



## Proposed Modifications to HSR Reporting

August 20, 2010

The Federal Trade Commission (“FTC”) has proposed modifications to the Hart-Scott-Rodino (“HSR”) Premerger Notification Rules and Notification and Report Form (the “Form”) that parties must file under the HSR Act when seeking antitrust clearance for certain mergers and acquisitions. The FTC’s stated purposes for the changes are to streamline the Form, thereby reducing the burden on filers, and to capture new information to assist the antitrust agencies in conducting their initial review of a proposed transaction’s competitive impact. While the proposed changes will make some aspects of HSR filing easier, other aspects of the proposed Rule changes will increase the burden on filing parties.

The following are the more notable proposed changes that are likely to increase the filing burden:

- ***Additional information required for “associates.”*** Private equity firms and master limited partnerships in particular are likely to face additional filing burdens under this proposed change. The FTC’s proposed changes will add the term “associates” to define entities that are under common management with the acquiring person. Examples of associates would include general partners of a limited partnership, other partnerships with the same general partner, other investment funds whose investments are managed by a common entity or under a common investment management agreement, and investment advisers of a fund. Currently, as a general rule, only the actual private equity fund or master limited partnership making the specific acquisition needs to file for antitrust clearance under the HSR Act. Under the proposed modifications, an acquirer will be required to disclose information about an associate’s investments that overlap with a target company’s activities. This change will impact private equity firms and master limited partnerships directly, requiring these firms to provide information about potential overlaps relating to all investments managed by the firm.
- ***New deal document filing requirements.*** In addition, the proposed changes will increase the volume of deal documents that must be submitted with the HSR filing (presently called the “4(c)” documents, named for the item number requiring their production). The current Item 4(c) document production requirements will remain unchanged. Under proposed Item 4(d), parties will now be required to submit: (i) offering memoranda; (ii) documents prepared by third party advisors for officers or directors for the purpose of evaluating competitive issues; and (iii) documents prepared by or for officers or directors evaluating synergies or efficiencies for the purpose of analyzing the transaction. Unlike the current Item 4(c) requirement, Items (i) and (ii) above need not be prepared for the purpose of analyzing the current transaction, but they must reference the entity or assets to be acquired and must have been produced within two years of the filing.

- **Changes to product and revenue reporting for foreign manufactured products.** Under the proposed Rules, filing parties will be required to provide revenue information and other additional detail concerning products manufactured outside the United States and sold at the wholesale or retail level in the United States. Currently, filers are not required to submit this information for products manufactured outside the United States, but sold in the United States.

The proposed changes also include modifications designed to reduce the HSR filing burden. These changes include, among others, eliminating the required submission of the filing party's most recent balance sheet, eliminating the required submission of base year revenue reporting, and streamlining and limiting certain information requirements concerning controlled subsidiaries.

The FTC has invited public comment on its proposed HSR Rule and Form changes, which must be submitted on or before October 18, 2010.

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For further information about these changes or other aspects of the HSR Act and Rules, please contact:

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