

Antitrust Agencies Announce Final Changes to HSR Filing Form

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On July 7, 2011, the Federal Trade Commission and Department of Justice announced final changes to the Hart-Scott-Rodino (HSR) reporting form. These changes include the elimination of several categories of information that have proved unnecessary in a preliminary merger review, such as requiring HSR filers to: (1) provide copies of documents filed with the Securities and Exchange Commission, (2) report economic code "base year" data, or (3) provide a detailed breakdown of the voting securities to be acquired.

The changes also include revisions to certain aspects of reporting, such as the following:

- **Revenue information by North American Industry Classification System (NAICS) code** - Manufacturers report U.S. revenues from the sale of manufactured products only under the 10-digit NAICS manufacturing product codes, and report revenues from the sale of products they do not manufacture under the current 6 digit wholesaling or retailing codes.
- **The identification of holders and holdings of the filing entities** - An acquiring person must report, based on its knowledge or belief, its associates' current holdings of voting securities and non-corporate interests between 5 percent and 50 percent in the acquired entity, and in entities having 6-digit NAICS industry code-overlaps with the acquired entity or assets.

In addition, the agencies added certain requirements for HSR filers, such as:

- **New Item 4(d) Document Requirements** - The new Item 4(d) requires the production of additional categories of documents, such as offering memoranda, synergy studies and analyses, and certain types of third-party reports prepared during an engagement or for the purpose of seeking an engagement, that specifically relate to the sale of the acquired assets or entity.
- **New "Associate" Requirements** - The agencies also introduced new concepts, such as identifying "associates" of the acquiring person. This will require entities under common investment or operational management to submit information regarding minority and controlling interests. This requirement will most often affect private equity firms or investment funds that are organized as limited partnerships, but that share a common general partner.



The agencies explain that these revisions are part of their ongoing effort to reduce the filing burden and streamline the form for parties seeking antitrust clearance of proposed mergers and acquisition under the HSR Act and Premerger Notification Rules.

These changes will go into effect 30 days from the publication of the *Federal Register* Notice. We anticipate the effective date to be mid-August 2011.

The FTC's press release, with links to the new form and the text of the *Federal Register* Notice, can be found [here](#).

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