Sub 2 and Sub 20 as the “Business C Holding Subs”; the Business C Operating Subs and the Business C Holding Subs, collectively, as the “Business C Subs”; and the Business C Operating Subs and Sub 22, collectively, as the “Active Subs.” Sub 15 and Sub 26 each owns 50 percent of the only class of stock of Sub 27. The Business C Subs, Sub 18, Sub 22, the Inactive Subs, Sub 26, Sub 27, and Finance Sub each is a member of the Distributing Group and affiliated with Distributing under § 1.355-3(b)(4)(iv).

Three of the Business C Operating Subs, Sub 7, Sub 14, and Sub 21 (the “Affiliate Employees Subs”) do not directly employ any individuals. The operational services for the Affiliate Employees Subs are performed by employees of affiliates.

Sub 3 provides managerial, professional, technical, information management, and other advisory or operational services to Distributing affiliated entities engaged primarily in Business C. Following the Distribution, it is expected that Sub 3 will continue to provide managerial, professional, technical, information management, and other advisory or operational services to Controlled affiliates. Sub 3’s services business is referred to as “Business C-1.” The expenses incurred by Sub 3 in connection with the services it performs for certain Active Subs and their affiliates (e.g., the salaries of Sub 3 employees) are allocated to those Active Subs and their affiliates.

At the beginning of the five-year period preceding the Distribution, Business D included both Activity A and Activity B. During that period, Activity A was shifted to Sub 22, and Business D experienced a decline in, and discontinued certain aspects of, Activity B. Business D continues to provide Activity B services to Sub 22, Sub 25, and non-affiliate customers of Sub 22.

Distributing indirectly engages in Business A, Business B, Business C, Business C-1 and Business E, and directly engages in Business D. A significant portion of Business A is conducted through partnerships that are wholly owned by members of the Distributing Group (the “Controlled Partnerships”). Financial information has been submitted indicating that Business D (directly conducted by Distributing), Business C (directly conducted by each Business C Operating Sub other than Sub 3), Business C-1 (directly conducted by Sub 3), and Business E (directly conducted by Sub 22) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

In addition to certain indebtedness owed to unrelated third parties and other Distributing affiliates, Distributing has outstanding indebtedness to Finance Sub. Finance Sub serves as a borrowing center for the Distributing Group.

Corporation X is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the “Corporation X Group”). Corporation X has outstanding two classes of common stock, Common M (voting stock) and Common N (nonvoting stock), and one class of convertible preferred stock, Preferred P. Common M is publicly traded and listed on an exchange; Common N and Preferred P are neither publicly traded nor listed on an exchange. Before the Merger, and pursuant to an exchange offer by Corporation X, all holders of Preferred O stock exchanged their Preferred O stock for newly issued Preferred P stock. All of the holders of Preferred P stock have converted their shares into Common M stock. Corporation X has paid a special dividend on the Preferred P stock to holders that have converted their shares into Common M stock before the Merger.

On Date 3, Distributing and Corporation X, which also indirectly engages in Business A, executed an agreement (the “Merger Agreement”) under which Corporation X will merge into Merger Sub, a wholly owned subsidiary of Distributing formed on Date 4, in a transaction intended to qualify under §§ 368(a)(1)(A) and (a)(2)(D) (the “Merger”). The Merger is expected to be consummated in Period 4.

In connection with the Merger, Distributing will amend its charter to re-designate its Common A stock, Common B stock, and Preferred C stock into Common S stock, Common T stock, and Preferred V stock, respectively (the “Redesignation”). In addition, the charter amendment will authorize the issuance of Common U stock, which will be non-voting stock.

In the Merger, Corporation X common shareholders will receive, for each share of Corporation X common stock, an amount of Distributing common stock (as described further below) and cash. Holders of Corporation X Common M stock will receive Distributing Common S stock (in addition to an amount of cash), and holders of Corporation X Common N stock will receive Distributing Common U stock (in addition to an amount of cash). The exact mix of stock and cash consideration will be determined shortly following the Merger and as of its effective time.

In connection with the Merger, Corporation X stock options (and rights to future delivery of equity or stock options) and convertible debt instruments will convert into corresponding instruments of Distributing or its affiliates, and Corporation X non-convertible debt will become debt of Merger Sub (the “Conversions”). In this regard, certain Corporation X convertible notes will become obligations of Merger Sub and will be convertible into Distributing stock. Distributing will distribute cash to the Corporation X shareholders in lieu of issuing fractional shares in the Merger. Merger Sub may be required to make cash payments to Corporation X shareholders who dissent in the Merger.

Under Distributing’s governing documents, its Board of Directors has the power to expand the size of the board to up to a directors, elect new directors to fill vacancies created by an expansion, and replace directors who have resigned. Pursuant to the Merger Agreement, and in accordance with the procedures set forth in the governing documents, Distributing’s Board of Directors will cause the board to be expanded following the Merger to b directors and certain members of the existing Board of Directors (the “Pre-Merger Board”) will resign, in each case, as of the effective time of the Merger. Following the expansion, the Board of Directors will consist of one Distributing officer, one Corporation X officer, c members designated by Distributing, and d members designated by Corporation X (the “Post-Merger Board”). Designees to the Post-Merger Board who are not members of the Pre-Merger Board will be elected by the Pre-Merger Board. At the first regularly scheduled Distributing shareholders’ meeting following the Merger, which will occur no later than in the calendar year

following that in which the Merger occurs, all members of the Post-Merger Board will be up for election by the shareholders of Distributing.

The taxpayer has stated that it is not a condition to the completion of the Merger that the Proposed Transactions will occur, and, at the effective time of the Merger, the Proposed Transactions will remain subject to a number of contingencies, including regulatory approvals. It is anticipated that the Merger will be completed in Period 4 and the Distribution in Period 5. The taxpayer has represented that the separation of Business A and Business B (collectively, the "Retained Businesses") from Business C in the Proposed Transactions will occur for various corporate business reasons.

### **Pre-Distribution Restructurings**

Before the Contribution (defined below) and Distribution, the following transactions will occur (collectively, the "Pre-Distribution Restructurings"):

(i) Sub 18 employs individuals who provide services to both the Retained Businesses of Distributing and the businesses to be transferred to Controlled. A portion of Sub 18's assets and employees will be transferred to Controlled or corporations that will be members of the Controlled affiliated group after the Distribution (the "Controlled Group").

(ii) Sub 9 will redeem its voting preferred stock held by LP. Sub 9 will be the sole source of the cash used to fund the redemption.

(iii) Sub 26 will sell its 50 percent interest in Sub 27 to Controlled or another member of the Controlled Group for an amount intended to equal the fair market value of such stock.

### **Proposed Transactions**

To effect the separation of Business C from the Retained Businesses, the following series of related transactions have been proposed (collectively, the "Proposed Transactions"):

(i) Distributing will contribute to Controlled all of the stock of the Directly Owned Business C Subs, Sub 2, Sub 9, Sub 22, the Inactive Subs, and other subsidiaries that may be formed before the Proposed Transactions to serve various corporate and business purposes (collectively, the "Contributed Subsidiaries") and certain other assets (together with the Contributed Subsidiaries, the "Contributed Assets") in exchange for Controlled common stock, securities (the "Controlled Securities"), cash (the "Controlled Cash"), and, possibly, the Mirror Preferred Stock (defined below) and the assumption of certain liabilities (altogether, the "Contribution"). Immediately after the Contribution, Controlled and members of the Controlled Group will own all of the outstanding stock of

Sub 2. The Contributed Assets will not include any assets formerly held by Corporation X or any other member of the Corporation X Group. The Controlled Cash is anticipated and will be intended not to exceed Distributing's aggregate adjusted basis in the Contributed Assets (reduced by the sum of any liabilities assumed). The Controlled Securities will be structured to qualify as "securities" as that term is used in § 361(a).

(ii) Distributing will distribute all of the Controlled common stock pro rata to its common shareholders, including holders of Common S, Common T, and Common U stock (the "Common Stock Distribution").

(iii) The holders of the Distributing Preferred V stock may elect to participate in the Distribution, in which case they will surrender their Preferred V stock and receive voting preferred stock of both Distributing (the "Exchange Preferred Stock") and Controlled (the "Mirror Preferred Stock") (the "Preferred Stock Distribution," and collectively with the Common Stock Distribution, the "Distribution"), with the liquidation preferences and conversion prices established so as to take into account the effect of the Distribution. The conversion prices and liquidation preferences of the Mirror Preferred Stock and the Exchange Preferred Stock will not be known until e. In the event these holders do not elect to participate in the Distribution, the conversion price of their shares of Distributing Preferred V stock will be adjusted to take into account the value of the Controlled common stock distributed in the Common Stock Distribution.

(iv) No earlier than the day following the completion of the Common Stock Distribution, Distributing will transfer all of the Controlled Cash and the Controlled Securities to Finance Sub and, possibly, unrelated debt holders in repayment of indebtedness of Distributing (the "Debt Repayment"). The Distributing debt intended to be so satisfied will have been incurred in transactions in the ordinary course of business of Distributing and will not have been incurred in connection with the Proposed Transactions. The aggregate value of the consideration Distributing will use to repay the indebtedness will be intended to equal the fair market value of that indebtedness at the time it is repaid, which may result in indebtedness being satisfied at a premium or a discount.

(v) As quickly as practicable and in a commercially efficient manner, Finance Sub intends to either (i) sell the Controlled Securities to persons unrelated to any member of the Distributing Group or the Corporation X Group, or (ii) exchange the Controlled Securities for outstanding indebtedness of the Distributing Group or the Corporation X Group held by persons unrelated to any member of the Distributing Group or Corporation X Group (the "Controlled Security Dispositions"). Finance Sub will have completely disposed of the Controlled Securities within f.

The Controlled Board of Directors (the "Controlled Board") will be appointed after the Merger and prior to the Distribution by its sole shareholder, Distributing, by action taken by the Post-Merger Board. Distributing and Corporation X each may designate

half of the initial members of the Controlled Board by any method, including by delegating this authority to the Post-Merger Board. If either Distributing or Corporation X fails to make these designations before completion of the Merger, the nominating and governance committee of the Post-Merger Board, with input from the chairman and the chief executive officer and president of Distributing, will make recommendations to the Post-Merger Board. In any event, and under all circumstances, the Post-Merger Board will appoint the initial members of the Controlled Board, taking into account those designations and/or recommendations. It is expected that g of the members of the Post-Merger Board will be appointed to the initial Controlled Board and, prior to the time of the Distribution, will terminate their service on the Post-Merger Board. It is not expected that any member of the Controlled Board will also be a board member of Distributing after the Distribution. At the first regularly scheduled Controlled shareholders' meeting following the Distribution, which will occur no later than in the calendar year following that in which the Distribution occurs, all members of the Controlled Board will be up for election by the shareholders of Controlled.

Distributing will hold no stock, securities, or options of Controlled following the Distribution other than (a) the Controlled Securities held for disposition in the Controlled Security Dispositions described in step (v) above, and (b) possibly, Controlled stock issued with respect to shares of Distributing stock that are either (i) restricted stock or (ii) held in connection with a directors' share plan by a Rabbi Trust for the benefit of certain directors of Distributing ((i) and (ii) collectively, the "Compensation Related Controlled Stock"). Any Compensation Related Controlled Stock held by Distributing will represent less than h percent of the aggregate voting power and value of Controlled stock.

In connection with the Proposed Transactions, the Distributing Group and the Controlled Group will enter into agreements for (i) transitional services ("Transitional Services") for a period not expected to exceed two years following the effective time of the Distribution (the "Transition Period"), (ii) tax sharing and allocations, and (iii) certain other contractual relationships the terms of which will be negotiated at arm's length (collectively, the "Continuing Agreements"). The Transitional Services may be compensated on a cost basis during the Transition Period but will be compensated on an arm's-length basis if the service period is extended.

## **Representations**

The following representations have been made regarding the Contribution, the Distribution, and the Debt Repayment:

(a) Other than (i) the Controlled Securities, and (ii) trade payables between Distributing and its affiliates and Controlled and its affiliates created in the ordinary course of business, including those under the Continuing Agreements, Controlled will not be indebted to Distributing after the Distribution. Any indebtedness, other than the

Controlled Securities, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Compensation Related Controlled Stock.

(c) No part of the consideration to be transferred by Distributing in the Debt Repayment will be received by a security holder as an employee or in any capacity other than that of a security holder or non-security debt holder of Distributing.

(d) The financial information submitted on behalf of Business D (as directly conducted by Distributing), Business C (as directly conducted by each of the Business C Operating Subs other than Sub 3), Business C-1 (as directly conducted by Sub 3), and Business E (as directly conducted by Sub 22), including the five years of financial information for each of such businesses, represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the submission of the financial information.

(e) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub 20 will consist of the stock and securities of Sub 21, which is directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(f) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Sub 2 will consist of the stock and securities of Sub 19 and Sub 20, which are directly (Sub 19) or indirectly (Sub 20 through Sub 21) engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(g) Immediately after the Distribution, at least 90 percent of the fair market value of the gross assets of Controlled will consist of the stock and securities of controlled corporations (the Directly Owned Business C Subs, Sub 2, Sub 9, and Sub 22) that are directly or indirectly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(h) Following the Distribution, Distributing will directly continue the active conduct of Business D, and Controlled will indirectly continue the active conduct of Business C (through each of the Business C Operating Subs other than Sub 3), Business C-1 (through Sub 3), and Business E (through Sub 22), independently and with their separate employees (with respect to the Active Subs, including employees of other members of the Controlled Group).

(i) The Distribution is being carried out for the following corporate business purposes: (i) facilitating the growth and the efficiency of operations and, in turn,

maximizing the profitability of the Retained Businesses, and Business C, including by eliminating strategic conflicts between the Retained Businesses and Business C, and (ii) creating entities that have different financial characteristics that may appeal to different investor bases. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(j) 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 Proposed Transactions, except in the ordinary course of business.

(k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(m) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(n) The total adjusted basis and the fair market value of the Contributed Assets will equal or exceed the sum of (a) the total liabilities assumed (within the meaning of §357(d)) by Controlled (if any) and (b) the total amount of the Controlled Cash received by Distributing and transferred to its creditors in connection with the reorganization.

(o) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account Distributing may have in the Controlled stock (or a member may have in the stock of another member that is required to be taken into account by § 1.1502-19) will be included in income

immediately before the Distribution to the extent required by regulations (see § 1.1502-19).

(p) Except possibly for payments made for Transitional Services during the Transition Period, payments made in 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.

(q) No two parties to the Proposed Transactions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).

(s) The total fair market value of the Contributed Assets will exceed the sum of (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of the Controlled Cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(t) Shares of Controlled stock distributed with respect to shares of Distributing restricted stock and shares of Distributing Stock held by a Rabbi Trust for the benefit of certain directors of Distributing will not exceed, in the aggregate, 20 percent of the voting power of the Controlled stock outstanding immediately after the Distribution.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Contribution, the Distribution, and the Debt Repayment:

(1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under § 368(b). Any issuance of Mirror Preferred Stock by Controlled to Distributing and any distribution of the Mirror Preferred Stock by Distributing to holders of Distributing Preferred V stock will be part of the reorganization under § 368(a)(1)(D).

(2) To the extent the Controlled Cash does not exceed the aggregate adjusted basis of the Contributed Assets (reduced by any liabilities assumed by Controlled), Distributing will not recognize any gain or loss on the Contribution (§§ 361(a), 361(b)(1)(A), 361(b)(3), and 357(a)).

(3) Distributing's aggregate basis in the Controlled Stock and Controlled Securities received in exchange for the Contributed Assets will be equal to Distributing's basis in the Contributed Assets, reduced by the amount of any assumed liabilities and the Controlled Cash (§§ 358(a) and (d)).

(4) Controlled will not recognize any gain or loss on its receipt of the Contributed Assets in the Contribution (§ 1032(a)).

(5) Controlled's basis in each Contributed Asset will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(6) Controlled's holding period in each Contributed Asset will include the period during which Distributing held that asset (§ 1223(2)).

(7) Distributing will not recognize any gain or loss on the Distribution (§ 361(c)).

(8) Taking into account the intercompany transaction regulations and their impact on, among other things, the deconsolidation of Controlled and the subsequent planned dispositions of the Controlled Securities, Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Securities, other than any (i) amount of income, gain, loss, or deduction that offsets Controlled's corresponding amount of income, gain, loss, or deduction upon the deemed satisfaction of the Controlled Securities, (ii) deductions attributable to the fact that Distributing debt obligations may be redeemed at a premium, (iii) income attributable to the fact that Distributing debt obligations may be redeemed at a discount, (iv) interest expense accrued with respect to the Distributing debt obligations, and (v) any income or gain realized on the transfer of the Controlled Securities in the Debt Repayment attributable to appreciation in the Controlled Securities while held by Distributing following the Distribution.

(9) Finance Sub will obtain a cost basis, determined at the time of the Debt Repayment, in the Controlled Securities acquired in the Debt Repayment in exchange for Distributing indebtedness.

(10) The Distributing shareholders will recognize no gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled stock from Distributing in the Distribution (§ 355(a)(1)).

(11) Each Distributing shareholder's basis in a share of Distributing common stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing common stock with respect to which the Distribution is made and the share or shares of Controlled common stock (or allocable portions thereof) received with respect to the share of Distributing common stock in proportion to their fair market values. If one share of Controlled common stock is received in respect of more than one share of Distributing common stock, the basis of each share of Distributing common stock must be allocated to the shares of Controlled common stock received in a manner that reflects that, to the greatest extent possible, a share of Controlled common stock received is received in respect of shares of Distributing common stock acquired on the same date and at the same price. If a Distributing shareholder that purchased or acquired shares of Distributing common stock on different dates or at different prices is not able to identify which particular share of Controlled common stock (or portion thereof) is received with respect to a particular share of Distributing common stock, the shareholder may designate which share of Controlled common stock is received with respect to a particular share of Distributing common stock, provided the terms of the designation are consistent with the terms of the distribution.

(12) Each Distributing shareholder's holding period in the Controlled common stock received in the Distribution will include the holding period of the common stock of Distributing with respect to which the Distribution is made, provided that the shareholder held such Distributing common stock as a capital asset on the date of the Distribution (§ 1223(1)).

(13) In the event that holders of the Distributing Preferred V stock elect to participate in the Distribution, each Distributing shareholder's basis in a share of Distributing Preferred V stock (as adjusted under § 1.358-1) that is exchanged for the Exchange Preferred Stock and the Mirror Preferred Stock shall be allocated between the share or shares of Exchange Preferred Stock (or allocable portions thereof) and Mirror Preferred Stock (or allocable portions thereof) received in proportion to their fair market values. If one share of Exchange Preferred Stock and Mirror Preferred Stock is received in respect of more than one share of Distributing Preferred V stock, the basis of each share of Distributing Preferred V stock must be allocated to the shares of Exchange Preferred Stock and Mirror Preferred Stock received in a manner that reflects that, to the greatest extent possible, a share of Exchange Preferred Stock and Mirror Preferred Stock received is received in exchange for shares of Distributing Preferred V stock acquired on the same date and at the same price. If a Distributing shareholder that purchased or acquired shares of Distributing Preferred V stock on different dates or at different prices is not able to identify which particular share of Exchange Preferred Stock (or portion thereof) and Mirror Preferred Stock (or portion thereof) is received in exchange for a particular share of Distributing Preferred V stock, the shareholder may designate which share of Exchange Preferred Stock and Mirror Preferred Stock is received with respect to a particular share of Distributing Preferred V stock, provided the terms of the designation are consistent with the terms of the distribution.

(14) Each Distributing shareholder's holding period in the Exchange Preferred Stock and Mirror Preferred Stock received in the Distribution will include the holding period of the Distributing Preferred V stock that is exchanged therefor, provided that the shareholder held such Distributing Preferred V stock as a capital asset on the date of the Distribution (§ 1223(1)).

(15) Distributing and Controlled will allocate their earnings and profits, if any, in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

(16) The initial designation of the members of the Post-Merger Board is not taken into account in the § 355(e) analysis.

(17) The initial designation of the members of the Controlled Board is not taken into account in the § 355(e) analysis.

(18) The cash Distributing transfers to Corporation X shareholders in connection with the Merger (in the form of merger consideration, (including any cash issued in redemption of, or any special dividend on, the Corporation X Preferred P stock in or before the Merger that is treated as consideration subject to § 356(a)(1)), and as payment in satisfaction of state law dissenter's rights or payments in lieu of fractional shares) will not be recharacterized as stock for purposes of § 355(e).

(19) Corporation X will not be a predecessor of Distributing, and Distributing will not be a successor of Corporation X, under § 355(e)(4)(D).

(20) The option exercise rule of § 1.355-6(c)(3)(ii) does not apply in determining whether the Corporation X shareholders that acquire the Distributing Common U Stock or Corporation X debt holders that acquire Merger Sub debt instruments that are convertible into Distributing stock acquire a 50-percent or greater interest in Distributing or Controlled for purposes of § 355(e).

(21) The increased votes accruing to the holders of any Preferred V stock not participating in the Distribution as a result of an adjustment of the conversion price will not constitute an acquisition within the meaning of § 355(e).

(22) In applying § 355(e)(3)(A)(iv), the methodology of the example in the legislative history to § 355(e)(3)(A)(iv) is applicable to the Merger for purposes of testing the subsequent Distribution under § 355(e) and applies separately with respect to each of the vote test and the value test of that provision (see S. Rep. No 105-174, at 174-175 (1998); see also H.R. Conf. Rep. No 105-220, at 532-33 (1997)).

### **Other Rulings**

(23) In applying the 338 approach of Notice 2003-65, 2003-2 C.B. 747 (the “Notice”) to determine the Distributing Group’s items of recognized built-in gains, all of the Distributing Group’s actual items of income and gain during the five-year recognition period (excluding items of the Corporation X Group) will be compared with all of the items of income and gain that would have resulted if, on the date of the Merger, a § 338 election had been made with respect to a hypothetical purchase of all Distributing’s outstanding stock and separate § 338 elections had been made with respect to each member of the Distributing Group on the date of the Merger (excluding Merger Sub and each member of the Corporation X loss subgroup).

(24) In applying the 338 approach of the Notice to determine the Corporation X Group’s items of recognized built-in gains, all of the Corporation X Group’s actual items of income and gain during the five-year recognition period (excluding items of the Distributing Group) will be compared with all of the items of income and gain that would have resulted if, on the date of the Merger, a § 338 election had been made with respect to a hypothetical purchase of all Corporation X’s outstanding stock and separate § 338 elections had been made with respect to each member of the Corporation X Group on the date of the Merger (excluding Distributing and each member of the Distributing loss subgroup).

(25) In applying the 338 approach of the Notice, Section IV.E of the Notice will apply to the Controlled Partnerships.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(iv) The potential application of § 305 to holders of Preferred V stock (if any) who elect not to participate in the Distribution;

- (v) The federal tax treatment of the Merger;
- (vi) The federal tax treatment of the Pre-Distribution Restructurings;
- (vii) The potential application of § 482 to amounts paid by the Affiliate Employees Subs for operational services performed by employees of various affiliates, the allocation of Sub 3 expenses to certain Active Subs and their affiliates, or Transitional Services that are compensated on a cost basis during the Transition Period;
- (viii) The methodology utilized to identify the shareholders that own stock in both Distributing and Corporation X before the Merger for purposes of applying § 355(e)(3)(A)(iv);
- (ix) Whether the Controlled Securities will qualify as “securities” as that term is used in § 361(a);
- (x) The federal tax treatment of the Redesignation; and
- (xi) The federal tax treatment of the Conversions.

### **Procedural Statements**

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

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and certain authorized representatives.

Sincerely,  
Associate Chief Counsel (Corporate)

By: \_\_\_\_\_  
Marc A. Countryman  
Senior Technician Reviewer, Branch 4

cc: