

Exhibit 1

Agreement to Participate and Selection of Settlement Option

- 1) **Agreement to Participate and Selection of Settlement Option.** The undersigned desire(s) to participate in a settlement initiative described in Rev. Proc. 2002-67 for resolving cases involving Notice 2001-17 contingent liability transactions. This settlement procedure is available to any taxpayer that has engaged in a contingent liability transaction, satisfies the requirements of Section 3.02 of Rev. Proc. 2002-67 and elects to resolve the issues in dispute using this procedure.

By signing this agreement to participate under the settlement initiative described in Rev. Proc. 2002-67, the undersigned acknowledges that the decision to participate is irrevocable and that, if the taxpayer fails to provide all of the information and documents specified in Rev. Proc. 2002-67, the contingent liability transaction issue will be subject to the full range of Internal Revenue Service audit and deficiency procedures. The undersigned acknowledges that the contingent liability transaction issue will not be considered under the settlement, mediation or arbitration procedures under Notice 2001-67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001-2 C.B. 544; Announcement 2002-60 (Extension of Test of Arbitration Procedure for Appeals), 2002-26 I.R.B. 28; and Rev. Proc. 2002-44 (Mediation Procedure for Appeals), 2002-26 I.R.B. 10.

The following is the option selected for this process:

_____ Fixed Concession Procedure

_____ Fast Track Dispute Resolution Procedure - Contingent Liability Cases

By choosing the Fast Track Dispute Resolution Procedure - Contingent Liability Cases, the undersigned agree(s) to participate in Binding Arbitration, as set forth in Section 7 of Rev. Proc. 2002-67, if the Fast Track Dispute Resolution Procedure - Contingent Liability Cases is unsuccessful. Those taxpayers selecting the Fast Track Dispute Resolution Procedure - Contingent Liability Cases must also submit with this form a completed Arbitration Agreement. See Section 7 and Exhibit 2 of Rev. Proc. 2002-67.

All requirements and provisions set forth in Rev. Proc. 2002-67 are incorporated herein by reference.

- 1) **Application Process.** The undersigned will be notified in writing within 15 calendar days of the receipt of this completed form as to whether its election has been accepted.

If a taxpayer is denied participation under the Fixed Concession Procedure, its application may be amended in writing within 10 calendar days of receipt of the notice described above to elect the Fast Track Dispute Resolution Procedure - Contingent Liability Cases, as set forth in Section 6 of Rev. Proc. 2002-67. See Section 4.05 of Rev. Proc. 2002-67.

Denial of a taxpayer's request to participate in either resolution method is not subject to judicial review.

- 1) **Waiver of Prohibition on Ex Parte Communications.** In accordance with the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-226, 112 Stat. 685 (RRA'98), and Rev. Proc. 2000-43, 2000-2 C.B. 404, it has been determined that ex parte communications may occur during the course of the settlement process. As defined in Rev. Proc. 2000-43, "ex-parte communications" are "communications that take place between Appeals and another Service function without the participation of the taxpayer or the taxpayer's representative."

The undersigned acknowledge(s) that waiver of this prohibition is voluntary. By signing this agreement, the undersigned further acknowledge(s) that the concerns regarding ex parte communications are understood, but in the interest of facilitating resolution of this case, the undersigned agree(s) to waive the prohibition between Appeals and other Service personnel who are

involved in pursuing settlement under the initiative described in Rev. Proc. 2002-67. This waiver covers all communications in the entire settlement process. This waiver will expire upon the date the settlement process with respect to this case is completed or ends.

1) **Location of Settlement Conference.** The undersigned requests that all meetings between the undersigned and the Service relating to the settlement proceedings take place at [Insert City, State].

1) **Participants.** The persons listed in this paragraph below are the primary participants in this settlement process on behalf of the taxpayers. Additional persons who will participate will be listed at the end of this agreement.

Taxpayer Name:

Taxpayer EIN:

Address

Corporate Officer:

Telephone:

Fax:

Title:

Email:

Taxpayer Representative:

Name of Firm:

Address:

Telephone:

Fax:

Email:

If the Taxpayer identifies a representative, the Taxpayer must attach a power of attorney to this agreement that authorizes the representative to participate in the settlement and arbitration process.

1) **Case status.**

- a) Is the case open in Compliance or Appeals?
- b) If so, who is the Service contact?
- c) Was the contingent liability transaction disclosed under Announcement 2002-02, 2002-2 I.R.B. 304?

1) **Certification of Compliance.** Under penalties of perjury, the undersigned certifies:

- a) that each transferor involved in the contingent liability transaction carried out the purported section 351 exchanges and subsequent sales in accordance with the applicable operating documents;
- b) that one or more persons transferred property to the transferee corporation solely in exchange for stock in such corporation (or such stock and other property or money) and immediately after the exchange such person (or persons) was in control (as defined in section 368(c)) of the transferee corporation; and,
- c) that the transferee is not an investment company within the meaning of section 351(e).

1) **Attachments.** With this form, the undersigned must also submit the following, as specified in Section 4.02 of Rev. Proc. 2002-67:

- a) A statement identifying the total capital loss reported on the taxpayer's income tax return(s) for the sale(s) of any stock issued by the transferee corporation in the contingent liability transaction, including the tax years affected and the amount of the capital loss used in each year (including any carryback and carryforward periods);
- b) A description of each class of stock issued and outstanding by the transferee corporation at the completion of the purported section 351 exchanges, including the number of shares issued in each class in the exchanges, to whom the stock was issued, the issuing prices of the stock, the par values and any voting rights;
- c) A statement identifying any shares issued in the purported section 351 exchanges in connection with the assumption of the contingent liability that have not been sold or otherwise disposed of by the taxpayer;
- d) A statement indicating the average selling price per share of any stock issued by the transferee corporation in the contingent liability transaction;
- e) A description of the type and bases of the assets transferred by the taxpayer in the contingent liability transaction; and

