

PENNSYLVANIA STATE LAW

CENTER FOR THE STUDY OF MERGERS AND ACQUISITIONS

SLIDES ILLUSTRATING (1) A PROTOTYPICAL INVERSION TRANSACTION, AND (2) THE IMPACT OF TREASURY AND IRS NOTICE 2014-52

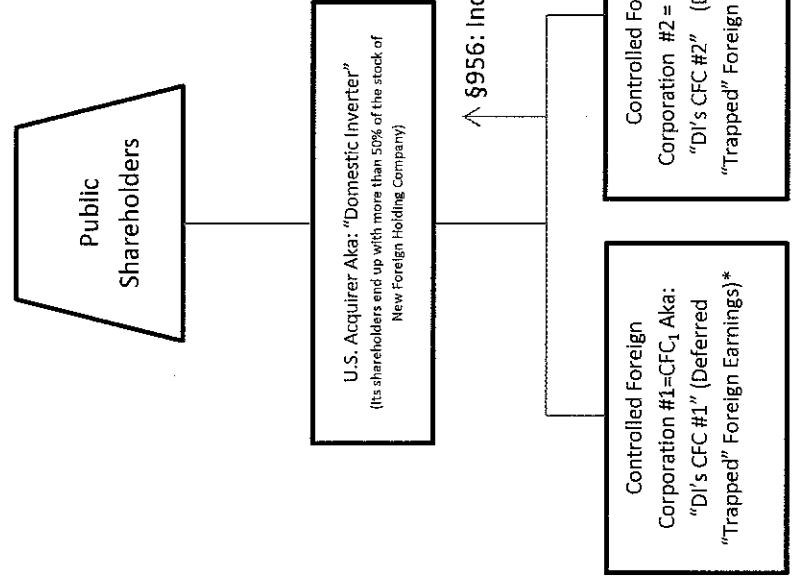
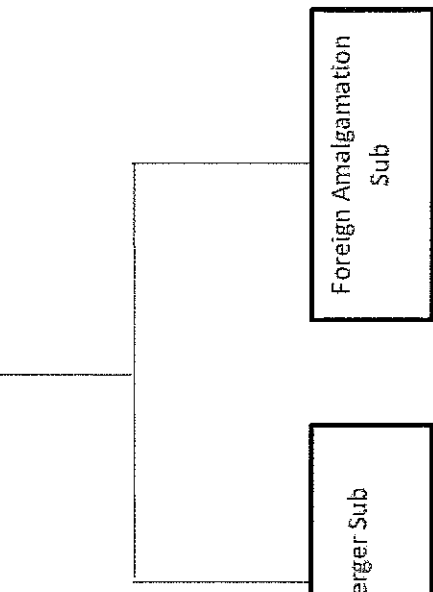
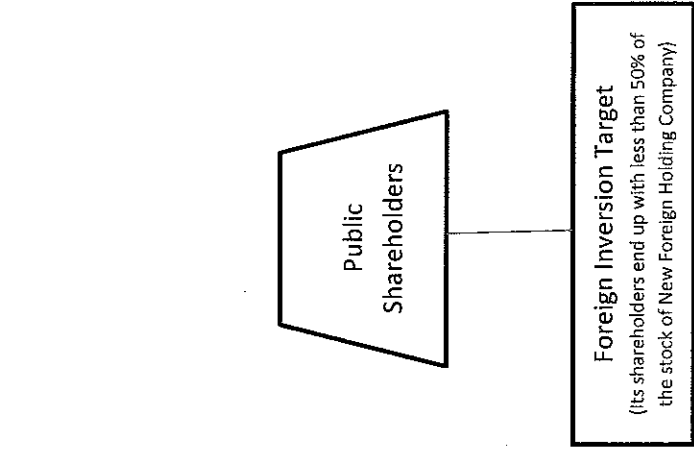
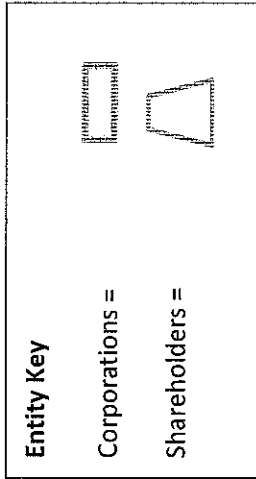
Professor Samuel C. Thompson, Jr.

Draft October 8, 2014

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PROTOTYPICAL INVERSION TRANSACTION

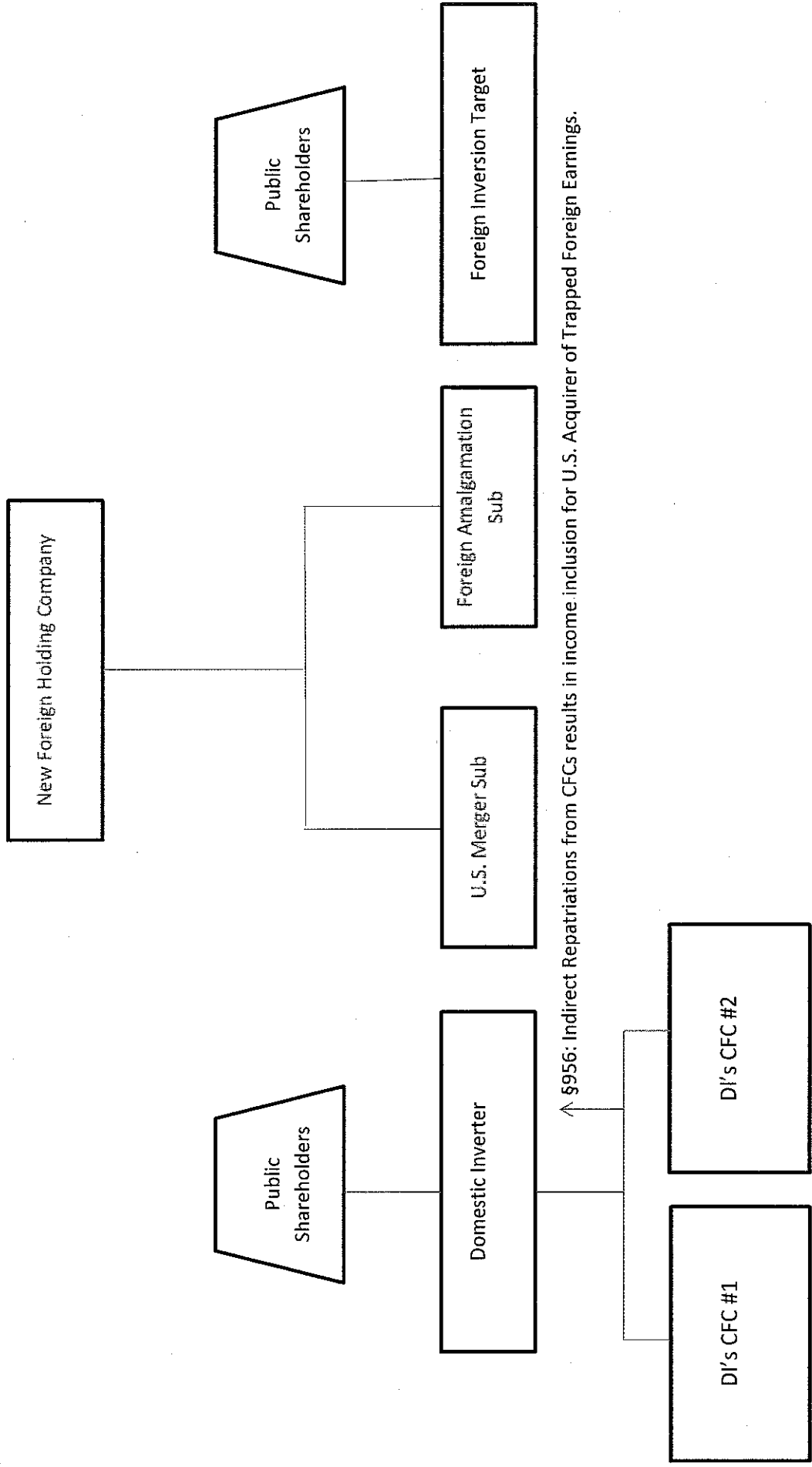
SLIDE #1 PRE-TRANSACTION STRUCTURE



*Total Deferred "Trapped" Foreign Earnings of all CFCs = \$2 trillion (\$1 trillion in cash)

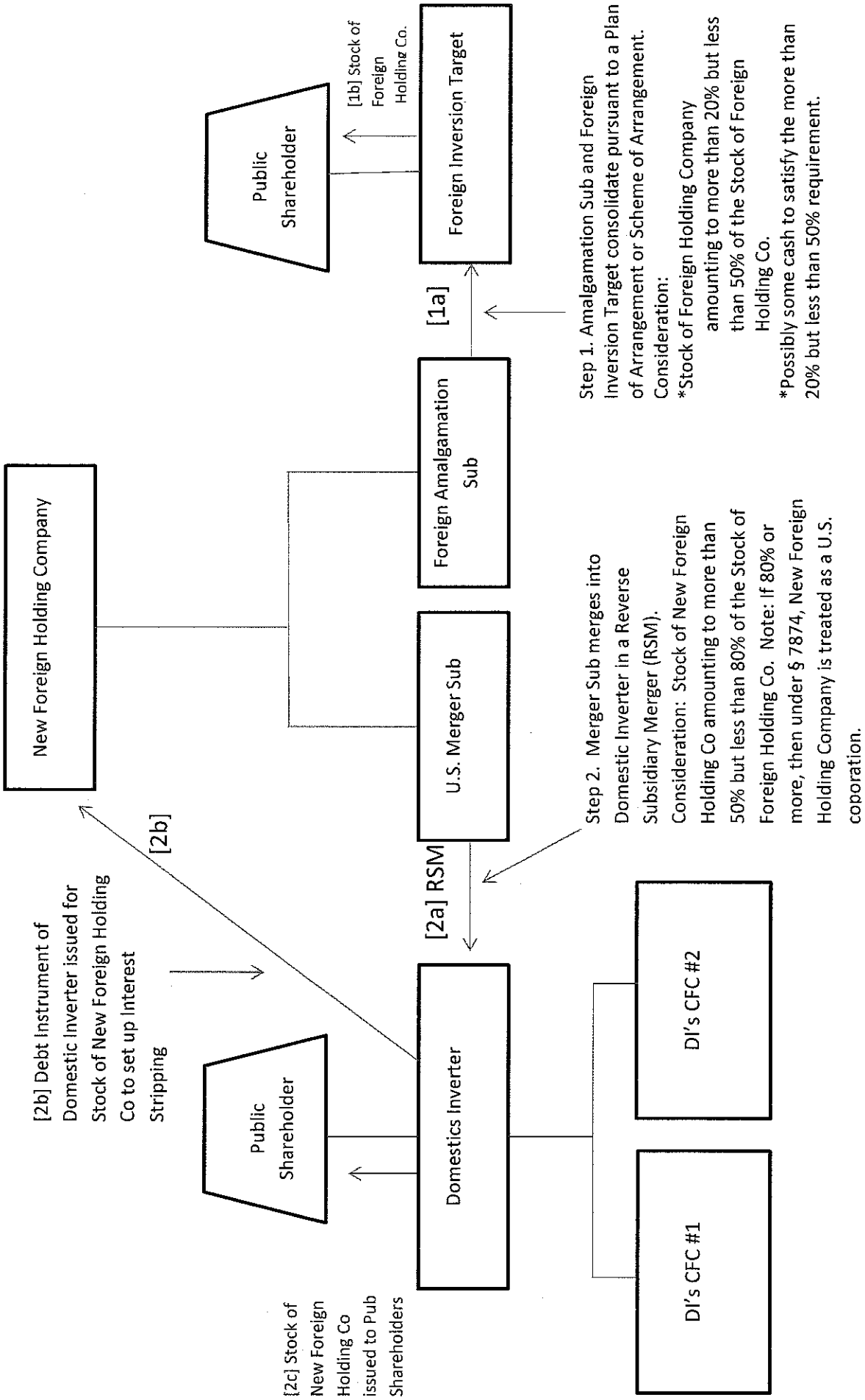
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #2 SUMMARY OF THE PRE-TRANSACTION STRUCTURE



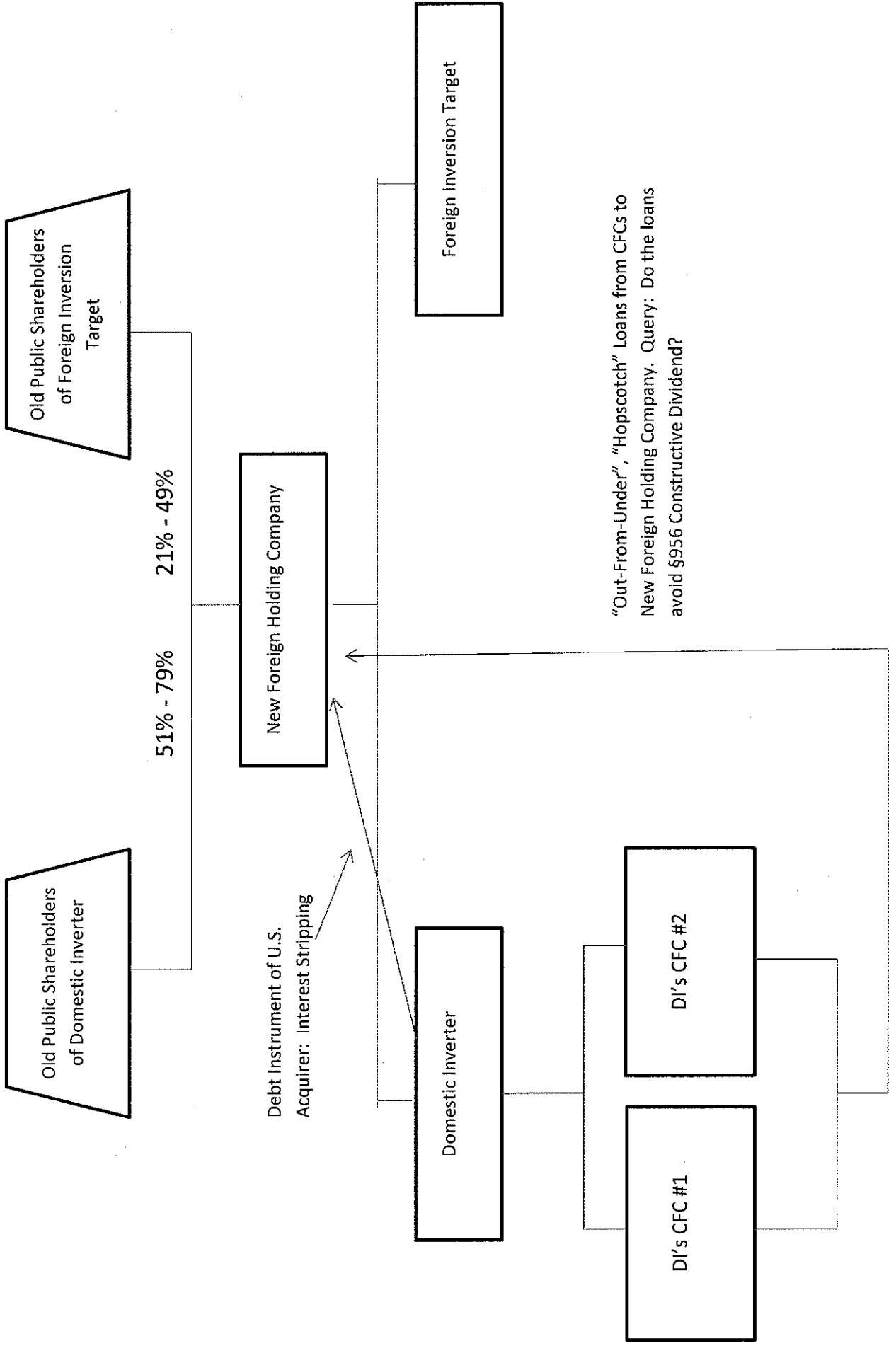
PROTOTYPICAL INVERSION TRANSACTION

SLIDE #3 THE TRANSACTION



PROTOTYPICAL INVERSION TRANSACTION

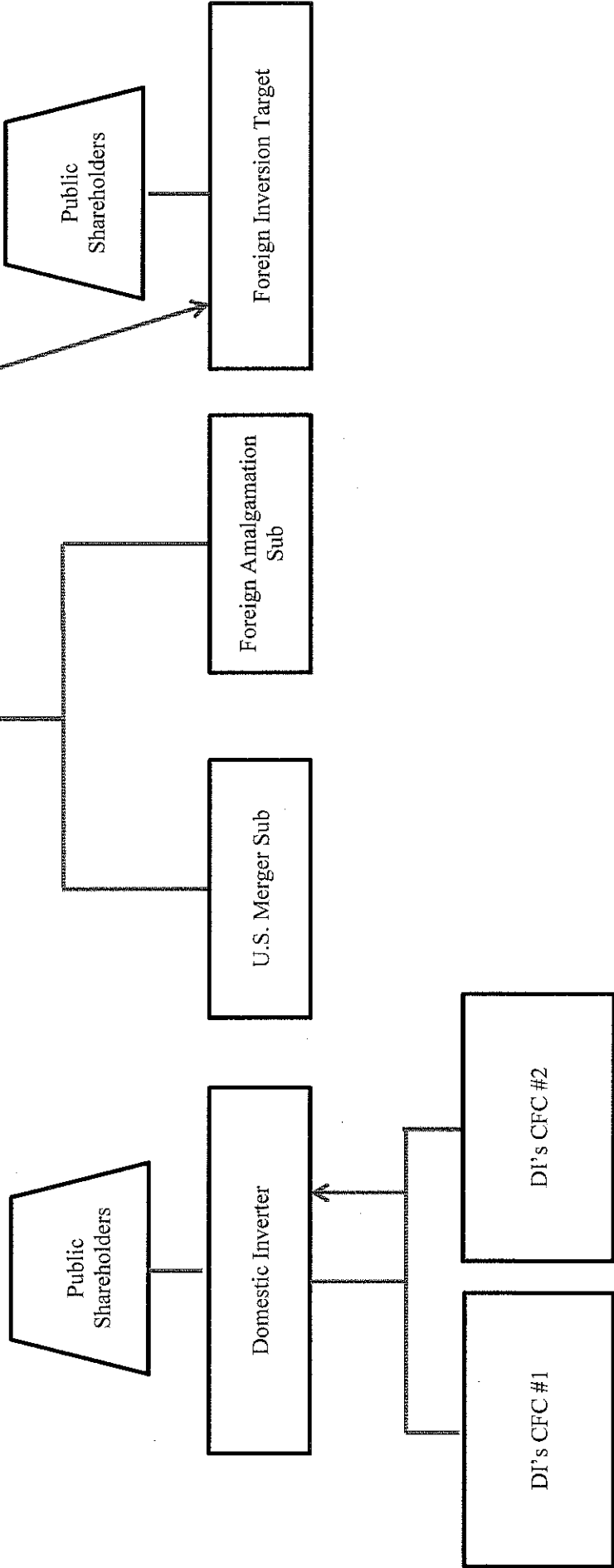
SLIDE #4 POST TRANSACTION STRUCTURE



TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #5 THE ANTI-CASH BOX RULE, § 2.01

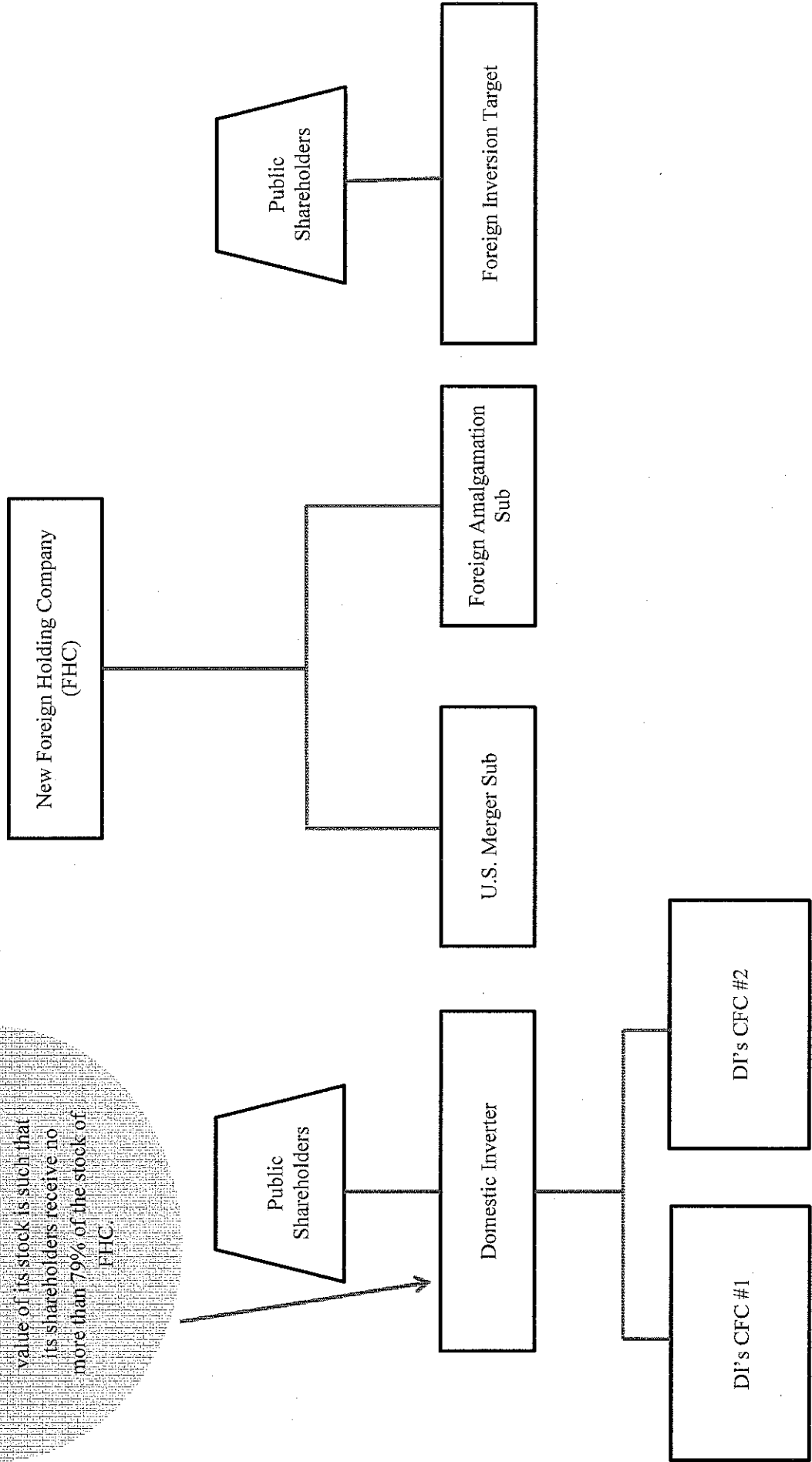
§ 2.01 of Notice will disregard certain stock of Foreign Inversion Target (FIT) attributable to passive assets, effectively ensuring that FIT's net active assets must have a value of at least 21% of the stock of FHC. A similar rule applies for the § 367 substantiality test.



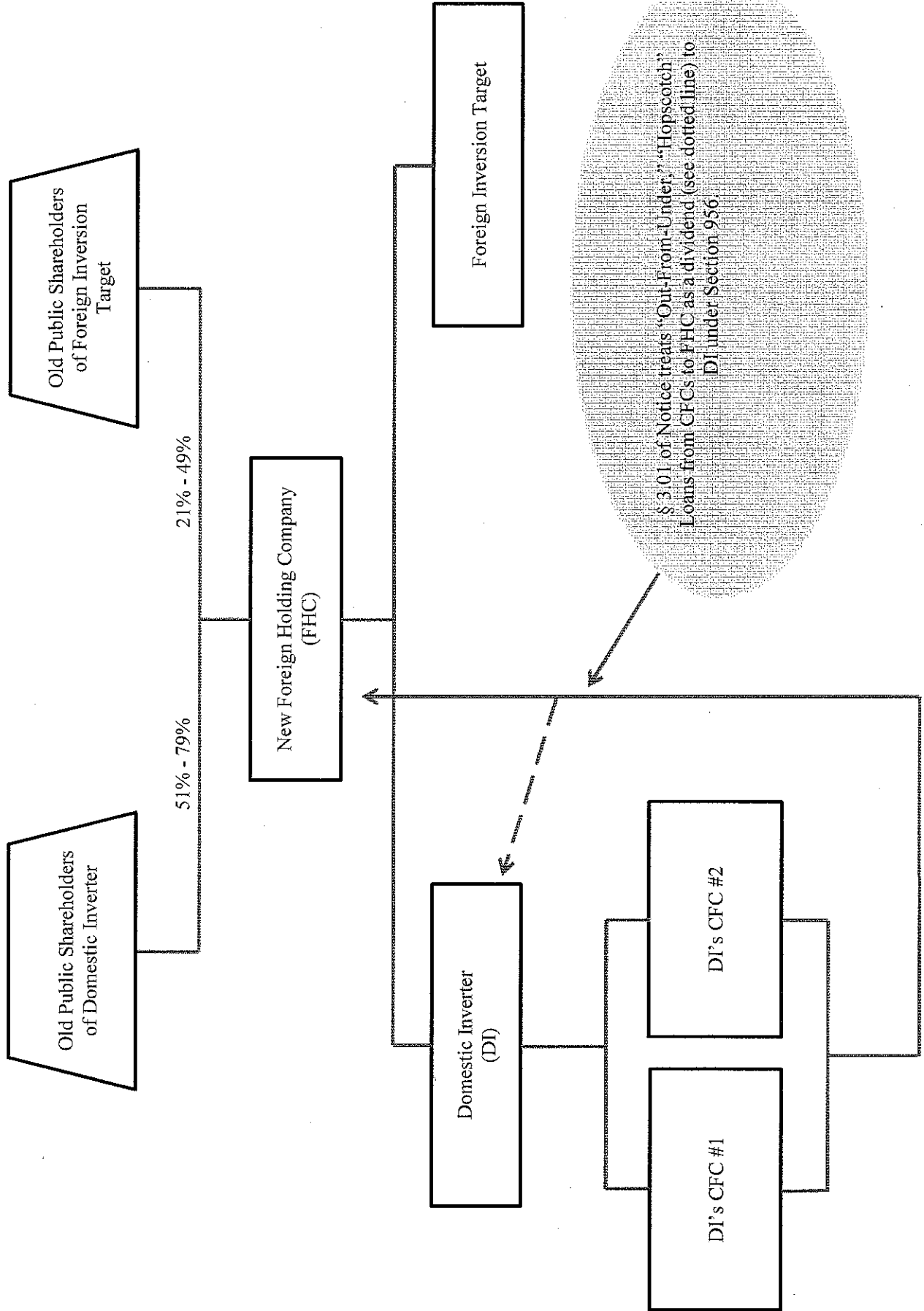
TREASURY NOTICE: IMPACT ON INVERSION STRUCTURE

SLIDE #6 THE NO-SLIMMING DOWN RULE. § 2.02

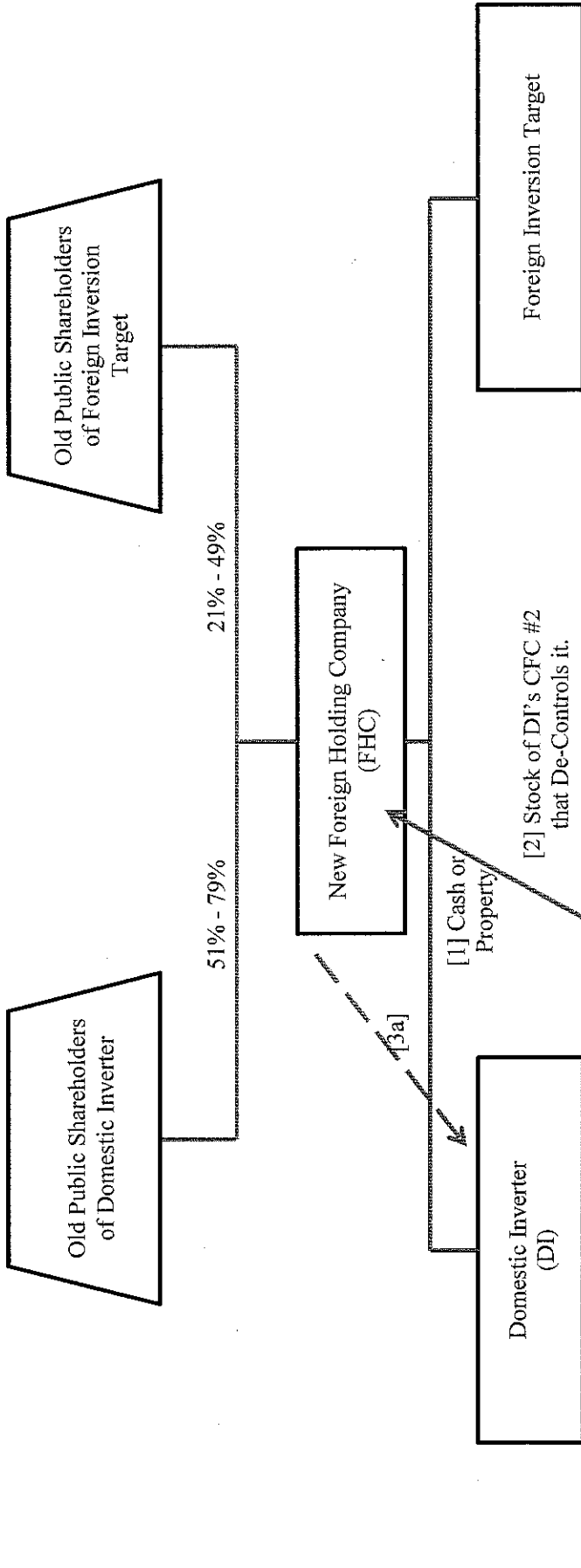
§ 2.02 of Notice, will disregard certain "slimming down" distributions by Domestic Inverter that are designed to ensure that the fair market value of its stock is such that its shareholders receive no more than 79% of the stock of FHC



TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE #7 ANTI-HOPSCOTCH LOAN RULE, § 3.01

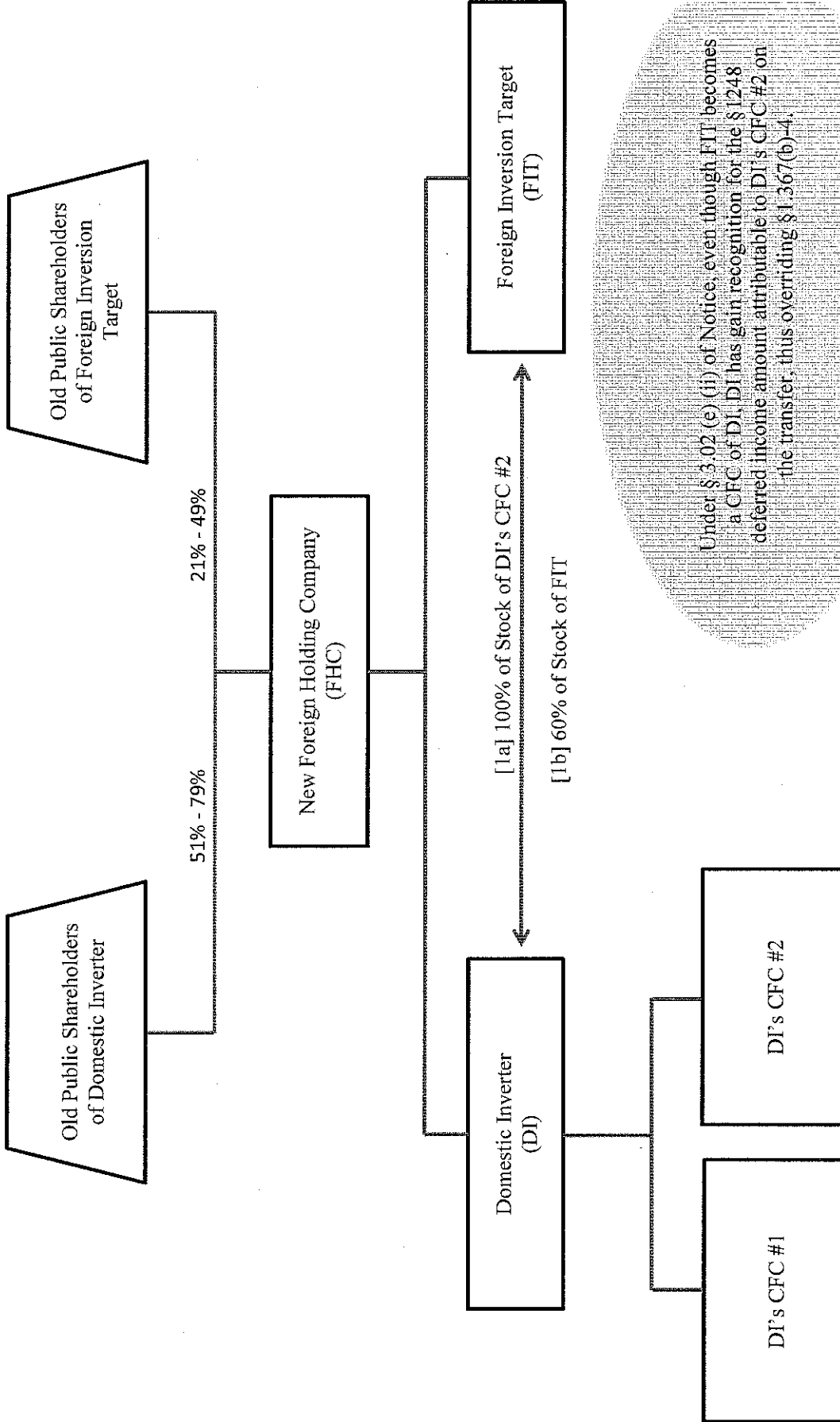


TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE #8 ANTI-DECONTROL OF CFC RULE, § 3.02 (e) (f)



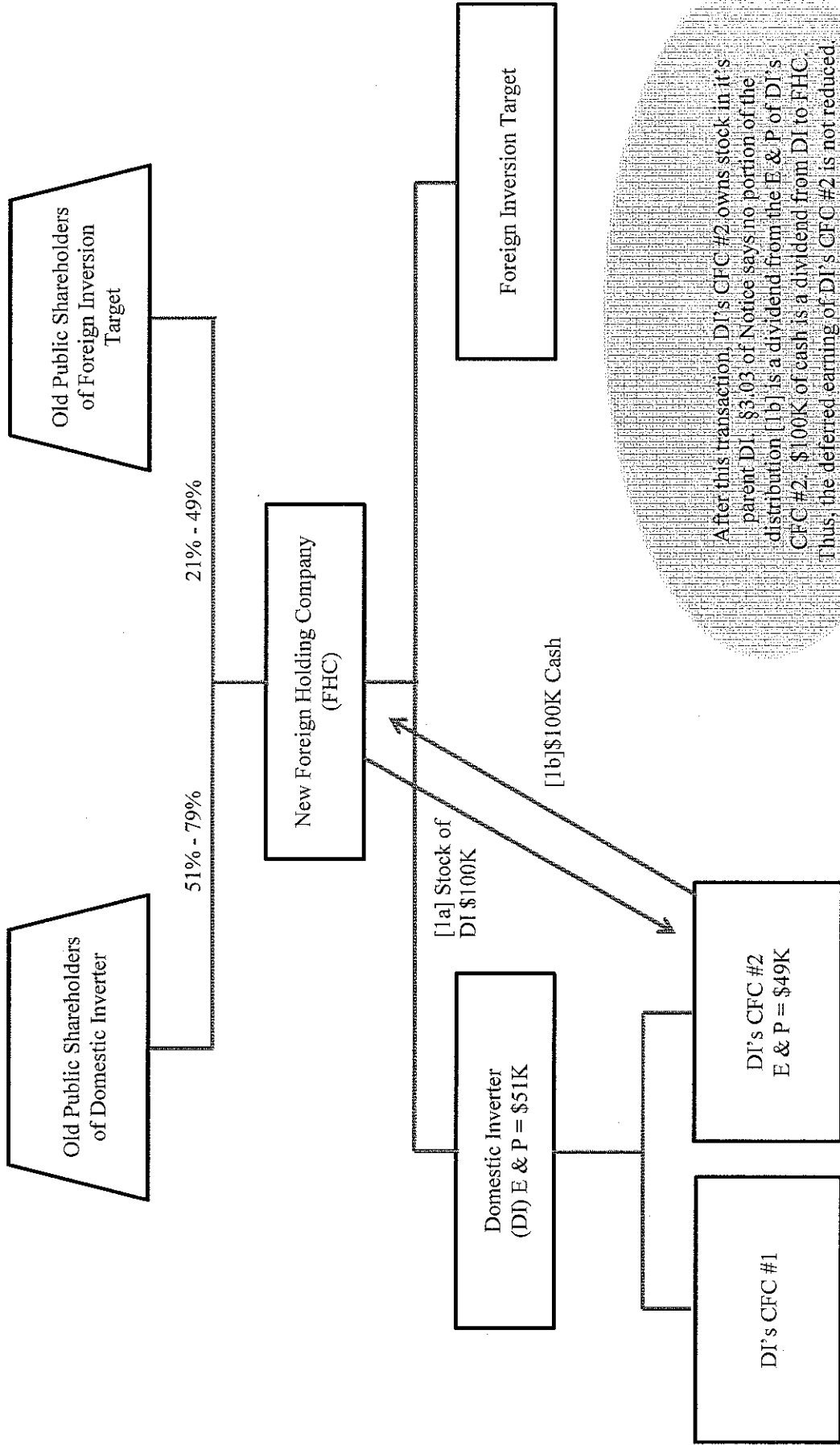
Under § 3.02 (e) (f) of Notice, this de-controlling transaction ([1] and [2]) is recharacterized as a contribution (see dotted lines [3a] and [3b]) from FHC to DI then followed by a matching contribution by DI to DI's CFC #2. DI's CFC #2 is the paying agent for DI.

**TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
 SLIDE #9 ANTI-DILUTION OF INTEREST IN CFC RULE, § 3.02 (e) (ii)**



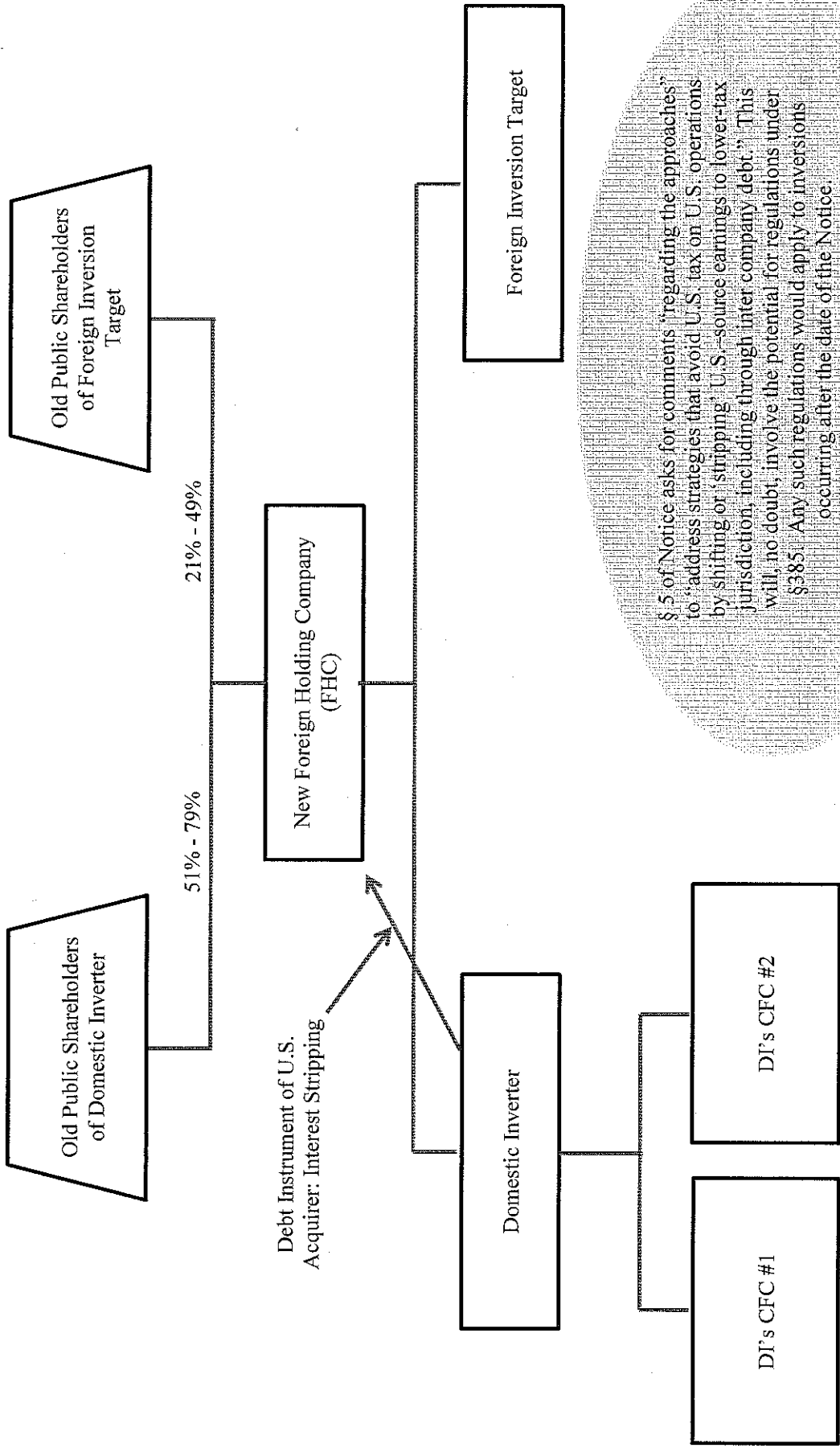
Under § 3.02 (e) (ii) of Notice, even though FIT becomes a CFC of DI, DI has gain recognition for the § 1248 deferred income amount attributable to DI's CFC #2 on the transfer, thus overriding § 1.367(b)-4.

**TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
SLIDE #10 ANTI-SECTION 304 AVOIDANCE RULE, § 3.03**



After this transaction, DI's CFC #2 owns stock in its parent DI. §3.03 of Notice says no portion of the distribution [1b] is a dividend from the E & P of DI's CFC #2. \$100K of cash is a dividend from DI to FHC. Thus, the deferred earning of DI's CFC #2 is not reduced.

**TREASURY NOTICE: POST-INVERSION TAX AVOIDANCE
 SLIDE #11 POTENTIAL ANTI-INTEREST STRIPPING RULE, § 5**



§ 5 of Notice asks for comments "regarding the approaches" to "address strategies that avoid U.S. tax on U.S. operations by shifting or 'stripping' U.S.-source earnings to lower-tax jurisdiction, including through inter company debt." This will, no doubt, involve the potential for regulations under § 385. Any such regulations would apply to inversions occurring after the date of the Notice.