

CHURCHILL DOWNS INC  
Form 8-K  
December 24, 2009

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported): December 23, 2009**

**CHURCHILL DOWNS INCORPORATED**

(Exact Name of Registrant as Specified in Its Charter)

**Kentucky**  
(State or Other Jurisdiction

of Incorporation)

**001-33998**  
(Commission

File Number)

**700 Central Avenue, Louisville, Kentucky 40208**

**61-0156015**  
(IRS Employer

Identification No.)

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(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number, Including Area Code: (502) 636-4400

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 7.01. Regulation FD Disclosure.**

The notifications required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the HSR Act ) to the United States Federal Trade Commission (the FTC ) and the Antitrust Division of the United States Department of Justice (the DOJ ) were filed on November 25, 2009 by Churchill Downs Incorporated (the Company ) and Youbet.com, Inc. ( Youbet ). The statutory waiting period under the HSR Act was initially scheduled to expire on December 28, 2009 at 11:59 p.m., Eastern time. The Company notified the DOJ that it intends to withdraw its HSR Act notification voluntarily on December 23, 2009 to provide the DOJ additional time beyond the initial 30-day HSR Act waiting period to complete its review, and that it intends to re-file its notification on December 24, 2009. Based on the re-filing date of December 24, 2009, the statutory waiting period under the HSR Act is now scheduled to expire on January 25, 2010, at 11:59 p.m., Eastern time, unless it is terminated earlier by the DOJ or is extended if the DOJ requests additional information and documentary material. No other regulatory approvals are a condition to the completion of the merger.

The information in this Item 7.01 of this Current Report on Form 8-K is furnished pursuant to Item 7.01 and shall not be deemed filed under the Securities Exchange Act of 1934, as amended.

**Forward Looking Statements**

This communication includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements may include, but are not limited to, statements about the benefits of the proposed transaction, including future financial and operating results, the combined company's plans, objectives, expectations and intentions. These statements are subject to a number of risks, uncertainties and other factors that could cause our actual results, performance, prospects or opportunities, as well as those of the markets we serve or intend to serve, to differ materially from those expressed in, or implied by, these statements. You can identify these statements by the fact that they do not relate to matters of a strictly factual or historical nature and generally discuss or relate to forecasts, estimates or other expectations regarding future events. Generally, the words believe, expect, intend, estimate, anticipate, project, may, can, could, might, will and similar expressions identify forward-looking statements, including statements related to expected operating and performing results, planned transactions, planned objectives of management, future developments or conditions in the industries in which we participate and other trends, developments and uncertainties that may affect our business in the future. Such risks, uncertainties and other factors include, among other things: the possibility that the expected efficiencies and cost savings from the proposed transaction will not be realized, or will not be realized within the expected time period; the ability to obtain governmental approvals of the merger on the proposed terms and schedule contemplated by the parties; the failure of Youbet's stockholders to approve the proposed merger; the risk that the Company and Youbet businesses will not be integrated successfully; disruption from the proposed transaction making it more difficult to maintain business and operational relationships; the risk that a significant licensing agreement is terminated or not renewed; rising prices for content, the possibility that the proposed transaction does not close, including, but not limited to, due to the failure to satisfy the closing conditions; the effect of global economic conditions, including any disruptions in the credit markets; the effect of UIGEA regulations and/or the resulting policies adopted by

credit card companies and other financial institutions; the effect (including possible increases in the cost of doing business) resulting from future war and terrorist activities or political uncertainties; the overall economic environment; the impact of increasing insurance costs; the impact of interest rate fluctuations; the effect of any change in our accounting policies or practices; the financial performance of our racing operations; the impact of gaming competition (including lotteries and riverboat, cruise ship and land-based casinos) and other sports and entertainment options in those markets in which we operate or are in close proximity; costs associated with our efforts in support of alternative gaming initiatives; costs associated with customer relationship management initiatives; a substantial change in law or regulations affecting pari-mutuel and gaming activities; our continued ability to effectively compete for the country's top horses and trainers necessary to field high-quality horse racing; our continued ability to grow our share of the interstate simulcast market and obtain the consents of horsemen's groups to interstate simulcasting; our ability to execute our acquisition strategy and to complete or successfully operate planned expansion projects; our ability to successfully complete any divestiture transaction; market reaction to our expansion projects; the loss of our totalisator companies or their inability to provide us assurance of the reliability of their internal control processes through Statement on Auditing Standards No. 70 audits or to keep their technology current; our accountability for environmental contamination; the loss of key personnel; the impact of natural disasters on our operations and our ability to adjust the casualty losses through our property and business interruption insurance coverage; any business disruption associated with a natural disaster and/or its aftermath; the impact of wagering or other federal or state laws, including changes in any such laws or enforcement of those laws by regulatory agencies; the outcome of pending or threatened litigation; changes in our relationships with horsemen's groups and their memberships; our ability to reach agreement with horsemen's groups on future purse and other agreements (including, without limiting, agreements on sharing of revenues from gaming and advance deposit wagering); the effect of claims of third parties to intellectual property rights; the volatility of our stock price; the impact of live racing day competition with other Florida and Louisiana racetracks within those respective markets; a substantial change in allocation of live racing days; changes in Illinois law that impact revenues of racing operations in Illinois; the presence of wagering facilities of Indiana racetracks near our operations; our ability to execute on our permanent slot facility in Florida; the need for various alternative gaming approvals in Louisiana; our ability to integrate businesses we acquire, including our ability to maintain revenues at historic levels and achieve anticipated cost savings; and the outcome of any claims arising in connection with a pending lawsuit in federal court in the Western District of Kentucky styled Churchill Downs Incorporated, et al v. Thoroughbred Horsemen's Group, LLC, Case #08-CV-225-S. See the Company's and Youbet's Annual Reports on Form 10-K for the fiscal year ended December 31, 2008 and other public filings with the Securities and Exchange Commission (the "SEC") for a further discussion of these and other risks and uncertainties applicable to our businesses. Neither the Company nor Youbet undertakes any duty to update any forward-looking statement whether as a result of new information, future events or changes in our respective expectations.

#### **Important Merger Information and Additional Information**

This communication is being made in respect of the proposed merger transaction involving the Company and Youbet. In connection with the proposed transaction the Company has filed with the SEC a registration statement on Form S-4 that includes a preliminary

proxy statement of Youbet that also constitutes a prospectus of the Company. At the appropriate time, Youbet will mail the definitive proxy statement/prospectus to its shareholders. Before making any voting or investment decision, investors are urged to read the definitive proxy statement/prospectus when it becomes available because it will contain important information about the proposed transaction. You may obtain copies of all documents filed with the SEC regarding this transaction, free of charge, at the SEC's website ([www.sec.gov](http://www.sec.gov)), by accessing the Company website at [www.churchilldownsincorporated.com](http://www.churchilldownsincorporated.com) under the heading "Investor Relations" and then under the link "SEC Filings" or from the Company by directing a request to 700 Central Avenue, Louisville, KY 40208. Alternatively, you may obtain copies by accessing Youbet's website at [www.Youbet.com](http://www.Youbet.com) under the heading "Investors Relations" and then under the link "SEC Filings" or from Youbet by directing a request to 5901 De Soto Avenue, Woodland Hills, CA 91367.

The Company and Youbet and their respective directors and executive officers and other persons may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding the Company directors and officers is available in the Company's proxy statement for its 2009 annual meeting of shareholders and the Company's 2008 Annual Report on Form 10-K, which were filed with the SEC on April 28, 2009 and March 4, 2009, respectively. Information regarding Youbet directors and executive officers is available in Youbet's proxy statement for its 2009 annual meeting of stockholders and Youbet's 2008 Annual Report on Form 10-K, which were filed with the SEC on April 30, 2009 and March 6, 2009, respectively. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holding and otherwise, will be contained in the definitive proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**CHURCHILL DOWNS INCORPORATED**

December 23, 2009

By: */s/* WILLIAM E. MUDD  
Name: **William E. Mudd**  
Title: **Executive Vice President and Chief Financial Officer**