

Corporate & Financial Weekly Digest

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Important Changes to Hart Scott Rodino Premerger Notification Program Announced

On July 7, the Federal Trade Commission (FTC), with the concurrence of the U.S. Department of Justice, announced significant amendments to the Hart-Scott-Rodino (HSR) Premerger Notification Program. A special Katten *Client Advisory* will be distributed in the next several days describing the changes in detail. The changes will significantly affect private equity funds, hedge funds and other investors who use multiple investment funds as acquisition vehicles and employ common managers for those funds. The amendments will go into effect 30 days after their publication in the *Federal Register*. The key changes are summarized below.

First, the new HSR Rules expand an Acquiring Person's reporting obligations by requiring that certain information be provided concerning the holdings of the Acquiring Person's "Associates"—a new defined term created in the HSR amendments. While the concept of "Associate" is quite broad, it covers (among other entities) all funds that are commonly operated or whose investment decisions are made by the same investment manager. In effect, it requires all funds in a family of commonly managed funds to provide certain information for the acquiring fund's HSR filing. Currently, only the fund making the acquisition must provide such information.

Second, the new changes require that the Acquiring Person provide information concerning its Associates' holdings of stock or assets in the Acquired Person and their holdings in other businesses that are in the same North American Industry Classification System (NAICS) classification as the Acquired Person. Essentially, any Associate holdings of the Acquired Entity, or possible competitors of the Acquired Entity, must now be disclosed in the HSR filing. Currently, this information need only be provided for the Acquiring Person itself, not its Associates

Third, the category of documents concerning competition that must be submitted with the filing has been expanded. Currently, documents addressing competitive issues that were prepared by or for officers or directors of the parties in connection with the transaction need be produced. Under a new section that is being added to the HSR Premerger Notification and Report Form, Confidential Information Memoranda, documents prepared by third parties (such as investment bankers and other consultants) that address competition issues related to the acquired entity or assets, and analyses of synergies or efficiencies expected to result from the acquisition, must all be included with the HSR filing.

Finally, the FTC will now require that products manufactured by a filing party outside the United States that are then sold in the United States be reported in the filing and identified by their 10-digit NAICS manufacturing codes. Previously these sales did not have to be reported as manufactured goods.

In sum, the amendments announced by the FTC will materially increase the time and effort required for some acquirers to complete their HSR filings. For firms that make many acquisitions and operate multiple funds, it may be advisable to maintain a filing "on the shelf" that has up-to-date information concerning the firm's "Associates" so that the filing may be prepared quickly once a deal is negotiated and signed. Otherwise, the HSR preparation process may stretch from a few days to a week or more. It may also be advisable in light of the new changes to negotiate longer deadlines for HSR filings in acquisition agreements.

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