

From: [REDACTED]
 Sent: Tuesday, July 03, 2007 11:49 AM
 To: Ferkingstad, James H.
 Cc: [REDACTED]
 Subject: Follow-Up Regarding Analysis of Transaction Steps



Step 7.PDF (42 KB) Step 8.PDF (49 KB)

James,

As a follow-up to our call on June 28, 2007, including [REDACTED] of this firm, we would like to confirm our understanding that a portion of the transaction on which we are working does not need to be reported for HSR purposes because of the analysis of the transaction by the steps into which it has been broken for tax purposes and the resulting exemption available through Section 802.51.

Description of Transaction

To recap, our client ("Seller") is a foreign entity entering into a transaction with a private equity fund ("PEF"), whereby the transaction has been broken down into several specifically-ordered steps to take advantage of certain tax benefits that are derived from having the transaction occur in several, purposeful steps, as described below.

STEP 1: PEF creates a new, wholly-owned French societe a responsabilite limitee to serve as a holding company ("French HoldCo"). PEF contributes cash to French HoldCo, which also creates a number of wholly-owned shell companies that have no assets, other than cash, and no activities or operations ("French Shell Companies").

STEP 2: Seller will subscribe for voting securities in French HoldCo equal to a 28% interest (with the remainder held by PEF) and will contribute the shares of a wholly-owned French subsidiary to French HoldCo in exchange for such 28% interest in French HoldCo. At the time of the contribution and Seller's acquisition of the voting securities of French HoldCo, French HoldCo will have no activities or operations, and its only assets will be cash and the shares it holds in the French Shell Companies.

STEP 3: After Step 2, in a series of further steps:

(a) French HoldCo and the French Shell Companies will borrow additional funds and will use such borrowed funds to purchase shares in other existing businesses held by Seller. At least some of these businesses are U.S. issuers or foreign issuers with substantial U.S. assets or sales. This transaction, whereby Seller sells shares of its existing businesses to French HoldCo and French Shell Companies, will be reported pursuant to HSR requirements by PEF (as UPE of French HoldCo) as the acquiring person and Seller as the acquired person.

(b) PEF will contribute the shares of an existing U.S. corporation that is within its person to French HoldCo. Because this existing U.S. corporation is already within the person of PEF, this component of the transaction is not reportable by PEF under the HSR Act.

HSR Analysis

At the time Step 2 is completed, Seller's acquisition of a 28% interest in French HoldCo is exempt under Rule 802.51, as French HoldCo, together with any entity controlled by French HoldCo, does not have \$50 million in U.S. assets or \$50 million in sales in or into the U.S. and Seller will not gain control of French HoldCo.

If, on the other hand, Seller's acquisition of the voting securities of French HoldCo were analyzed after Step 3 (i.e., if all the Steps were viewed as a single transaction, rather than a series of separate transactions), Seller would file as both an acquired person (because of PEF's acquisition of shares of Seller's subsidiaries in Steps 2 and Step 3(a)) and also as an acquiring person (because of Seller's acquisition of the voting securities of French HoldCo after it has acquired shares of an existing U.S. corporation with sufficient assets and operations). The transactions in Steps 2 and 3 are all contemplated by a single "Transaction Agreement." Step 3 is conditioned on Step 2 having occurred, and in reality, the Steps will occur one immediately after the other.

3rd Ed.

We believe (and on the phone you confirmed) that, consistent with Interpretation No. 80 of the Premerger Notification Practice Manual, there is a legitimate, non-HSR avoidance rationale for the sequencing of the transactions, and that, accordingly, Step 2 is properly analyzed on a stand-alone basis, which results in Seller's acquisition of the voting securities of French HoldCo being exempt from HSR reporting requirements. Since Seller's acquisition of the voting securities of French HoldCo is not separately reportable, Seller will file only as an acquired person.

Steps 2 3

We have attached to this email a redacted copy of steps 2 and 3 of the closing of the transaction for your reference.

If we have misunderstood our reporting responsibility with respect to Seller's acquisition of the voting securities of French HoldCo, please advise.

Kind regards,
[Redacted]

7/12 Agree JAF

[Redacted]

[Redacted]

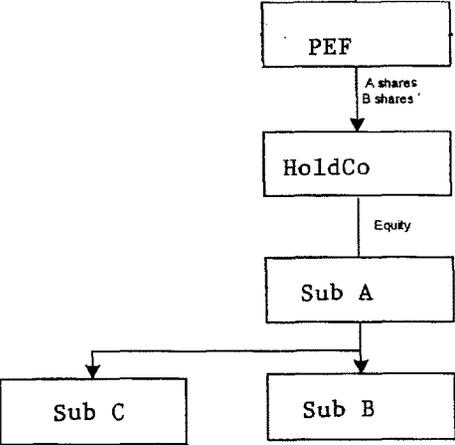
Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at [Redacted] and destroy the original transmission and its attachments without reading or saving in any manner.

DISCLAIMER Treasury Department Circular 230 Disclosure: To ensure compliance with requirements imposed by the Treasury Department, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein...

PROPOSED STEP PLAN – Steps at closing

Step 7 21



PROPOSED STEP PLAN – Steps at closing

Step 8

2

