

PLR 201032017 (IRS PLR), 2010 WL 3197564

Internal Revenue Service (I.R.S.)

IRS PLR  
Private Letter Ruling

Issue: August 13, 2010

February 5, 2010

[Section 355](#) -- Distribution of Stock and Securities of a Controlled Corporation

355.00-00 Distribution of Stock and Securities of a Controlled Corporation

355.01-00 Spin-Off

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361.00-00 Nonrecognition of Gain or Loss to Corporations (Recognized v. Not Recognized)

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368.00-00 Definitions Relating to Corporate Reorganizations

368.01-00 Statutory Merger or Consolidation (Type 'A')

**CC:CORP:05**

**[PLR-146296-09](#)**

LEGEND:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Distributing 4 =

Distributing 5 =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Controlled 5 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Merger Partner =

Trust =

Merger Agreement =

Business A =

Business B =

Business C =

State A =

State B =

State C =

State D =

State E =

State F =

State G =

State H =

State I =

State J =

State K =

State L =

State M =

State N =

State O =

State P =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

jj =

kk =

ll =

mm =

nn =

Date 1 =

Date 2 =

Dear \*\*\*:

This letter responds to your October 9, 2009 request for rulings as to the federal tax consequences of a series of proposed transactions (hereinafter, collectively, the “Proposed Transactions”). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether the First Internal Spin-Off, Second Internal Spin-Off, Third Internal Spin-Off, First Internal Split-Off, Second Internal Split-Off and the External Spin-Off (each defined herein): (i) satisfy the business purpose requirement of [Treas. Reg. § 1.355-2\(b\)](#), (ii) are being used principally as a device for the distribution of earnings and profits of either Distributing 5, Distributing 4, Distributing 3, Distributing 2, Distributing 1, Controlled 5, Controlled 4, Controlled 3, Controlled 2 or Controlled 1 (see [§ 355\(a\)\(1\)\(B\)](#)) of the Internal Revenue Code and [Treas. Reg. § 1.355-2\(d\)](#), or (iii) are 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% or greater interest in Distributing 5, Distributing 4, Distributing 3, Distributing 2, Distributing 1, Controlled 5, Controlled 4, Controlled 3, Controlled 2, or Controlled 1 (see [§ 355\(e\)](#) and [Treas. Reg. § 1.355-7](#)).

SUMMARY OF FACTS:

Distributing 5 is a publicly-traded holding company and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing 5 has a single class of voting common stock outstanding (“Distributing 5 Common Stock”). Trust, which was established by Distributing 5 for the primary purpose of providing special awards for heroic or other special meritorious service to the company or the community at large, holds approximately aa shares of Distributing 5 Common Stock constituting less than bb% of the outstanding Distributing 5 Common Stock (an amount representing less than 1% of the outstanding Distributing 5 Common Stock). The Trust has been treated for federal income tax purposes as a grantor trust pursuant to [§ 671](#) at all times since its formation by Distributing 5.

Distributing 5 directly owns all of the outstanding interests in Sub 8, a newly formed limited liability company that is treated as an entity disregarded as separate from its owner for U.S. federal income tax purposes under [Treas. Reg. § 301.7701-3](#). Distributing 5 also directly owns all of the outstanding stock of Controlled 5, Sub 1, Sub 2, Sub 3, as well as cc% of the outstanding stock of Distributing 4. The remainder of the outstanding stock of Distributing 4 is owned dd% by Sub 1 and ee% by Sub 4, a wholly-owned subsidiary of Sub 2.

Distributing 4 has a single class of common stock outstanding (the “Distributing 4 Common Stock”). Distributing 4 directly owns all of the outstanding stock of Distributing 3, Distributing 2, Distributing 1, Controlled 4, Sub 5 and Sub 6. Controlled 5 directly owns all of the outstanding stock of Sub 7. Distributing 1 owns all of the outstanding stock of Controlled 1. Distributing 2 owns all of the outstanding stock of Controlled 2. Distributing 3 owns all of the outstanding stock of Controlled 3.

In connection with the Proposed Transactions, Distributing 5 formed Controlled 5, which has a single class of voting common stock (the “Controlled 5 Common Stock”). In addition, Controlled 4, Controlled 3, Controlled 2, Controlled 1, Sub 7, and Sub 8 were formed in order to facilitate the Proposed Transactions. Controlled 4 has a single class of voting common stock (the “Controlled 4 Common Stock”). Controlled 3 has a single class of voting common stock (the “Controlled 3 Common Stock”). Controlled 2 has a single class of voting common stock (the “Controlled 2 Common Stock”). Controlled 1 has a single class of voting common stock (the “Controlled 1 Common Stock”).

Distributing 1 presently engages in Business A in State A, State B, State C, State D, State E and State F. Following the Proposed Transactions, Distributing 1 will continue to be engaged in Business A in State A, State B, State C, State D and State F (the “Distributing 1 Business”). Distributing 1 has a single class of common stock outstanding (the “Distributing 1 Common Stock”). Distributing 1 has outstanding indebtedness including notes.

Distributing 2 presently engages in Business A in State G, State H and State I. Following the Proposed Transactions, Distributing 2 will continue to be engaged in Business A in State H (the “Distributing 2 Business”). Distributing 2 has a single class of common stock outstanding (the “Distributing 2 Common Stock”). Distributing 2 has outstanding indebtedness including notes.

Distributing 3 presently engages in Business A in State A, State J, State K and State L. Following the Proposed Transactions, Distributing 3 will continue to be engaged in Business A in State L (the “Distributing 3 Business”). Distributing 3 has a single class of common stock outstanding (the “Distributing 3 Common Stock”). Distributing 3 has outstanding indebtedness consisting of intercompany debt owed to other members of Distributing 5's affiliated group and/or one or more disregarded entities wholly owned, directly or indirectly by Distributing 5.

Distributing 5 and members of its separate affiliated group (“SAG”), as defined in [section 355\(b\)\(3\)\(B\)](#) (the “Distributing 5 SAG”) presently engage in Business A and Business B. Distributing 5 has outstanding, with unrelated creditors, indebtedness including notes, short-term commercial paper and bonds (the “Distributing 5 Debt”).

Distributing 4 and members of its separate affiliated group, as defined in [section 355\(b\)\(3\)\(B\)](#), including Distributing 2 and Distributing 3 (the “Distributing 4 SAG”), are and following the Proposed Transactions will continue to be,

engaged in Business A in State H and State L (the “Distributing 4 Business”). Distributing 4 has outstanding indebtedness including notes.

Financial information has been submitted which indicates that Business A, as conducted by each of Distributing 1, Distributing 2, Distributing 3, Distributing 4 (including its respective SAG) and Distributing 5 (including its respective SAG), has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 5's management believes that the separation of the Controlled 5 SAG (as defined below) from Distributing 5's other business segments will serve a number of corporate business purposes. Merger Partner is interested in acquiring the Controlled 5 SAG and certain other assets related thereto. Merger Partner has a single class of common stock (the “Merger Partner Common Stock”). On Date 1, Distributing 5, Controlled 5 and Merger Partner entered into the Merger Agreement, agreeing to undertake certain transactions described in further detail below.

#### Proposed Transactions

The following series of transactions has been proposed:

(i) Distributing 1 will contribute its Business A assets and liabilities used in State E (the “Controlled 1 Business”) as well as certain software, leasehold interests and other assets not relating to Distributing 1's State E operations to Controlled 1 (the “First Contribution”).

(ii) Distributing 1 will distribute all of the Controlled 1 Common Stock to Distributing 4.

The transactions described in steps (i) and (ii) above are referred to herein as the “First Internal Spin-Off.”

(iii) Distributing 2 will contribute its Business A assets and liabilities used in State G, State I and a portion of State H (the “Controlled 2 Business”) to Controlled 2 (the “Second Contribution”).

(iv) Distributing 2 will distribute all of the Controlled 2 Common Stock to Distributing 4.

The transactions described in steps (iii) and (iv) above are referred to herein as the “Second Internal Spin-Off.”

(v) Distributing 3 will contribute its Business A assets and liabilities used in State A, State J and State K (the “Controlled 3 Business”) to Controlled 3 (the “Third Contribution”).

(vi) Distributing 3 will distribute all of the Controlled 3 Common Stock to Distributing 4.

The transactions described in steps (v) and (vi) above are referred to herein as the “Third Internal Spin-Off.”

(vii) Distributing 4 will contribute the Distributing 1 Common Stock, Controlled 2 Common Stock, Controlled 3 Common Stock, and all the common stock of Sub 5 and Sub 6 to Controlled 4 (the “Fourth Contribution”). As a result of this contribution, Controlled 4 and members of its separate affiliated group, as defined in [section 355\(b\)\(3\)\(B\)](#) (the “Controlled 4 SAG”) will be engaged in Business A in State A, State B, State C, State D, State F, State G, State H, State I, State J, State K, State M, State N and State O (the “Controlled 4 Business”).

(viii) Distributing 4 will distribute all of the Controlled 4 Common Stock to Distributing 5 in exchange for a portion of Distributing 4 Common Stock held by Distributing 5 of approximately equivalent value to all of the Controlled 4 Common Stock.

The transactions described in steps (vii) and (viii) above are referred to herein as the “First Internal Split-Off.”

(ix) Distributing 4 will distribute all of the Controlled 1 Common Stock to Distributing 5 in exchange for a portion of the Distributing 4 Common Stock held by Distributing 5 of approximately equivalent value to all of the Controlled 1 Common Stock (the “Second Internal Split-Off”).

(x) Immediately following the Second Internal Split-Off, Controlled 1 will merge with and into Sub 8, with Sub 8 surviving the merger (the “Controlled 1 Merger”). Distributing 5 represents that it will treat the Controlled 1 Merger as a reorganization within [section 368\(a\)\(1\)\(A\)](#). Following the Controlled 1 Merger, Sub 8 will contribute interests in certain software and related assets received by Controlled 1 in the First Contribution that are not used in the Controlled 1 Business and that will be used by other members of Distributing 5's affiliated group to such members of Distributing 5's affiliated group.

(xi) Distributing 5 will contribute to Controlled 5 all of the common stock of (i) Controlled 4 and (ii) Sub 3, and Distributing 5 will also cause to be contributed to Sub 7 certain additional assets relating to the Controlled 5 SAG (as defined below) and certain related liabilities (collectively, the “Fifth Contribution”). In exchange for the Fifth Contribution, Distributing 5 will receive (i) additional shares of Controlled 5 Common Stock, (ii) the Special Payment (as described in step (xii) below) and (iii) if applicable, the Controlled 5 Securities (as described in step (xiii) below). As a result of the Fifth Contribution, Controlled 5 and members of its separate affiliated group, as defined in [section 355\(b\)\(3\)\(B\)](#) (the “Controlled 5 SAG”), will be engaged in Business A in State A, State B, State C, State D, State F, State G, State H, State I, State J, State K, State M, State N, State O and State P (the “Controlled 5 Business”).

(xii) Controlled 5 will borrow from unrelated financial institutions or through capital markets transactions (the “Special Payment Financing”) and will distribute the proceeds to Distributing 5 (the “Special Payment”). The amount of the Special Payment will not exceed the lesser of (i)  $\$ff$  minus the amount of certain debt of Controlled 5's subsidiaries (the “Distribution Date Spinco Indebtedness”) or (ii) the amount of Distributing 5's tax basis in the assets contributed to Controlled 5 or Sub 7 (reduced by any liabilities assumed, within the meaning of [§ 357\(d\)](#)) in the Fifth Contribution. Distributing 5 intends to use the cash proceeds of the Special Payment to (i) pay dividends to its shareholders, (ii) repurchase outstanding Distributing 5 Common Stock or (iii) repay debt owed by Distributing 5 (including any disregarded entity of Distributing 5) to unrelated third parties (the “External Debt”), in each case within  $gg$  days following the Proposed Transactions and pursuant to the plan of reorganization. The Special Payment proceeds will be held in one or more segregated accounts until they are used as described above. All or a portion of the Special Payment Financing may be consummated prior to the closing of the Proposed Transactions, with the funds held in escrow pending the closing.

(xiii) In the event that the amount of the Special Payment is less than  $\$ff$  minus the Distribution Date Spinco Indebtedness, Controlled 5 will issue debt securities to Distributing 5 with a face amount approximately equal to such shortfall and a term of years not less than  $hh$  (the “Controlled 5 Securities”). Distributing 5 will subsequently dispose of the Controlled 5 Securities as quickly as practicable, and no later than  $gg$  days following the Proposed Transactions. Distributing 5 intends to distribute the Controlled 5 Securities in pursuance of the plan of reorganization to Distributing 5's third party creditors (the “Debt Exchange”). To effectuate the Debt Exchange, Distributing 5 will transfer all of the Controlled 5 Securities received by it to an investment bank or a commercial bank or a group of investment banks or commercial banks (the “Investment Banks”) in exchange for Distributing 5 Debt, which is expected to consist of commercial paper or other debt acquired by the Investment Banks as principals for their own account (either in a direct issuance by Distributing 5 to the Investment Banks for cash or by purchases in the secondary market) at least  $jj$  days prior to the date of the Debt Exchange. Distributing 5 expects to consummate the Debt Exchange in accordance with an exchange agreement entered into by Distributing 5 and the Investment Banks no sooner than  $jj$  days after the Investment Banks acquire the Distributing 5 Debt, pursuant to which the parties will agree to exchange an amount of Distributing 5 Debt for Controlled 5 Securities. Following the Debt Exchange, Distributing 5 anticipates that the Investment Banks will sell the Controlled 5 Securities they receive in the Debt Exchange to unrelated third parties. In the event that Distributing 5 is unable to consummate the Debt Exchange, Distributing 5 will dispose of the Controlled 5 Securities in another manner no later than  $gg$  days following the closing of the Proposed Transactions

(xiv) Distributing 5 will distribute all of the Controlled 5 Common Stock pro rata to the holders of the Distributing 5 Common Stock (the “External Spin-Off”). Distributing 5 will effect the External Spin-Off by delivering to an exchange agent on behalf of the Distributing 5 shareholders all of the outstanding shares of Controlled 5 Common Stock, which the agent will hold on behalf of the Distributing 5 shareholders for conversion into shares of Merger Partner Common Stock pursuant to the Merger described in step (xv) below. As a shareholder of Distributing 5, Trust will receive shares of Controlled 5 Common Stock in the External Spin-Off.

(xv) Immediately following the External Spin-Off, Controlled 5 will merge with and into Merger Partner in a transaction qualifying as a statutory merger under applicable state law, with Merger Partner surviving the statutory merger (the “Merger”). Except for cash received in lieu of fractional shares, if any, the shareholders of Controlled 5 will receive solely Merger Partner Common Stock in exchange for their Controlled 5 Common Stock. Any fractional shares of Merger Partner Common Stock will be aggregated by the exchange agent and sold in the open market at then prevailing prices. The proceeds from such sales will then be delivered to the Controlled 5 shareholders who would otherwise have received the fractional shares. After the Merger, the former Controlled 5 shareholders will own between approximately kk% and ll% of the outstanding Merger Partner Common Stock, and will own more than 50% of the total combined voting power of all classes of stock of Merger Partner entitled to vote and more than 50% of the total value of shares of all classes of stock of Merger Partner. Pursuant to the Merger, Trust will receive shares of Merger Partner Common Stock in exchange for its shares of Controlled 5 Common Stock (such stock, the “Retained Trust Common Stock” and the receipt of such stock by the Trust, the “Retention”).

(xvi) As a result of the Merger, Merger Partner will become the obligor with respect to all outstanding debt of Controlled 5, including the Special Payment Financing and the Controlled 5 Securities, if any.

In connection with the Proposed Transactions, Distributing 5, Controlled 5, and Merger Partner have entered, and will enter, into several agreements relating to the separation of the Controlled 5 SAG from Distributing 5 and its affiliated group and certain continuing transactions between the companies, including certain transitional agreements and a tax sharing agreement (collectively with the Merger Agreement, the “Agreements”).

In addition, except for certain provisions included in the Merger Agreement allocating transfer expenses and other transaction costs, Distributing 5 and Merger Partner will pay their respective expenses incurred in connection with the Merger, and if either Distributing 5 or Merger Partner pays an amount that is the responsibility of the other party, the paying party will be promptly reimbursed for such amount.

#### REPRESENTATIONS:

##### The First Internal Spin-Off

Distributing 5 makes the following representations with respect to the First Internal Spin-Off:

- (a) Indebtedness owed by Controlled 1 to Distributing 1, if any, after the First Internal Spin-Off will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 will be received by Distributing 4 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) The five years of financial information submitted on behalf of Distributing 1 is representative of the present operations of the Distributing 1 Business, and with regard to Distributing 1, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of the business contributed to Controlled 1 is representative of the present operations of the Controlled 1 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the First Internal Spin-Off, Distributing 1 and Controlled 1 will each continue the active conduct of their respective businesses, independently and with their separate employees.

(f) The First Internal Spin-Off is being carried out for the corporate business purpose of making possible the External Spin-Off and is motivated, in whole or substantial part, by this corporate business purpose.

(g) The First Internal Spin-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(h) For purposes of § 355(d), immediately after the First Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 1 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 First Internal Spin-Off.

(i) For purposes of § 355(d), immediately after the First Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 stock, that was either (1) 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 First Internal Spin-Off, or (2) attributable to distributions on Distributing 1 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 First Internal Spin-Off.

(j) The total adjusted bases and the fair market value of the assets transferred to Controlled 1 by Distributing 1 in the First Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) transferred by Controlled 1 to Distributing 1 that is to be distributed to the shareholders of Distributing 1 or transferred to creditors of Distributing 1 pursuant to the plan of reorganization.

(k) The fair market value of the assets transferred to Controlled 1 by Distributing 1 in the First Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the exchange and (iii) the amount of the cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 1 from Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

(l) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in the First Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(m) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(n) Distributing 1 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the First Internal Spin-Off.



(o) No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, the First Internal Spin-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business

(p) No indebtedness between Distributing 1 and Controlled 1 has been or will be cancelled in connection with the First Internal Spin-Off other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing 1 and its subsidiaries prior to the First Internal Spin-Off.

(q) Immediately before the First Internal Spin-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 1's excess loss account, if any, with respect to its Controlled 1 Common Stock will be included in income immediately before the First Internal Spin-Off to the extent required by applicable regulations. (See § 1.1502-19.)

(r) Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except (i) in the case of certain transitional services which will be charged at cost or at cost-plus, (ii) for the sublease of certain real property which payments are expected to be on terms similar to those contained in the primary lease agreement for such real property, and (iii) in connection with the tax sharing agreement which will be charged as described in such agreement.

(s) No two parties to the First Internal Spin-Off are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(t) The First Internal Spin-Off 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(u) Immediately after the First Internal Spin-Off, neither Distributing 1 nor Controlled 1 will be a "disqualified investment corporation" as defined in § 355(g)(2)(A).

#### The Second Internal Spin-Off

Distributing 5 makes the following representations with respect to the Second Internal Spin-Off:

(v) Indebtedness owed by Controlled 2 to Distributing 2, if any, after the Second Internal Spin-Off will not constitute stock or securities.

(w) No part of the consideration to be distributed by Distributing 2 will be received by Distributing 4 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(x) The five years of financial information submitted on behalf of Distributing 2 is representative of the present operations of the Distributing 2 Business, and with regard to Distributing 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(y) The five years of financial information submitted on behalf of the business contributed to Controlled 2 is representative of the present operations of the Controlled 2 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(z) Following the Second Internal Spin-Off, Distributing 2 and Controlled 2 will each continue the active conduct of their respective businesses, independently and with their separate employees.

(aa) The Second Internal Spin-Off is being carried out for the corporate business purpose of making possible the External Spin-Off and is motivated, in whole or substantial part, by this corporate business purpose.

(bb) The Second Internal Spin-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.

(cc) For purposes of § 355(d), immediately after the Second Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 2 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 Second Internal Spin-Off.

(dd) For purposes of § 355(d), immediately after the Second Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 2 stock, that was either (1) 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 Second Internal Spin-Off, or (2) attributable to distributions on Distributing 2 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 Second Internal Spin-Off.

(ee) The total adjusted bases and the fair market value of the assets transferred to Controlled 2 by Distributing 2 in the Second Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) transferred by Controlled 2 to Distributing 2 that is to be distributed to the shareholders of Distributing 2 or transferred to creditors of Distributing 2 pursuant to the plan of reorganization.

(ff) The fair market value of the assets transferred to Controlled 2 by Distributing 2 in the Second Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the exchange and (iii) the amount of the cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 2 from Controlled 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(gg) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the Second Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(hh) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(ii) Distributing 2 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the Second Internal Spin-Off.

(jj) No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, the Second Internal Spin-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business

(kk) No indebtedness between Distributing 2 and Controlled 2 has been or will be cancelled in connection with the Second Internal Spin-Off other than the settlement of open intercompany account balances and other intercompany

loans attributable to normal business operations of Distributing 2 and its subsidiaries prior to the Second Internal Spin-Off.

(ll) Immediately before the Second Internal Spin-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 2's excess loss account, if any, with respect to its Controlled 2 Common Stock will be included in income immediately before the Second Internal Spin-Off to the extent required by applicable regulations. (See § 1.1502-19.)

(mm) Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except (i) in the case of certain transitional services which will be charged at cost or at cost-plus, (ii) for the sublease of certain real property which payments are expected to be on terms similar to those contained in the primary lease agreement for such real property, and (iii) in connection with the tax sharing agreement which will be charged as described in such agreement.

(nn) No two parties to the Second Internal Spin-Off are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(oo) The Second Internal Spin-Off 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(pp) Immediately after the Second Internal Spin-Off, neither Distributing 2 nor Controlled 2 will be a "disqualified investment corporation" as defined in § 355(g)(2)(A).

#### The Third Internal Spin-Off

Distributing 5 makes the following representations with respect to the Third Internal Spin-Off:

(qq) Indebtedness owed by Controlled 3 to Distributing 3, if any, after the Third Internal Spin-Off will not constitute stock or securities.

(rr) No part of the consideration to be distributed by Distributing 3 will be received by Distributing 4 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(ss) The five years of financial information submitted on behalf of Distributing 3 is representative of the present operations of the Distributing 3 Business, and with regard to Distributing 3, there have been no substantial operational changes since the date of the last financial statements submitted.

(tt) The five years of financial information submitted on behalf of the business contributed to Controlled 3 is representative of the present operations of the Controlled 3 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(uu) Following the Third Internal Spin-Off, Distributing 3 and Controlled 3 will each continue the active conduct of their respective businesses, independently and with their separate employees.

(vv) The Third Internal Spin-Off is being carried out for the corporate business purpose of making possible the External Spin-Off and is motivated, in whole or substantial part, by this corporate business purpose.

(ww) The Third Internal Spin-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 3 or both.

(xx) For purposes of § 355(d), immediately after the Third Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 3 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 Third Internal Spin-Off.

(yy) For purposes of § 355(d), immediately after the Third Internal Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 3 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 3 stock, that was either (1) 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 Third Internal Spin-Off, or (2) attributable to distributions on Distributing 3 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 Third Internal Spin-Off.

(zz) The total adjusted bases and the fair market value of the assets transferred to Controlled 3 by Distributing 3 in the Third Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) transferred by Controlled 3 to Distributing 3 that is to be distributed to the shareholders of Distributing 3 or transferred to creditors of Distributing 3 pursuant to the plan of reorganization.

(aaa) The fair market value of the assets transferred to Controlled 3 by Distributing 3 in the Third Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 3 by Distributing 3 that are discharged or extinguished in connection with the exchange and (iii) the amount of the cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 3 from Controlled 3 in connection with the exchange. The fair market value of the assets of Controlled 3 will exceed the amount of its liabilities immediately after the exchange.

(bbb) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in the Third Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(ccc) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(ddd) Distributing 3 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the Third Internal Spin-Off.

(eee) No intercorporate debt will exist between Distributing 3 and Controlled 3 at the time of, or subsequent to, the Third Internal Spin-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business.

(fff) No indebtedness between Distributing 3 and Controlled 3 has been or will be cancelled in connection with the Third Internal Spin-Off other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing 3 and its subsidiaries prior to the Third Internal Spin-Off.

(ggg) Immediately before the Third Internal Spin-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 3's excess loss account, if any, with respect to its Controlled 3 Common Stock will be included in income immediately before the Third Internal Spin-Off to the extent required by applicable regulations. (See § 1.1502-19.)

(hhh) Payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled 3 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except (i) in the case of certain transitional services which will be charged at cost or at cost-plus, (ii) for the sublease of certain real property which payments are expected to be on terms similar to those contained in the primary lease agreement for such real property, and (iii) in connection with the tax sharing agreement which will be charged as described in such agreement.

(iii) No two parties to the Third Internal Spin-Off are investment companies as defined in [§ 368\(a\)\(2\)\(F\)\(iii\)](#) and (iv).

(jjj) The Third Internal Spin-Off 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% or greater interest (within the meaning of [§ 355\(d\)\(4\)](#)) in Distributing 3 or Controlled 3 (including any predecessor or successor of any such corporation).

(kkk) Immediately after the Third Internal Spin-Off, neither Distributing 3 nor Controlled 3 will be a “disqualified investment corporation” as defined in [§ 355\(g\)\(2\)\(A\)](#).

#### The First Internal Split-Off

Distributing 5 makes the following representations with respect to the First Internal Split-Off:

(lll) Indebtedness, if any, owed by Controlled 4 to Distributing 4 after the First Internal Split-Off will not constitute stock or securities.

(mmm) The fair market value of Controlled 4 Common Stock and other consideration to be received by Distributing 5 will be approximately equal to the fair market value of Distributing 4 Common Stock surrendered by Distributing 5 in the exchange.

(nnn) No part of the consideration to be distributed by Distributing 4 will be received by Distributing 5 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

(ooo) Distributing 4 and Controlled 4 will each treat all members of its respective SAG (as defined in [§ 355\(b\)\(3\)\(B\)](#)) as one corporation in determining whether it meets the requirements of [§ 355\(b\)\(2\)\(A\)](#) regarding the active conduct of a trade or business.

(ppp) The five years of financial information submitted on behalf of the Distributing 4 SAG is representative of the present operations of the Distributing 4 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(qqq) The five years of financial information submitted on behalf of the Controlled 4 SAG is representative of the present operations of the Controlled 4 Business, and with regard to the Controlled 4 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

(rrr) Following the First Internal Split-Off, the Distributing 4 SAG and Controlled 4 SAG will each continue the active conduct of their respective businesses, independently and with their separate employees.

(sss) The First Internal Split-Off is being carried out for the corporate business purpose of making possible the External Spin-Off and is motivated, in whole or substantial part, by this corporate business purpose.

(ttt) The First Internal Split-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 4 or Controlled 4 or both.

(uuu) For purposes of § 355(d), immediately after the First Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 4 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 First Internal Split-Off.

(vvv) For purposes of § 355(d), immediately after the First Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 4 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 4 stock, that was either (1) 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 First Internal Split-Off, or (2) attributable to distributions on Distributing 4 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 First Internal Split-Off.

(www) The total adjusted bases and the fair market value of the assets transferred to Controlled 4 by Distributing 4 in the Fourth Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 4 in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) transferred by Controlled 4 to Distributing 1 that is to be distributed to the shareholders of Distributing 4 or transferred to creditors of Distributing 4 pursuant to the plan of reorganization.

(xxx) The fair market value of the assets transferred to Controlled 4 by Distributing 4 in the Fourth Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 4 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 4 by Distributing 4 that are discharged or extinguished in connection with the exchange and (iii) the amount of the cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 4 from Controlled 4 in connection with the exchange. The fair market value of the assets of Controlled 4 will exceed the amount of its liabilities immediately after the exchange.

(yyy) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 4 in the Fourth Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(zzz) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(aaaa) Distributing 4 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the First Internal Split-Off.

(bbbb) No indebtedness between Distributing 4 (and its subsidiaries) and Controlled 4 (and its subsidiaries) has been or will be cancelled in connection with the First Internal Split-Off other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing 4 and its subsidiaries prior to the First Internal Split-Off.

(cccc) No intercorporate debt will exist between Distributing 4 and Controlled 4 at the time of, or subsequent to, the First Internal Split-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business.

(dddd) Immediately before the First Internal Split-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect).

(eeee) Immediately before the First Internal Split-Off, Distributing 4 will not have an excess loss account (within the meaning of § 1.1502-19(a)(2)) in Controlled 4's stock.

(ffff) Payments made in connection with all continuing transactions, if any, between Distributing 4 and Controlled 4 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except (i) in the case of certain transitional services which will be charged at cost or at cost-plus, (ii) for the sublease of certain real property which payments are expected to be on terms similar to those contained in the primary lease agreement for such real property, and (iii) in connection with the tax sharing agreement which will be charged as described in such agreement.

(gggg) No two parties to the First Internal Split-Off are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(hhhh) The First Internal Split-Off 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 4 or Controlled 4 (including any predecessor or successor of any such corporation).

(iiii) Immediately after the First Internal Split-Off, neither Distributing 4 nor Controlled 4 will be a "disqualified investment corporation" as defined in § 355(g)(2)(A).

#### The Second Internal Split-Off

Distributing 5 makes the following representations with respect to the Second Internal Split-Off:

(jjjj) Indebtedness, if any, owed by Controlled 1 to Distributing 4 after the Second Internal Split-Off will not constitute stock or securities.

(kkkk) The fair market value of Controlled 1 Common Stock and other consideration to be received by Distributing 5 will be approximately equal to the fair market value of Distributing 4 Common Stock surrendered by Distributing 5 in the exchange.

(llll) No part of the consideration to be distributed by Distributing 4 will be received by Distributing 5 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 4.

(mmmm) Distributing 4 will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.

(nnnn) The five years of financial information submitted on behalf of the Distributing 4 SAG is representative of the present operations of the Distributing 4 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(oooo) The five years of financial information submitted on behalf of the business contributed to Controlled 1 is representative of the present operations of the Controlled 1 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(pppp) Following the Second Internal Split-Off, the Distributing 4 SAG and Controlled 1 (or its successor) will each continue the active conduct of their respective businesses, independently and with their separate employees.

(qqqq) The Second Internal Split-Off is being carried out for the corporate business purpose of facilitating the realignment of certain software and related assets in a manner consistent with future use by members of Distributing 5's affiliated group and is motivated, in whole or substantial part, by this corporate business purpose.

(rrrr) The Second Internal Split-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 4 or Controlled 1 or both.

(ssss) For purposes of § 355(d), immediately after the Second Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 4 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 4 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 Second Internal Split-Off.

(tttt) For purposes of § 355(d), immediately after the Second Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 1 stock, that was either (1) 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 Second Internal Split-Off, or (2) attributable to distributions on Distributing 4 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 Second Internal Split-Off.

(uuuu) Distributing 4 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the Second Internal Split-Off.

(vvvv) No indebtedness between Distributing 4 (and its subsidiaries) and Controlled 1 has been or will be cancelled in connection with the Second Internal Split-Off other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing 4 and its subsidiaries prior to the Second Internal Split-Off.

(wwww) No intercorporate debt will exist between Distributing 4 and Controlled 1 at the time of, or subsequent to, the Second Internal Split-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business.

(xxxx) Immediately before the Second Internal Split-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect).

(yyyy) Immediately before the Second Internal Split-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 4's excess loss account, if any, with respect to its Controlled 1 Common Stock will be included in income immediately before the Second Internal Split-Off to the extent required by applicable regulations (see § 1.1502-19).

(zzzz) Payments made in connection with all continuing transactions, if any, between Distributing 4 (and its subsidiaries) and Controlled 1 will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.

(aaaaa) No two parties to the Second Internal Split-Off are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(bbbbb) The Second Internal Split-Off 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 4 or Controlled 1 (including any predecessor or successor of any such corporation).



(cccc) Immediately after the Second Internal Split-Off, neither Distributing 4 nor Controlled 1 will be a “disqualified investment corporation” as defined in § 355(g)(2)(A).

The Fifth Contribution, the External Spin-Off and the Debt Exchange

Distributing 5 makes the following representations with respect to the Fifth Contribution, the External Spin-Off and the Debt Exchange:

(dddd) Distributing 5 will cause Trust to dispose of the Retained Trust Common Stock received in the Merger as soon as practicable after the External Spin-Off, and in any event, not later than mm months after the External Spin-Off.

(eeee) The Retained Trust Common Stock will be voted in proportion to the votes cast by other shareholders of Merger Partner.

(ffff) Other than the Controlled 5 Securities, indebtedness, if any, owed by Controlled 5 to Distributing 5 after the External Spin-Off will not constitute stock or securities.

(gggg) Except for the receipt of Controlled 5 Common Stock by holders of restricted Distributing 5 Common Stock who have not made a valid election under § 83(b), no part of the consideration to be distributed by Distributing 5 with respect to the Distributing 5 Common Stock will be received by any shareholder of Distributing 5 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 5.

(hhhh) No part of the consideration to be distributed by Distributing 5 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 5.

(iiii) Distributing 5 and Controlled 5 will each treat all members of its respective SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.

(jjjj) The five years of financial information submitted on behalf of the Distributing 5 SAG is representative of the present operations of the Distributing 4 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(kkkk) The five years of financial information submitted on behalf of the business contributed to the Controlled 5 SAG is representative of the present operations of the Controlled 5 Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(llll) Following the External Spin-Off, Distributing 5 and Controlled 5, directly or through their respective SAGs, will each continue the active conduct of their respective businesses, independently and with their separate employees.

(mmmm) The External Spin-Off is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (1) to enhance each of Distributing 5's and Controlled 5's competitive positioning by allowing each to focus on its respective core business; (2) to optimize the capital structure of Controlled 5; (3) to facilitate the Merger; and (4) to enhance the effectiveness of Controlled 5's equity-linked compensation.

(nnnn) The External Spin-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 5 or Controlled 5 or both.

(oooo) For purposes of § 355(d), immediately after the External Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 5 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 5 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 External Spin-Off.

(ppppp) For purposes of § 355(d), immediately after the External Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 5 stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 5 stock, that was either (1) 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 External Spin-Off, or (2) attributable to distributions on Distributing 5 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 External Spin-Off.

(qqqqq) The total adjusted bases and the fair market value of the assets transferred to Controlled 5 by Distributing 5 in the Fifth Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 5 in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 5 and transferred to its creditors and/or shareholders in connection with the reorganization.

(rrrrr) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 5 in the Fifth Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(sssss) The fair market value of the assets transferred to Controlled 5 by Distributing 5 in the Fifth Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 5 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 5 by Distributing 5 that are discharged or extinguished in connection with the exchange and (iii) the amount of the cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 5 from Controlled 5 in connection with the exchange. The fair market value of the assets of Controlled 5 will exceed the amount of its liabilities immediately after the exchange.

(ttttt) Any Controlled 5 Securities issued to Distributing 5 in the Fifth Contribution will qualify as “securities” within the meaning of § 361(a).

(uuuuu) Within gg days following the Proposed Transactions, Distributing 5 will use the Special Payment proceeds distributed to it by Controlled 5 to repay External Debt and/or to repurchase shares of Distributing 5 Common Stock and/or to pay a dividend to Distributing 5's shareholders pursuant to the plan of reorganization, provided that (i) if such proceeds are used to repurchase shares of Distributing 5 Common Stock, such share repurchase will be authorized by a special action of Distributing 5's Board of Directors and will be in addition to any share repurchases of Distributing 5 Common Stock occurring in the ordinary course and (ii) if such proceeds are used to pay a dividend to Distributing 5's shareholders, such dividend will be a special dividend declared by Distributing 5's Board of Directors and will be in addition to any regularly occurring dividends distributed to Distributing 5's shareholders in the ordinary course. Such proceeds will be held in a segregated account until they are used as described above.

(vvvvv) Distributing 5 will use the Controlled 5 Securities distributed to it by Controlled 5, if any, to consummate the Debt Exchange; however, in the event that Distributing 5 is unable to consummate the Debt Exchange, Distributing 5 will use commercially reasonable efforts to use the Controlled 5 Securities to repurchase shares of Distributing 5 Common Stock and/or to pay a dividend to Distributing 5's shareholders pursuant to the plan of reorganization. Distributing 5 will in any event dispose of the Controlled 5 Securities no later than gg days following the Proposed Transactions.

(wwwww) The sum of the Distributing 5 Debt (i) exchanged for Controlled 5 Securities in the Debt Exchange, if any, and (ii) repaid with the proceeds of the Special Payment will not exceed the weighted quarterly average of the External Debt for the twelve-month period ending on the close of business on Date 2, the last business day before the date on which Distributing 5's Board of Directors initially discussed the potential disposition of the Controlled 5 Business.

(xxxxx) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(yyyyy) Distributing 5 neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the External Spin-Off.

(zzzzz) No indebtedness between Distributing 5 (and its subsidiaries, after giving effect to the Proposed Transactions) and Controlled 5 (and its subsidiaries, after giving effect to the Proposed Transactions) has been or will be cancelled in connection with the External Spin-Off other than the settlement of open intercompany account balances and other intercompany loans attributable to normal business operations of Distributing 5 and its subsidiaries prior to the External Spin-Off.

(aaaaa) No intercorporate debt will exist between Distributing 5 and Controlled 5 at the time of, or subsequent to, the External Spin-Off, except for any Controlled 5 Securities and payables arising under transitional agreements or otherwise in the ordinary course of business.

(bbbbb) Immediately before the External Spin-Off, 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, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect).

(ccccc) Immediately before the External Spin-Off, Distributing 5 will not have an excess loss account (within the meaning of § 1.1502-19(a)(2)) in Controlled 5's stock.

(dddd) Any excess loss account of Controlled 5 or any other member of the Distributing 5 affiliated group in the stock of another member of such group that is required to be taken into account by applicable regulations (see § 1.1502-19) will be included in income immediately before the External Spin-Off.

(eeee) Payments made in connection with all continuing transactions, if any, between Distributing 5 (and its subsidiaries) and Controlled 5 (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except (i) in the case of certain transitional services which will be charged at cost or at cost-plus, (ii) for the sublease of certain real property which payments are expected to be on terms similar to those contained in the primary lease agreement for such real property, and (iii) in connection with the tax sharing agreement which will be charged as described in such agreement.

(ffff) No two parties to the External Spin-Off are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(gggg) The External Spin-Off 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 5 or Controlled 5 (including any predecessor or successor of any such corporation).

(hhhhh) Immediately after the External Spin-Off, neither Distributing 5 nor Controlled 5 will be a "disqualified investment corporation" as defined in § 355(g)(2)(A).

### The Merger

Distributing 5 makes the following representations with respect to the Merger:

(iiii) Other than the Controlled 5 Securities and the Special Payment Financing, the liabilities of Controlled 5 assumed (within the meaning of § 357(d)) by Merger Partner will have been incurred in the ordinary course of business and will be associated with the assets being transferred.

(jjjjj) Controlled 5 will not be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(kkkkk) Controlled 5 will not be under the jurisdiction of a court in a title 11 or similar case under § 368(a)(3)(A).

Distributing 5 and Merger Partner make the following representations with respect to the Merger:

(lllll) The fair market value of the Merger Partner Common Stock and cash in lieu of fractional shares, if any, received by each Controlled 5 shareholder will be approximately equal to the fair market value of the Controlled 5 Common Stock surrendered in the exchange thereof.

(mmmmm) At least 50% of the proprietary interest in Controlled 5 will be exchanged for Merger Partner Common Stock and will be preserved within the meaning of § 1.368-1(e).

(nnnnn) Neither Merger Partner nor any person related to Merger Partner (within the meaning of § 1.368-1(e)(3)) has any plan or intention, directly or through any subsidiary corporation, to purchase any Merger Partner Common Stock after the Merger, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Revenue Procedure 96-30, 1996-1 C.B. 696 (see Rev. Rul. 99-58, 1999-2 C.B. 701).

(ooooo) Merger Partner has no plan or intention to sell or otherwise dispose of any of the assets of Controlled 5 acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

(ppppp) Following the Merger, Merger Partner (through its controlled subsidiaries) will continue the active conduct of the Controlled 5 Business.

(qqqqq) Except for certain customary provisions of the Merger Agreement allocating transfer expenses and certain other transaction costs, Merger Partner, Controlled 5 and the Controlled 5 shareholders will pay their respective expenses, if any, incurred in connection with the Merger.

(rrrrr) There is no intercorporate indebtedness existing between Controlled 5 and Merger Partner that was issued, acquired or will be settled at a discount.

(sssss) Merger Partner is not an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(ttttt) The fair market value of the Controlled 5 assets to be transferred to Merger Partner will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Merger Partner.

(uuuuu) The Merger will qualify as a statutory merger under applicable state law.

(vvvvv) The payment of cash in lieu of fractional shares, if any, of Merger Partner Common Stock will be solely for the purpose of avoiding the expense and inconvenience to Merger Partner of issuing fractional shares and will not represent separately bargained-for consideration. It is expected that the total cash consideration that will be paid by the distribution agent to the shareholders of record of Controlled 5 pursuant to the Merger Agreement instead of issuing fractional shares will not exceed nn% of the total consideration that will be issued in the transaction to the Controlled 5 shareholders in exchange for their shares of Controlled 5 Common Stock. It is intended that no Controlled 5 shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Merger Partner Common Stock.

#### RULINGS:

Based on the information submitted and the representations made, we rule as follows on the Proposed Transactions:

#### The First Internal Spin-Off

- (1) The First Contribution, together with the distribution of the Controlled 1 Common Stock in the First Internal Spin-Off, will qualify as a reorganization within the meaning of [§ 368\(a\)\(1\)\(D\)](#). Distributing 1 and Controlled 1 will each be “a party to the reorganization” within the meaning of [§ 368\(b\)](#).
- (2) Distributing 1 will not recognize any gain or loss on the First Contribution. ([§§ 357\(a\)](#) and [361\(a\), \(b\)](#)).
- (3) Controlled 1 will not recognize any gain or loss on the First Contribution. ([§ 1032\(a\)](#)).
- (4) Controlled 1's basis in each asset received in the First Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the transfer. ([§ 362\(b\)](#)).
- (5) Controlled 1's holding period in each asset received in the First Contribution will include the period during which Distributing 1 held that asset. ([§ 1223\(2\)](#)).
- (6) Distributing 1 will not recognize any gain or loss on the distribution of the Controlled 1 Common Stock in the First Internal Spin-Off. ([§ 361\(c\)\(1\)](#)).
- (7) Distributing 4 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 1 Common Stock in the First Internal Spin-Off. ([§ 355\(a\)](#)).
- (8) Distributing 4's holding period in the Controlled 1 Common Stock received will include Distributing 4's holding period for the Distributing 1 Common Stock, provided that the Distributing 1 Common Stock is held as a capital asset on the date of the First Internal Spin-Off. ([§ 1223\(1\)](#)).
- (9) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with [§ 312\(h\)](#), [§ 1.312-10\(a\)](#) and [§ 1.1502-33\(e\)\(3\)](#).

#### The Second Internal Spin-Off

- (10) The Second Contribution, together with the distribution of the Controlled 2 Common Stock in the Second Internal Spin-Off, will qualify as a reorganization within the meaning of [§ 368\(a\)\(1\)\(D\)](#). Distributing 2 and Controlled 2 will each be “a party to the reorganization” within the meaning of [§ 368\(b\)](#).
- (11) Distributing 2 will not recognize any gain or loss on the Second Contribution. ([§§ 357\(a\)](#) and [361\(a\), \(b\)](#)).
- (12) Controlled 2 will not recognize any gain or loss on the Second Contribution. ([§ 1032\(a\)](#)).
- (13) Controlled 2's basis in each asset received in the Second Contribution will equal the basis of that asset in the hands of Distributing 2 immediately before the transfer. ([§ 362\(b\)](#)).
- (14) Controlled 2's holding period in each asset received in the Second Contribution will include the period during which Distributing 2 held that asset. ([§ 1223\(2\)](#)).
- (15) Distributing 2 will not recognize any gain or loss on the distribution of the Controlled 2 Common Stock in the Second Internal Spin-Off. ([§ 361\(c\)\(1\)](#)).
- (16) Distributing 4 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 2 Common Stock in the Second Internal Spin-Off. ([§ 355\(a\)](#)).
- (17) Distributing 4's holding period in the Controlled 2 Common Stock received will include Distributing 4's holding period for the Distributing 2 Common Stock, provided that the Distributing 2 Common Stock is held as a capital asset on the date of the Second Internal Spin-Off. ([§ 1223\(1\)](#)).

(18) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled 2 in accordance with [§ 312\(h\)](#), [§ 1.312-10\(a\)](#) and [§ 1.1502-33\(e\)\(3\)](#).

#### The Third Internal Spin-Off

(19) The Third Contribution, together with the distribution of the Controlled 3 Common Stock in the Third Internal Spin-Off, will qualify as a reorganization within the meaning of [§ 368\(a\)\(1\)\(D\)](#). Distributing 3 and Controlled 3 will each be “a party to the reorganization” within the meaning of [§ 368\(b\)](#).

(20) Distributing 3 will not recognize any gain or loss on the Third Contribution. ([§§ 357\(a\)](#) and [361\(a\), \(b\)](#)).

(21) Controlled 3 will not recognize any gain or loss on the Third Contribution. ([§ 1032\(a\)](#)).

(22) Controlled 3's basis in each asset received in the Third Contribution will equal the basis of that asset in the hands of Distributing 3 immediately before the transfer. ([§ 362\(b\)](#)).

(23) Controlled 3's holding period in each asset received in the Third Contribution will include the period during which Distributing 3 held that asset. ([§ 1223\(2\)](#)).

(24) Distributing 3 will not recognize any gain or loss on the distribution of the Controlled 3 Common Stock in the Third Internal Spin-Off. ([§ 361\(c\)\(1\)](#)).

(25) Distributing 4 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 3 Common Stock in the Third Internal Spin-Off. ([§ 355\(a\)](#)).

(26) Distributing 4's holding period in the Controlled 3 Common Stock received will include Distributing 4's holding period for the Distributing 3 Common Stock, provided that the Distributing 3 Common Stock is held as a capital asset on the date of the Third Internal Spin-Off. ([§ 1223\(1\)](#)).

(27) Earnings and profits, if any, will be allocated between Distributing 3 and Controlled 3 in accordance with [§ 312\(h\)](#), [§ 1.312-10\(a\)](#) and [§ 1.1502-33\(e\)\(3\)](#).

#### The First Internal Split-Off

(28) The Fourth Contribution, together with the distribution of the Controlled 4 Common Stock in the First Internal Split-Off, will qualify as a reorganization within the meaning of [§ 368\(a\)\(1\)\(D\)](#). Distributing 4 and Controlled 4 will each be “a party to the reorganization” within the meaning of [§ 368\(b\)](#).

(29) Distributing 4 will not recognize any gain or loss on the Fourth Contribution. ([§§ 357\(a\)](#) and [361\(a\), \(b\)](#)).

(30) Controlled 4 will not recognize any gain or loss on the Fourth Contribution. ([§ 1032\(a\)](#)).

(31) Controlled 4's basis in each asset received in the Fourth Contribution will equal the basis of that asset in the hands of Distributing 4 immediately before the transfer. ([§ 362\(b\)](#)).

(32) Controlled 4's holding period in each asset received in the Fourth Contribution will include Distributing 4's holding period in such asset. ([§ 1223\(2\)](#)).

(33) Distributing 4 will not recognize any gain or loss on the distribution of the Controlled 4 Common Stock in the First Internal Split-Off. ([§ 361\(c\)](#)).

(34) Distributing 5 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 4 Common Stock in the First Internal Split-Off. (§ 355(a)).

(35) Distributing 5's aggregate basis in the Distributing 4 Common Stock and Controlled 4 Common Stock immediately following the First Internal Split-Off will equal the basis of the Distributing 4 Common Stock held by Distributing 5 immediately prior to the First Internal Split-Off and will be allocated between the Distributing 4 Common Stock and Controlled 4 Common Stock in proportion to the fair market value of each. (§ 358(b)).

(36) Distributing 5's holding period in the Controlled 4 Common Stock received will include Distributing 5's holding period for the Distributing 4 Common Stock, provided that the Distributing 4 Common Stock is held as a capital asset on the date of the First Internal Split-Off. (§ 1223(1)).

(37) Earnings and profits, if any, will be allocated between Distributing 4 and Controlled 4 in accordance with § 312(h), § 1.312-10(a) and § 1.1502-33(e)(3).

#### The Second Internal Split-Off

(38) Distributing 4 will not recognize any gain or loss on the distribution of the Controlled 1 Common Stock in the Second Internal Split-Off. (§ 355(c)).

(39) Distributing 5 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 1 Common Stock in the Second Internal Split-Off. (§ 355(a)).

(40) Distributing 5's holding period in the Controlled 1 Common Stock received will include Distributing 5's holding period for the Distributing 4 Common Stock, provided that the Distributing 4 Common Stock is held as a capital asset on the date of the Second Internal Split-Off. (§ 1223(1)).

(41) Earnings and profits, if any, will be allocated between Distributing 4 and Controlled 1 in accordance with § 312(h), § 1.312-10(a) and § 1.1502-33(e)(3).

#### The Fifth Contribution, the External Spin-Off and the Debt Exchange

(42) The Fifth Contribution (including the receipt by Distributing 5 of any Controlled 5 Securities and the Special Payment), together with the distribution of the Controlled 5 Common Stock in the External Spin-Off, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 5 and Controlled 5 will each be “a party to a reorganization” within the meaning of § 368(b).

(43) Provided any Controlled 5 Securities and the Special Payment received by Distributing 5 are distributed in pursuance of the plan of reorganization, Distributing 5 will not recognize any gain or loss on the Fifth Contribution (including the receipt by Distributing 5 of any Controlled 5 Securities and the Special Payment). (§§ 357(a) and 361(a), (b)).

(44) Controlled 5 will not recognize any gain or loss on the Fifth Contribution. (§ 1032(a)).

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

(46) Controlled 5's holding period in each asset received in the Fifth Contribution will include Distributing 5's holding period in such asset. (§ 1223(2)).

(47) Distributing 5 will not recognize any gain or loss on the External Spin-Off. (§ 361(c)).

(48) The Distributing 5 shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled 5 Common Stock in the External Spin-Off, except for holders of restricted Distributing 5 Common Stock who have not made a valid election under [§ 83\(b\)](#). ([§ 355\(a\)](#)).

(49) Each Distributing 5 shareholder's basis in a share of Distributing 5 Common Stock (as adjusted under [§ 1.358-1](#)) shall be allocated between the share of Distributing 5 Common Stock with respect to which the External Spin-Off is made and the share of Controlled 5 Common Stock (or allocable portions thereof) received with respect to the share of Distributing 5 Common Stock in proportion to their fair market values. If one share of Controlled 5 Common Stock is received in respect of more than one share of Distributing 5 Common Stock, the basis of each share of Distributing 5 Common Stock must be allocated to the shares of Controlled 5 Common Stock received in a manner that reflects that, to the extent possible, a share of Controlled 5 Common Stock is received in respect of shares of Distributing 5 Common Stock acquired on the same date and at the same price. If a Distributing 5 shareholder that purchased or acquired shares of Distributing 5 Common Stock on different dates or at different prices is not able to identify which particular share of Controlled 5 Common Stock (or portion thereof) is received with respect to a particular share of Distributing 5 Common Stock, the shareholder may designate which particular share of Controlled 5 Common Stock (or portion thereof) is received with respect to a particular share of Distributing 5 Common Stock, provided the designation is consistent with the terms of the External Spin-Off. ([§ 358\(b\)](#); [§ 1.358-2\(a\)](#)).

(50) Each Distributing 5 shareholder's holding period in the Controlled 5 Common Stock received will include the holding period of the Distributing 5 Common Stock with respect to which the distribution of the Controlled 5 Common Stock is made, provided that the Distributing 5 Common Stock is held as a capital asset on the date of the External Spin-Off. ([§ 1223\(1\)](#)).

(51) Earnings and profits, if any, will be allocated between Distributing 5 and Controlled 5 in accordance with [§ 312\(h\)](#), [§ 1.312-10\(a\)](#) and [§ 1.1502-33\(e\)\(3\)](#).

(52) The Retention is not in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax. ([§ 355\(a\)\(1\)\(D\)\(ii\)](#)).

(53) Provided that the Controlled 5 Securities are transferred in the Debt Exchange or distributed to Distributing 5's shareholders in pursuance of the plan of reorganization, Distributing 5 will not recognize any income, gain, loss, or deduction with respect to the Controlled 5 Securities, other than any (i) deductions attributable to the fact that Distributing 5 Debt may be redeemed at a premium, (ii) income attributable to the fact that Distributing 5 Debt may be redeemed at a discount and (iii) interest expense accrued with respect to Distributing 5 Debt. ([§ 361\(c\)](#)).

(54) The External Spin-Off and the Merger will not cause a significant modification of either the Special Payment Financing or the Controlled 5 Securities under [section 1.1001-3\(e\)](#).

#### The Merger

(55) The Merger will qualify as a reorganization under [§ 368\(a\)\(1\)\(A\)](#). Controlled 5 and Merger Partner will each be "a party to the reorganization" under [§ 368\(b\)](#).

(56) Controlled 5 will not recognize gain or loss on the transfer of its assets to Merger Partner and the assumption by Merger Partner of the liabilities of Controlled 5, including any Controlled 5 Securities and the Special Payment Financing. ([§ 361\(a\)](#) and [§ 357\(a\)](#)).

(57) Merger Partner will not recognize gain or loss on the receipt of Controlled 5 assets in exchange for Merger Partner Common Stock. ([§ 1032\(a\)](#)).



(58) Merger Partner's basis in each asset received in the Merger will equal the basis of that asset in the hands of Controlled 5 immediately before its transfer. (§ 362(b)).

(59) Merger Partner's holding period in each asset received in the Merger will include Controlled 5's holding period in such asset. (§ 1223(2)).

(60) Merger Partner will succeed to and take into account those attributes of Controlled 5 described in § 381(c). (§ 381(a) and § 1.381(a)-1). These items will be taken into account by Merger Partner subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder.

(61) No gain or loss will be recognized by shareholders of Controlled 5 on the receipt of Merger Partner stock in exchange for Controlled 5 stock. (§ 354(a)(1)).

(62) A Controlled 5 shareholder who receives cash in lieu of a fractional share will recognize gain or loss measured by the difference between the basis allocated to the fractional share transferred, as determined below, and the amount of cash received. (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of the External Spin-Off. (§§ 1221 and 1222).

(63) Each Controlled 5 shareholder's basis in the Merger Partner Common Stock received in the Merger will be the same as the basis of the share or shares (or allocable portions thereof) of Controlled 5 Common Stock exchanged therefor, allocated in the manner described in § 1.358-2.

(64) Each Controlled 5 shareholder's holding period in the Merger Partner Common Stock received in the Merger will include the holding period in the Controlled 5 Common Stock exchanged therefor, provided the Controlled 5 Common Stock is held as a capital asset on the date of the Merger. (§ 1223(1)).

(65) Payments made between Distributing 5 and Merger Partner under the Agreements that (i) have arisen or will arise based on facts existing during a taxable period ending on or before the date of the Merger or a taxable period beginning before and ending after the date of the Merger and (ii) will not become ascertainable until after the Merger, will be treated as occurring between Distributing 5 and Controlled 5 immediately before the External Spin-Off. (Rev. Rul. 83-73, 1983-1 C.B. 84; Arrowsmith v. Comm'r, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952)).

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions or of any other matter under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions not specifically covered by the above rulings.

In particular, no opinion is expressed regarding whether the First Internal Spin-Off, Second Internal Spin-Off, Third Internal Spin-Off, First Internal Split-Off, Second Internal Split-Off and External Spin-Off: (i) satisfy the business purpose requirement of § 1.355-2(b), (ii) are being used principally as a device for the distribution of earnings and profits of Distributing 5, Distributing 4, Distributing 3, Distributing 2, Distributing 1, Controlled 5, Controlled 4, Controlled 3, Controlled 2 or Controlled 1 or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) are 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% or greater interest in Distributing 5, Distributing 4, Distributing 3, Distributing 2, Distributing 1, Controlled 5, Controlled 4, Controlled 3, Controlled 2 or Controlled 1 (see § 355(e) and § 1.355-7).

## PROCEDURAL MATTERS

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

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

Sincerely,

Douglas C. Bates  
Assistant to the Branch Chief, Branch 5 (Corporate)

cc:

[Section 6110\(j\)\(3\) of the Internal Revenue Code](#) This document may not be used or cited as precedent. .  
PLR 201032017 (IRS PLR), 2010 WL 3197564

End of Document

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