

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

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Date:
January 17, 2014

Legend
Parent =
Distributing 1 =
Controlled 1 =
Controlled 2 =
Controlled 3 =
Sub 1 =
Sub 2 =



Sub 3 =
LLC 1 =
Business A =
Business B =
Business B1 =
Business B2 =
Facility 1 =
Facility 2 =
State A =
State B =
State C =
State D =
State E =
V =
W =
X% =
\$aaa =
\$bbb =
\$ccc =



Agreement A =

Agreement B =

Agreement C =

Regulatory Authority =

Regulatory Purposes =

Date 1 =

Dear :



This letter responds to your authorized representative's August 13, 2013 request for rulings on certain federal income tax consequences of the transaction described below (the "Transaction"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in 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 any of the distributions described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 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 any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Parent is a State A corporation and is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return (the "Parent Group"). Parent's stock is publicly traded and widely held.

Parent directly owns all of the stock of Distributing 1, a State B corporation and a member of the Parent Group. Distributing 1 directly conducts Business A and Business B. Distributing 1 directly owned all of the stock of Controlled 1, a State C corporation formed to carry out the Transaction.

Parent directly owns all of the stock of Sub 1, a State D corporation. Sub 1 is engaged in Business A and Business B. Parent also owns all of the stock of Sub 2, a State E corporation. Sub 2 is engaged in Business A and Business B.

As part of Business B, Distributing 1 conducted Business B1 through its direct ownership of an undivided v interest in Facility 1. Sub 1 owns the remaining w interest in Facility 1. Also as part of Business B, Distributing 1 conducted Business B2 through its ownership of Facility 2.

Distributing 1 entered into a \$aa credit facility with third-party lenders on Date 1 (the "Credit Facility"). The balance on the Credit Facility on the day of the Transaction was \$aa. Distributing 1 also has outstanding senior notes with an aggregate principal amount of \$bb. Additionally, Distributing 1 has approximately \$cc of outstanding notes (the "Bond Notes") related to tax-exempt bonds issued by local government entities. Distributing 1 issued the Bond Notes with respect to equipment and systems at certain facilities that are a part of Business B and that were transferred to Controlled 1 as part of the Transaction. Because the Bond Notes could not be assigned to Controlled 1, Distributing 1 and Controlled 1 entered into an agreement through which Controlled 1 became contractually liable to repay the Bond Notes and to issue new notes matching the terms of the Bond Notes in order to retire the Bond Notes issued by Distributing 1.

Financial information has been submitted indicating that Business A, Business B, Business B1, and Business B2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

TRANSACTION

For what are represented to be valid business reasons, Parent undertook the following Transaction:

- (i) Distributing 1 contributed all of the assets of Business B, including Business B1 and Business B2, to Controlled 1, and Controlled 1 assumed the liabilities related thereto (the "First Contribution");
- (ii) Distributing 1 distributed all of the stock of Controlled 1 to Parent (the "First Distribution");
- (iii) Parent formed LLC 1 as a new State C limited liability company that will be treated as an entity disregarded as separate from its owner (and thus as a branch or division of Parent), and contributed all of the stock of Controlled 1 to LLC 1;
- (iv) Controlled 1 formed Controlled 2 as a new State D corporation, and contributed all of the business assets of Business B1 to Controlled 2, and Controlled 2 assumed the liabilities related thereto (the "Second Contribution");
- (v) Controlled 1 distributed all of the stock of Controlled 2 to LLC 1 (the "Second Distribution");
- (vi) LLC 1 distributed all of the stock of Controlled 2 to Parent;
- (vii) Controlled 1 formed Controlled 3 as a new State E corporation, and contributed an x% undivided interest in the business assets of Business B2 to Controlled 3, and Controlled 3 assumed x% of the liabilities related to Controlled 1's interest in Business B2 (the "Third Contribution");
- (viii) Controlled 1 distributed all of the stock of Controlled 3 to LLC 1 (the "Third Distribution");
- (ix) LLC 1 distributed all of the stock of Controlled 3 to Parent;
- (x) Pursuant to State D law, Controlled 2 merged with and into Sub 1 with Sub 1 surviving the merger (the "Sub 1 Merger"); and
- (xi) Pursuant to State E law, Controlled 3 merged with and into Sub 2 with Sub 2 surviving the merger (the "Sub 2 Merger").

The agreements between the parties to the Transaction provided that Distributing 1 would transfer certain contracts used in Business B1 and Business B2 (the "Direct Transfer Contracts") to Controlled 1 as part of the First Contribution, that Controlled 1

would transfer the Direct Transfer Contracts to Controlled 2 or Controlled 3, respectively, as part of the Second Contribution or the Third Contribution, and that Controlled 2 and Controlled 3 would merge into Sub 1 and Sub 2, respectively. To avoid multiple notifications and consents with respect to the Direct Transfer Contracts and to reduce time, effort, and cost, Distributing 1 transferred certain contracts used in Business B1 and Business B2 directly to Sub 1 and Sub 2, respectively, in lieu of making multiple, sequential transfers, at the direction of Controlled 1 and of Controlled 2 or Controlled 3, respectively.

Also in connection with the Transaction, members of the Parent Group entered into a series of agreements (collectively the "Continuing Relationships") to address transitional issues. Specifically, (i) Sub 1, Sub 2, and other members of the Parent Group engaged in Business B entered into Agreement A; (ii) Distributing 1 and Controlled 1 entered into Agreement B; (iii) Distributing 1, Controlled 1, Sub 1, Sub 2, and other members of the Parent Group entered into Agreement C; (iv) Distributing 1, Controlled 1, Sub 1, and Sub 2 continue to participate in an intragroup arrangement pursuant to which Sub 3 will provide certain managerial and professional services to members of the Parent Group; and (v) Distributing 1, Controlled 1, Sub 1, and Sub 2 will share certain employees with each other and their affiliates, pursuant to an intercompany agreement and on pricing terms ordered by the Regulatory Authority.

REPRESENTATIONS

The First Contribution and the First Distribution

Parent has made the following representations regarding the First Contribution and the First Distribution:

- (1) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the First Distribution will not constitute stock or securities.
- (2) Any money, property, or stock contributed by Distributing 1 to Controlled 1 in the First Contribution was exchanged solely for stock or securities in Controlled 1.
- (3) Distributing 1's distribution of Controlled 1's stock to Parent in the First Distribution was with respect to Parent's ownership of Distributing 1's stock.
- (4) No part of the consideration distributed by Distributing 1 was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (5) The five years of financial information submitted on behalf of Business A (as conducted by Distributing 1) is representative of the present operations of

such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.

(6) The five years of financial information submitted on behalf of Business B (as conducted by Distributing 1 immediately before the Transaction) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.

(7) Neither Business A conducted by Distributing 1 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the First Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner of the goodwill and significant assets of Business A following the First Distribution.

(8) Neither Business B to be conducted by Controlled 1 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the First Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business B. Following the First Distribution, Controlled 1 will be the principal owner of the goodwill and significant assets of Business B.

(9) Distributing 1 will continue the active conduct of Business A, independently and with its separate employees, following the First Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.

(10) Controlled 1 will continue the active conduct of Business B, independently and with its separate employees, following the First Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.

(11) The First Distribution was carried out for the Regulatory Purposes. The First Distribution was motivated in whole or substantial part by these corporate business purposes.

(12) The First Distribution was not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(13) The total adjusted basis and fair market value of the assets transferred to Controlled 1 in the First Contribution equaled or exceeded the sum of: (i) the

total liabilities assumed (as determined under section 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.

- (14) Any liabilities assumed (as determined under section 357(d)) by Controlled 1 in the First Contribution were incurred in the ordinary course of business and were associated with the assets transferred.
- (15) The total fair market value of the assets transferred to Controlled 1 in the First Contribution exceeded the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that were discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 1 exceeded the amount of its liabilities immediately after the First Contribution.
- (16) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the First Distribution.
- (17) No intercorporate debt existed or will exist between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) at the time of, or after, the First Distribution, other than intercompany loans or obligations that have arisen, or will arise, in the ordinary course of business.
- (18) Payments made in connection with all continuing transactions between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or on pricing terms ordered by the Regulatory Authority.
- (19) No two parties to the First Distribution were investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (20) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period

- (determined after applying section 355(d)(6)) ending on the date of the First Distribution.
- (21) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Distribution.
- (22) The First Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons acquired or will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled 1 or Distributing 1 (including any predecessor or successor of any such corporation).
- (23) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Controlled 1, (2) if any person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person held such interest in such corporation immediately before the First Distribution, or (3) neither Distributing 1 nor Controlled 1 was a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (24) Immediately before the First Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 1 has in Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before the First Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the First Distribution, Distributing 1 did not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.

The Second Contribution and the Second Distribution

Parent has made the following representations regarding the Second Contribution and the Second Distribution:

- (25) Any indebtedness owed by Controlled 2 (and its successors or any entity controlled directly or indirectly by Controlled 2 and its successors) to Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) after the Second Distribution will not constitute stock or securities.
- (26) Any money, property, or stock contributed by Controlled 1 to Controlled 2 in the Second Contribution was exchanged solely for stock or securities in Controlled 2.
- (27) Controlled 1's distribution of Controlled 2's stock to Parent in the Second Distribution was with respect to Parent's ownership of Controlled 1's stock.
- (28) No part of the consideration distributed by Controlled 1 was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Controlled 1.
- (29) The five years of financial information submitted on behalf of Business B (as conducted by Distributing 1 immediately before the Transaction and as conducted by Controlled 1 after the First Distribution) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (30) The five years of financial information submitted for Business B1 (as conducted by Distributing 1 immediately before the Transaction and to be conducted by Controlled 2 and its successors) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (31) Neither Business B to be conducted by Controlled 1 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Second Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business B until the First Contribution, and thereafter Controlled 1 was and will be the principal owner of the goodwill and significant assets of Business B.
- (32) Neither Business B1 to be conducted by Controlled 2 (and its successors) nor control of an entity conducting this business was acquired during the five-year

- period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Second Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business B1 until the First Contribution, and Controlled 1 was the principal owner of the goodwill and significant assets of Business B1 after the First Contribution and until the Second Contribution. Following the Second Distribution, Controlled 2 (and its successors) will be the principal owner of the goodwill and significant assets of Business B1.
- (33) Controlled 1 will continue the active conduct of Business B, independently and with its separate employees, following the Second Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.
- (34) Controlled 2 (and its successors) will continue the active conduct of Business B1, independently and with its separate employees, following the Second Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.
- (35) The Second Distribution was carried out for the Regulatory Purposes. The Second Distribution was motivated in whole or substantial part by these corporate business purposes.
- (36) The Second Distribution was not used principally as a device for the distribution of the earnings and profits of Controlled 1 or Controlled 2 or both.
- (37) The total adjusted basis and fair market value of the assets transferred to Controlled 2 in the Second Contribution equaled or exceeded the sum of: (i) the total liabilities assumed (as determined under section 357(d)) by Controlled 2 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Controlled 1 and transferred to its creditors in connection with the reorganization.
- (38) Any liabilities assumed (as determined under section 357(d)) by Controlled 2 in the Second Contribution were incurred in the ordinary course of business and were associated with the assets transferred.
- (39) The total fair market value of the assets transferred to Controlled 2 in the Second Contribution exceeded the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Controlled 1 that were discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under

section 361(a) without the recognition of gain) received by Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 2 exceeded the amount of its liabilities immediately after the Second Contribution.

(40) Controlled 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Second Distribution.

(41) No intercorporate debt existed or will exist between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Controlled 2 (and its successors or any entity controlled directly or indirectly by Controlled 2 and its successors) at the time of, or after, the Second Distribution, other than intercompany loans or obligations that have arisen, or will arise, in the ordinary course of business.

(42) Payments made in connection with all continuing transactions between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Controlled 2 (and any successor or any entity controlled directly or indirectly by Controlled 2 and any successor) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or on pricing terms ordered by the Regulatory Authority.

(43) No two parties to the Second Distribution were investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(44) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution.

(45) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution or (ii) attributable to distributions on Controlled 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution.

- (46) The Second Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons acquired or will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled 2 or Controlled 1 (including any predecessor or successor of any such corporation).
- (47) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Controlled 1 or Controlled 2, (2) if any person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person held such interest in such corporation immediately before the Second Distribution, or (3) neither Controlled 1 nor Controlled 2 was a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (48) Immediately before the Second Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Controlled 1 has in Controlled 2 stock or the stock of any direct or indirect subsidiary of Controlled 2 will be included in income immediately before the Second Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Second Distribution, Controlled 1 did not have an excess loss account in the stock of Controlled 2 or the stock of any direct or indirect subsidiary of Controlled 2.

The Third Contribution and the Third Distribution

Parent has made the following representations regarding the Third Contribution and the Third Distribution:

- (49) Any indebtedness owed by Controlled 3 (and its successors or any entity controlled directly or indirectly by Controlled 3 and its successors) to Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) after the Third Distribution will not constitute stock or securities.
- (50) Any money, property, or stock contributed by Controlled 1 to Controlled 3 in the Third Contribution was exchanged solely for stock or securities in Controlled 3.
- (51) Controlled 1's distribution of Controlled 3's stock to Parent in the Third Distribution was with respect to Parent's ownership of Controlled 1's stock.

- (52) No part of the consideration distributed by Controlled 1 was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Controlled 1.
- (53) The five years of financial information submitted on behalf of Business B (as conducted by Distributing 1 immediately before the Transaction and as conducted by Controlled 1 after the First Contribution) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (54) The five years of financial information submitted on behalf of Business B2 (as conducted by Distributing 1 immediately before the Transaction and to be conducted by Controlled 3 and its successors) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (55) Neither Business B to be conducted by Controlled 1 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Third Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Third Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business B until the First Contribution, and thereafter Controlled 1 was and will be the principal owner of the goodwill and significant assets of Business B.
- (56) Neither Business B2 to be conducted by Controlled 3 (and its successors) nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Third Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Third Distribution, Distributing 1 was the principal owner of the goodwill and significant assets of Business B2 until the First Contribution, and Controlled 1 was the principal owner of the goodwill and significant assets of Business B2 after the First Contribution and until the Third Contribution. Following the Third Distribution, Controlled 3 (and its successors) will be the principal owner of the goodwill and significant assets of Business B2.
- (57) Controlled 1 will continue the active conduct of Business B, independently and with its separate employees, following the Third Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.
- (58) Controlled 3 (and its successors) will continue the active conduct of Business B2, independently and with its separate employees, following the Third

Distribution, and with employees of other members of the Parent Group pursuant to the Continuing Relationships.

- (59) The Third Distribution was carried out for the Regulatory Purposes. The Third Distribution was motivated in whole or substantial part by these corporate business purposes.
- (60) The Third Distribution was not used principally as a device for the distribution of the earnings and profits of Controlled 1 or Controlled 3 (and its successors) or both.
- (61) The total adjusted basis and fair market value of the assets transferred by Controlled 1 to Controlled 3 in the Third Contribution equaled or exceeded the sum of: (i) the total liabilities assumed (as determined under section 357(d)) by Controlled 3 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Controlled 1 and transferred to its creditors in connection with the reorganization.
- (62) Any liabilities assumed (as determined under section 357(d)) by Controlled 3 in the Third Contribution were incurred in the ordinary course of business and were associated with the assets transferred.
- (63) The total fair market value of the assets transferred to Controlled 3 in the Third Contribution exceeded the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled 3 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 3 by Controlled 1 that were discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Controlled 1 in connection with the exchange. The fair market value of the assets of Controlled 3 exceeded the amount of its liabilities immediately after the Third Contribution.
- (64) Controlled 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Third Distribution.
- (65) No intercorporate debt existed or will exist between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Controlled 3 (and its successors or any entity controlled directly or indirectly by Controlled 3 and its successors) at the time of, or after, the Third Distribution, other than intercompany loans or obligations that have arisen, or will arise, in the ordinary course of business.

- (66) Payments made in connection with all continuing transactions between Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) and Controlled 3 (and its successors or any entity controlled directly or indirectly by Controlled 3 and its successors) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or on pricing terms ordered by the Regulatory Authority, except that, pending regulatory approval, it is expected that Controlled 1 will reimburse Sub 2 at cost for services and materials provided in the operation of Business B2.
- (67) No two parties to the Third Distribution were investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (68) For purposes of section 355(d), immediately after the Third Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Distribution.
- (69) For purposes of section 355(d), immediately after the Third Distribution, no person (determined after applying section 355(d)(7)) held stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 3 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Distribution or (ii) attributable to distributions on Controlled 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Third Distribution.
- (70) The Third Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons acquired or will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled 3 or Controlled 1 (including any predecessor or successor of any such corporation).
- (71) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Controlled 1 or Controlled 3, (2) if any person held a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the Third

Distribution, or (3) neither Controlled 1 nor Controlled 3 was a disqualified investment corporation (within the meaning of section 355(g)(2)).

- (72) Immediately before the Third Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Controlled 1 has in Controlled 3 stock or the stock of any or indirect subsidiary of Controlled 3 will be included in income immediately before the Third Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Third Distribution, Controlled 1 did not have an excess loss account in the stock of Controlled 3 or the stock of any direct or indirect subsidiary of Controlled 3.

The Sub 1 Merger

Parent has made the following representations regarding the Sub 1 Merger:

- (73) The parties entered into an agreement and plan of merger that stated that the parties intend for the Sub 1 Merger to qualify as a tax-free reorganization under section 368(a), and the Sub 1 Merger occurred pursuant to that plan.
- (74) The Sub 1 Merger was effected pursuant to state law, under which, as a result of the operation of such laws, the following events occurred simultaneously at the effective time of the Sub 1 Merger: (i) all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Controlled 2 became the assets and liabilities of Sub 1; and (ii) Controlled 2 ceased its separate legal existence for all purposes.
- (75) Sub 1 did not issue any stock in the Sub 1 Merger. Parent directly owned all of the outstanding stock in both Controlled 2 and Sub 1 immediately before the Sub 1 Merger, and directly owned all of the stock in Sub 1 immediately thereafter.
- (76) All of the proprietary interests in Controlled 2 will be preserved within the meaning of Treas. Reg. § 1.368-1(e)(1)(i) and (ii).
- (77) Sub 1 has no plan or intention to redeem or otherwise acquire, directly or through a related person (within the meaning of Treas. Reg. § 1.368-1(e)(2) and (3)), any of its stock.
- (78) The fair market value of the property transferred by Controlled 2 to Sub 1 exceeded the sum of: (a) the amount of liabilities of Controlled 2 assumed (as determined under section 357(d)) by Sub 1 in the Sub 1 Merger, and (b) the amount of any money and the fair market value of any property (other than

stock permitted to be received under section 361(a) without the recognition of gain) received by Controlled 2 in the Sub 1 Merger. The fair market value of the assets of Sub 1 exceeded the amount of its liabilities immediately after the Sub 1 Merger.

(79) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Controlled 2 acquired in the Sub 1 Merger, except for dispositions made in the ordinary course of business and transfers described in section 368(a)(2)(C) and Treas. Reg. § 1.368-2(k).

(80) The liabilities of Controlled 2, if any, assumed (within the meaning of section 357(d)) by Sub 1 in the Sub 1 Merger were incurred by Controlled 2 in the ordinary course of its business and were associated with the assets transferred.

(81) Following the Sub 1 Merger, Sub 1 will continue the historic business of Controlled 2 or use a significant portion of Controlled 2's historic business assets in a business.

(82) Sub 1, Controlled 2, and Parent have each paid or will pay their respective expenses, if any, incurred in connection with the Sub 1 Merger.

(83) There is no intercorporate indebtedness existing between Controlled 2 and Sub 1 that was issued, acquired, or settled at a discount.

(84) No two parties to the Sub 1 Merger were investment companies within the meaning of sections 368(a)(2)(F)(iii) and (iv).

(85) Controlled 2 was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

The Sub 2 Merger

Parent has made the following representations regarding the Sub 2 Merger:

(86) The parties entered into an agreement and plan of merger that stated that the parties intend for the Sub 2 Merger to qualify as a tax-free reorganization under section 368(a), and the Sub 2 Merger occurred pursuant to that plan.

(87) The Sub 2 Merger was effected pursuant to state law, under which, as a result of the operation of such laws, the following events occurred simultaneously at the effective time of the Sub 2 Merger: (i) all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Controlled 3 became the assets and liabilities of Sub 2; and (ii) Controlled 3 ceased its separate legal existence for all purposes.

- (88) Sub 2 did not issue any stock in the Sub 2 Merger. Parent directly owned all of the outstanding stock in both Controlled 3 and Sub 2 immediately before the Sub 1 Merger, and directly owned all of the stock in Sub 2 immediately thereafter.
- (89) All of the proprietary interests in Controlled 3 will be preserved within the meaning of Treas. Reg. § 1.368-1(e)(1)(i) and (ii).
- (90) Sub 2 has no plan or intention to redeem or otherwise acquire, directly or through a related person (within the meaning of Treas. Reg. § 1.368-1(e)(2) and (3)), any of its stock.
- (91) The fair market value of the property transferred by Controlled 3 to Sub 2 exceeded the sum: of (a) the amount of liabilities of Controlled 3 assumed (as determined under section 357(d)) by Sub 2 in the Sub 2 Merger, and (b) the amount of any money and the fair market value of any property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by Controlled 3 in the Sub 2 Merger. The fair market value of the assets of Sub 2 exceeded the amount of its liabilities immediately after the Sub 2 Merger.
- (92) Sub 2 has no plan or intention to sell or otherwise dispose of any of the assets of Controlled 3 acquired in the Sub 2 Merger, except for dispositions made in the ordinary course of business and transfers described in section 368(a)(2)(C) and Treas. Reg. § 1.368-2(k).
- (93) The liabilities of Controlled 3, if any, assumed (within the meaning of section 357(d)) by Sub 2 in the Sub 2 Merger were incurred by Controlled 3 in the ordinary course of its business and were associated with the assets transferred.
- (94) Following the Sub 2 Merger, Sub 2 will continue the historic business of Controlled 3 or use a significant portion of Controlled 3's historic business assets in a business.
- (95) Sub 2, Controlled 3, and Parent have each paid or will pay their respective expenses, if any, incurred in connection with the Sub 2 Merger.
- (96) There is no intercorporate indebtedness existing between Controlled 3 and Sub 2 that was issued, acquired, or settled at a discount.
- (97) No two parties to the Sub 2 Merger were investment companies within the meaning of sections 368(a)(2)(F)(iii) and (iv).
- (98) Controlled 3 was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

RULINGS

The First Contribution and the First Distribution

Based solely on the information submitted and the representations set forth above, and provided that (i) any money, property, or stock contributed by Distributing 1 to Controlled 1 in the First Contribution was exchanged solely for stock or securities in Controlled 1, and (ii) Distributing 1's distribution of the stock of Controlled 1 to Parent in the First Distribution was with respect to Parent's ownership of the stock of Distributing 1, we rule as follows as to the First Contribution and the First Distribution:

- (1) The First Contribution and the First Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be "a party to a reorganization" within the meaning of section 368(b).
- (2) Distributing 1 will not recognize any gain or loss on its transfer of assets to Controlled 1 in exchange for Controlled 1 stock and Controlled 1's assumption of liabilities in the First Contribution (sections 361(a) and 357(a)).
- (3) Controlled 1 will not recognize any gain or loss on its receipt of assets from Distributing 1 in exchange for Controlled 1 stock and Controlled 1's assumption of liabilities in the First Contribution (section 1032(a)).
- (4) Controlled 1's basis in each asset received from Distributing 1 in the First Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the First Contribution (section 362(b)).
- (5) Controlled 1's holding period in each asset received from Distributing 1 in the First Contribution will include the period during which Distributing 1 held that asset (section 1223(2)).
- (6) Distributing 1 will not recognize any gain or loss upon its distribution of Controlled 1 stock to Parent in the First Distribution (section 361(c)(1)).
- (7) Parent will not recognize any gain or loss (and will not include any amount in the income of) on its receipt of shares of Controlled 1 stock from Distributing 1 in the First Distribution (section 355(a)(1)).
- (8) Parent's basis in its Distributing 1 stock immediately after the First Distribution will be the same as its basis in the Distributing 1 stock immediately before the First Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each immediately following the First Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).

- (9) Parent's holding period in the Controlled 1 stock it will receive in the First Distribution will include the holding period of the Distributing 1 stock with respect to which the First Distribution is made, provided Parent held its Distributing 1 stock as a capital asset on the date of the First Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

The Second Contribution and the Second Distribution

Based solely on the information submitted and the representations set forth above, and provided that (i) any money, property, or stock contributed by Controlled 1 to Controlled 2 in the Second Contribution was exchanged solely for stock or securities in Controlled 2, and (ii) Controlled 1's distribution of the stock of Controlled 2 to Parent in the Second Distribution was with respect to Parent's ownership of the stock of Controlled 1, we rule as follows as to the Second Contribution and the Second Distribution:

- (11) The Second Contribution and the Second Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Controlled 1 and Controlled 2 each will be "a party to a reorganization" within the meaning of section 368(b).
- (12) Controlled 1 will not recognize any gain or loss on its transfer of its assets to Controlled 2 in exchange for Controlled 2 stock and Controlled 2's assumption of liabilities in the Second Contribution (sections 361(a) and 357(a)).
- (13) Controlled 2 will not recognize any gain or loss on its receipt of assets from Controlled 1 in exchange for Controlled 2 stock and Controlled 2's assumption of liabilities in the Second Contribution (section 1032(a)).
- (14) Controlled 2's basis in each asset received from Controlled 1 in the Second Contribution will equal the basis of that asset in the hands of Controlled 1 immediately before the Second Contribution (section 362(b)).
- (15) Controlled 2's holding period in each asset received from Controlled 1 in the Second Contribution will include the period during which Controlled 1 held that asset (section 1223(2)).
- (16) Controlled 1 will not recognize any gain or loss upon its distribution of Controlled 2 stock to Parent in the Second Distribution (section 361(c)(1)).
- (17) Parent will not recognize any gain or loss (and will not include any amount in income) on its receipt of shares of Controlled 2 stock from Controlled 1 in the Second Distribution (section 355(a)(1)).

- (18) Parent's basis in its Controlled 1 stock immediately after the Second Distribution will be the same as its basis in its Controlled 1 stock immediately before the Second Distribution, allocated between the stock of Controlled 1 and Controlled 2 in proportion to their relative fair market value immediately following the Second Distribution (and immediately preceding the Third Distribution) in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (19) Parent's holding period in the Controlled 2 stock it will receive in the Second Distribution will include the holding period of the Controlled 1 stock with respect to which the Second Distribution is made, provided Parent held its Controlled 1 stock as a capital asset on the date of the Second Distribution (section 1223(1)).
- (20) Earnings and profits, if any, will be allocated between Controlled 1, Controlled 2, and Controlled 3 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

The Third Contribution and the Third Distribution

- Based solely on the information submitted and the representations set forth above, and provided that (i) any money, property, or stock contributed by Controlled 1 to Controlled 3 in the Third Contribution was exchanged solely for stock or securities in Controlled 3, and (ii) Controlled 1's distribution of the stock of Controlled 3 to Parent in the Third Distribution was with respect to Parent's ownership of the stock of Controlled 1, we rule as follows as to the Third Contribution and the Third Distribution:
- (21) The Third Contribution and the Third Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Controlled 1 and Controlled 3 each will be "a party to a reorganization" within the meaning of section 368(b).
- (22) Controlled 1 will not recognize any gain or loss on its transfer of assets to Controlled 3 in exchange for Controlled 3 stock and Controlled 3's assumption of liabilities in the Third Contribution (sections 361(a) and 357(a)).
- (23) Controlled 3 will not recognize any gain or loss on its receipt of assets from Controlled 1 in exchange for Controlled 3 stock and Controlled 3's assumption of liabilities in the Third Contribution (section 1032(a)).
- (24) Controlled 3's basis in each asset received from Controlled 1 in the Third Contribution will equal the basis of that asset in the hands of Controlled 1 immediately before the Third Contribution (section 362(b)).
- (25) Controlled 3's holding period in each asset received from Controlled 1 in the Third Contribution will include the period during which Controlled 1 held that asset (section 1223(2)).

- (26) Controlled 1 will not recognize any gain or loss upon its distribution of Controlled 3 stock to Parent in the Third Distribution (section 361(c)(1)).
- (27) Parent will not recognize any gain or loss (and will not include any amount in income) on its receipt of shares of Controlled 3 stock from Controlled 1 in the Third Distribution (section 355(a)(1)).
- (28) Parent's basis in its Controlled 1 stock immediately after the Third Distribution will be the same as its basis in its Controlled 1 stock immediately before the Third Distribution (and after the Second Distribution), allocated between the stock of Controlled 1 and Controlled 3 in proportion to their relative fair market value immediately following the Third Contribution in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (29) Parent's holding period in the Controlled 3 stock it will receive in the Third Distribution will include the holding period of the Controlled 1 stock with respect to which the Third Distribution is made, provided Parent held its Controlled 1 stock is held as a capital asset on the date of the Third Distribution (section 1223(1)).
- (30) Earnings and profits, if any, will be allocated between Controlled 1, Controlled 2, and Controlled 3 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

The Sub 1 Merger

Based solely on the information submitted and the representations set forth above, we rule as follows as to the Sub 1 Merger:

- (31) Provided that the Sub 1 Merger qualifies as a statutory merger under applicable law, for U.S. federal income tax purposes the Sub 1 Merger will be treated as a transfer by Controlled 2 of its assets to Sub 1 in exchange for Sub 1's stock and Sub 1's assumption of Controlled 2's liabilities, followed by Controlled 2's distribution of the Sub 1 stock to Parent, pursuant to a plan of reorganization, in cancellation of Parent's stock in Controlled 2. The Sub 1 Merger will be a reorganization within the meaning of section 368(a)(1)(A). Sub 1 and Controlled 2 will each be a "party to a reorganization" under section 368(b).
- (32) Controlled 2 will not recognize any gain or loss on its transfer of assets to Sub 1 in exchange for Sub 1 stock and the assumption by Sub 1 of any liabilities of Controlled 2 (sections 361(a), 357(a)).
- (33) Controlled 2 will not recognize any gain or loss upon its transfer of Sub 1 stock to Parent (section 361(c)).

- (34) Sub 1 will not recognize any gain or loss on its receipt of the Controlled 2 assets in exchange for the Sub 1 stock (section 1032(a)).
- (35) Sub 1's basis in each asset received from Controlled 2 will equal the basis of that asset in the hands of Controlled 2 immediately before the Sub 1 Merger (section 362(b)).
- (36) Sub 1's holding period in each asset received from Controlled 2 will include the period during which Controlled 2 held the asset (section 1223(2)).
- (37) Parent will not recognize any gain or loss on its receipt of Sub 1 stock in exchange for Controlled 2 stock pursuant to a plan of reorganization (section 354(a)(1)).
- (38) Parent's basis in the Sub 1 stock received in the Sub 1 Merger will equal the basis of the Controlled 2 stock surrendered in exchange therefor, allocated in accordance with Treas. Reg. § 1.358-2T(a)(2)(iii) (section 358(a)(1)).
- (39) Parent's holding period in the Sub 1 stock deemed issued will include the holding period of the Controlled 2 stock surrendered in exchange therefor, provided the Controlled 2 stock was held as a capital asset on the date of the exchange (section 1223(1)).
- (40) Sub 1 will succeed to and take into account the items of Controlled 2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.

The Sub 2 Merger

Based solely on the information submitted and the representations set forth above, we rule as follows as to the Sub 2 Merger:

- (41) Provided that the Sub 2 Merger qualifies as a statutory merger under applicable law, for U.S. federal income tax purposes the Sub 2 Merger will be treated as a transfer by Controlled 3 of its assets to Sub 2 in exchange for Sub 2's stock and Sub 2's assumption of Controlled 3's liabilities, followed by Controlled 3's distribution of the Sub 2 stock to Parent, pursuant to a plan of reorganization, in cancellation of Parent's stock in Controlled 3. The Sub 2 Merger will be a reorganization under section 368(a)(1)(A). Controlled 3 and Sub 2 will each be a "party to a reorganization" under section 368(b).
- (42) Controlled 3 will not recognize any gain or loss on its transfer of assets to Sub 2 in exchange for Sub 2 stock and the assumption by Sub 2 of any liabilities of Controlled 3 (sections 361(a), 357(a)).
- (43) Controlled 3 will not recognize any gain or loss upon its transfer of Sub 2 stock to Parent (section 361(c)).

- (44) Sub 2 will not recognize any gain or loss on its receipt of the Controlled 3 assets in exchange for the Sub 2 stock (section 1032(a)).
- (45) Sub 2's basis in each asset received from Controlled 3 will equal the basis of that asset in the hands of Controlled 3 immediately before the Sub 2 Merger (section 362(b)).
- (46) Sub 2's holding period in each asset received from Controlled 3 will include the period during which Controlled 3 held the asset (section 1223(2)).
- (47) Parent will recognize no gain or loss on its receipt of Sub 2 stock in exchange for Controlled 3 stock pursuant to the plan of reorganization (section 354(a)(1)).
- (48) Parent's basis in the Sub 2 stock received in the Sub 2 Merger will equal the basis of the Controlled 3 stock surrendered in exchange therefor, allocated in accordance with Treas. Reg. § 1.358-2T(a)(2)(iii) (section 358(a)(1)).
- (49) Parent's holding period in the Sub 2 stock deemed issued will include the holding period of the Controlled 3 stock surrendered in exchange therefor, provided the Controlled 3 stock was held as a capital asset on the date of the exchange (section 1223(1)).
- (50) Sub 2 will succeed to and take into account the items of Controlled 3 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.

CAVEATS

No opinion is expressed about the federal income tax treatment of the Transaction under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether any distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or
- (iii) Whether any distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii).

PROCEDURAL MATTERS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling 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, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the 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 representative.

Sincerely,

Maury Passman
Acting Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)