

Internal Revenue Service

Number: **200605003**

Release Date: 2/3/2006

Index Number: 382.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:1

PLR-139276-05

Date:

October 28, 2005

Legend:

Company =

date 1 =

date 2 =

date 3 =

date 4 =

date 5 =

State =

a =

b =

c =

d =

Manager =

Small Investor Fund =

Large Investor Fund =

Foreign Investor Fund =

General Partner =

Individual =

Country =

Dear :

This letter responds to your letter dated July 22, 2005, requesting rulings under section 382 of the Internal Revenue Code (Code). Submissions dated August 8, September 23, and October 24, 2005, supplement the original letter. The relevant information in the letter and supplements is summarized below.

Company is the common parent of an affiliated group of corporations filing a consolidated return. Company is a loss corporation. The stock of Company is widely held and publicly traded on an over-the-counter market using what are known as “pink sheets.”

On date 1 (more than three years ago), Company and subsidiaries filed voluntary bankruptcy petitions in the United States Bankruptcy Court for the District of State (Bankruptcy Court). On date 2 (while Company was a loss corporation), Company filed a motion with the Bankruptcy Court requesting the Bankruptcy Court to impose trading restrictions on Company stock. The restrictions were intended to give Company the ability to prevent an ownership change by limiting owner shifts in Company stock. The Bankruptcy Court imposed the requested restrictions by interim order effective date 3 and by final order effective date 5.

The restrictions relate to acquisitions or dispositions of Company stock involving any person (Restricted Owner) that owns or comes to own at least a percent (greater than 4 but less than 5 percent) of Company stock. Ownership for this purpose takes into account the constructive ownership rules of section 382 and the regulations thereunder. Under the interim and final orders, any person that is or becomes a Restricted Owner is required to notify Company of the person’s status as such. Also, any person intending to acquire Company stock is required to notify Company if the proposed acquisition (Purported Acquisition) would either (i) cause any person to become a Restricted Owner or (ii) increase the percentage of stock owned by any

Restricted Owner. In addition, any person intending to dispose of Company stock is required to notify Company if the proposed disposition (Purported Disposition) would either (i) cause any person to cease to be a Restricted Owner or (ii) decrease the percentage of stock owned by any Restricted Owner. Within a specified time of receiving notice of a Purported Acquisition or Disposition (Purported Transaction), Company may object to the transaction. If Company objects in accordance with the order, any Purported Transaction is not effective unless approved by an order of the Bankruptcy Court.

Shortly before date 3, three private investment funds under common management (Funds) began to acquire Company stock. The Funds informed Company that as of date 4 (while the interim order was in effect), the Funds owned in the aggregate b percent (greater than 5 percent) of Company stock. The Funds also informed Company that each Fund individually owned less than a percent of Company stock (taking into account the constructive ownership rules of section 382 and the regulations thereunder).

Company was concerned that the Funds together might be an entity under Treas. Reg. § 1.382-3(a)(1). If the Funds together were an entity, the acquisitions of Company stock would result in an owner shift under section 382(g)(2) and Treas. Reg. § 1.382-2T(e)(1). In addition, if the Funds together were an entity, one or more of the acquisitions would be Purported Acquisitions. Thus, Company considered objecting to the acquisitions as in violation of the interim order. Ultimately Company agreed that if the Funds together were not an entity, Company would not object to the acquisitions.

The Funds consist of Small Investor Fund (Small), Large Investor Fund (Large), and Foreign Investor Fund (Foreign). Small and Large are State limited partnerships, and Foreign is a Country corporation. General Partner is the general partner of Small and Large and the sponsor of Foreign. General Partner owns a c-percent interest in each Fund's net profits. General Partner is owned by Individual and persons or entities affiliated with Individual, such as family members, trusts for the benefit of family members, and the like. Individual and affiliates own limited partnership interests in the Funds equal to approximately d percent (less than 10 percent) of the total capital interests in the Funds.

Manager is an LLC that serves as manager and investment advisor of the Funds. Individual and affiliates own Manager.

Each Fund is organized to attract specific types of investors. No Fund shares an investor with any other Fund. The Funds qualify for exemption from registration under the Investment Company Act of 1940. Each Fund's specific exemption depends on the type of investor it attracts.

Each Fund has the same investment objectives. Thus, in virtually every case Manager decides to invest each Fund's assets in the same stock or security. Moreover,

Manager invests the same percentage of each Fund's total assets in that stock or security. That is, Manager invests based on the percentage of each Fund's assets to be invested in a particular issuer's stock or security; Manager does not invest based on the percentage of an issuer's stock or security to be acquired by one or more of the Funds. Manager acts in accordance with its fiduciary duty to the Funds. However, even in the absence of a fiduciary duty, Manager would use this investment approach because each Fund has the same investment objectives.

In addition to serving as investment advisor to the Funds, Manager also serves as investment advisor to other private investment funds. The investment objectives of these other funds differ from that of the Funds. Thus, for example, none of these other funds owns Company stock.

The Funds represent as follows:

(a) The Funds:

- (i) did not acquire any Company stock for the purpose of the Funds' accumulating ownership of any particular minimum percentage of the total outstanding stock of Company,
- (ii) have not acquired equity interests in any other issuer for the purpose of the Funds' accumulating ownership of any particular minimum percentage of the equity interests of that issuer, and
- (iii) have not indicated to investors in the Funds that the Funds would acquire equity interests in any issuer for the purpose of the Funds' accumulating ownership of any particular minimum percentage of the equity interests of any issuer.

(b) The Funds:

- (i) did not acquire any Company stock for the purpose of changing or influencing the control of Company,
- (ii) have not acquired equity interests in any other issuer for the purpose of changing or influencing the control of that issuer, and
- (iii) have not indicated to investors in the Funds that the Funds would acquire equity interests in any issuer for the purpose of changing or influencing the control of any issuer.

In the event of a Purported Transaction, Company may seek to compel certain actions related to Company stock acquired or disposed of in the Purported Transaction (Prohibited Company Stock), as described in (I) through (III) below.

(I) Within 30 business days of learning of a Purported Transaction, Company will notify the Bankruptcy Court and the person engaging in the Purported Transaction that the transaction is in violation of the order.

(II) In the event a person (Purported Transferee) acquires Prohibited Company Stock in a Purported Acquisition:

- (i) Within 30 business days of learning of the Purported Acquisition, Company will demand that the Purported Transferee sell the Prohibited Company Stock in an arm's length transaction using the "pink sheets" if possible. If the Purported Transferee does not sell the Prohibited Company Stock within 30 days of the demand, Company will institute legal proceedings to compel the sale.
- (ii) If the amount realized by the Purported Transferee on the sale reduced by related costs (net proceeds) exceeds the Purported Transferee's basis in the Prohibited Company Stock, then
 - a. After selling the Prohibited Company Stock, the Purported Transferee will promptly donate the net proceeds from the sale minus its basis in the Prohibited Company Stock, together with any distributions received on the Prohibited Company Stock while the order is in effect, to one or more organizations described in section 501(c)(3). If the Purported Transferee received the Prohibited Company Stock by gift or inheritance, its basis for this purpose shall be the fair market value of the Prohibited Company Stock at the time received.
 - b. The Purported Transferee will promptly notify the Bankruptcy Court and Company, in a certificate signed by a person authorized by the Purported Transferee, of the number of shares of Prohibited Company Stock sold, the date of each sale, the price at which each share was sold, the related costs of each sale, the basis of each share sold, the date on which each share was acquired, the gain recognized on each sale, the amounts received as distributions while the order is in effect, the fair market value of the share at the time received if received by gift or inheritance, and the section 501(c)(3) organizations to which net proceeds minus basis, together with distributions, were donated.
- (iii) If the net proceeds from the sale do not exceed the Purported Transferee's basis in the Prohibited Company Stock, then:

- a. After selling the Prohibited Company Stock, the Purported Transferee will promptly donate any distributions received on the Prohibited Company Stock while the order is in effect, minus costs related to the sale, to one or more organizations described in section 501(c)(3). If the Purported Transferee received the Prohibited Company Stock by gift or inheritance, its basis for this purpose shall be the fair market value of the Prohibited Company Stock at the time received.
 - b. The Purported Transferee will promptly notify the Bankruptcy Court and Company, in a certificate signed by a person authorized by the Purported Transferee, of the number of shares of Prohibited Company Stock sold, the date of each sale, the price at which each share is sold, the related costs of each sale, the basis of each share sold, the date on which each share was acquired, the loss, if any, recognized on each sale, the amounts received as distributions while the order is in effect, the fair market value of the share at the time received if received by gift or inheritance, and the section 501(c)(3) organizations to which distribution minus costs related to the sale were donated.
- (III) In the event a person (Purported Transferor) disposes of Prohibited Company Stock in a Purported Disposition (including a disposition by a Prohibited Transferee selling Restricted Company Stock before demand by Company, and any other Purported Disposition):

 - (i) If the net proceeds from the Purported Disposition exceed the Purported Transferor's basis in the Prohibited Company Stock, upon receiving notice from Company the Purported Transferor will promptly donate the net proceeds from the sale minus its basis in the Prohibited Company Stock, together with any distributions received on the Prohibited Company Stock while the order is in effect, to one or more organizations described in section 501(c)(3), and will promptly notify the Bankruptcy Court and Company as provided in (II)(ii)b., above.
 - (ii) If the net proceeds from the Purported Disposition do not exceed the Purported Transferor's basis in the Prohibited Company Stock, upon receiving notice from Company the Purported Transferor will promptly donate any distributions received on the Prohibited Company Stock while the order is in effect, minus costs related to the sale, to one or more organizations described in section 501(c)(3), and will promptly notify the Bankruptcy Court and Company as provided in (II)(iii)b., above.

Based on the foregoing, we rule as follows:

1. The Funds together are not an entity within the meaning of Treas. Reg. § 1.382-3(a)(1).
2. Provided that:
 - (i) the Purported Transferee or Transferor complies with the procedures described in (I) through (III) above, or
 - (ii) Company complies with the prompt enforcement requirements described in (I) through (III) above and is continuing to seek enforcement against a Purported Transferee or Transferor at the end of a taxable year of Company,

the person acquiring Prohibited Company Stock in the Purported Transaction will not be treated as having acquired ownership of that stock for purposes of section 382 and the regulations thereunder.

3. Should a court or other adjudicative body issue a final order declaring the restrictions in the Bankruptcy Court's interim or final orders unenforceable *ab initio*, then for purposes of section 382 and the regulations thereunder ownership of Prohibited Company Stock will be treated as having been acquired by a person in a Purported Transaction on the date actually acquired.

The ruling contained in this letter is based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

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

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for any relevant taxable year.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Martin Huck
Assistant Chief, Branch 1
Office of the Associate Chief Counsel (Corporate)