



## Announced Modifications to HSR Reporting

*July 11, 2011*

The Federal Trade Commission (“FTC”) has announced final rules implementing 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 first published proposed modifications on August 13, 2010, and solicited public comments at that time, some of which are addressed in the final rule changes. These final rule changes will become effective 30 days after publication in the Federal Register, likely to occur in the next day or so, and will apply to all transactions that file on or after the effective date. The FTC’s stated purposes for the changes is 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 rule changes will make some aspects of the HSR filing process easier, other aspects will become more difficult.

The following are the more notable announced 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 announced change. The FTC’s announced changes will add the term “associates” to define entities that are under common management with the acquiring person. Examples of associates 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, investment advisers of a fund, and entities controlled by the above including portfolio companies. 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, and only information regarding the controlled entities and portfolio companies of that fund or partnership is reported on the Form. Under the announced modifications, an acquirer will be required to disclose information about investments of associates that derive revenues from activities that overlap with a target company’s activities, both for entities controlled by associates and for 5% or greater minority investments of associates. 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 announced 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 HSR item number requiring their production), although the scope of these changes has been reduced relative to the initial proposal in response to public comments. The current Item 4(c) document production requirements will remain unchanged. Under new Item 4(d), parties will now be required to submit: (i) confidential information memoranda prepared by or for an officer

or director; (ii) documents developed by third party advisors during an engagement or for the purpose of seeking an engagement for officers or directors for the purpose of evaluating competitive issues; and (iii) documents prepared by or for officers or directors evaluating synergies and/or efficiencies for the purpose of analyzing the transaction. Unlike the current Item 4(c) requirement, documents responsive to Items 4(d)(i) and (ii) above need not be prepared for the purpose of analyzing the current transaction, but they must specifically relate to the sale of the acquired entity(s) or assets and must have been produced within one year of the filing. However, unlike the current Item 4(c) requirement, parties will not be required to search for documents responsive to Items 4(d)(i) and (ii) beyond officers and directors of the acquiring or acquired entities that specifically relate to the sale of the acquired entities or assets and their ultimate parents.

- **Changes to product and revenue reporting for foreign manufactured products.** Under the announced rules, filing parties will be required to provide revenue information and other additional detail concerning products manufactured outside the United 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 announced 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 (currently 2002) revenue by NAICS codes, and streamlining and limiting certain information requirements concerning controlled subsidiaries.

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