

Memorandum

Revised HSR Act Thresholds

January 26, 2017

The Federal Trade Commission (“FTC”) has announced revised monetary thresholds for the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (“HSR Act”). The revised thresholds were published in the Federal Register on January 26, 2017 and will be effective on February 27, 2017, applying to all transactions that close on or after that date.

The revisions increase the size-of-transaction and size-of-person thresholds for filing under the HSR Act. The thresholds used in determining filing obligations have been increased as follows: from \$78.2 to \$80.8 million, from \$156.3 to \$161.5 million, from \$321.6 to \$323.0 million, from \$781.5 to \$807.5 million, and from \$1,563.0 to \$1,615.0 million.

With respect to the size-of-person thresholds, acquisitions valued above \$80.8 million but less than \$323.0 million will be reportable if one party has annual net sales or total assets of at least \$161.5 million and the other has annual net sales or total assets of at least \$16.2 million. Acquisitions valued at or above \$323.0 million will be reportable without regard to the sales or assets of the parties.

The revisions will also increase size-of-transaction thresholds for acquisitions of additional voting securities from the same person. Notifications will be required at each of the following thresholds: \$80.8 million; \$161.5 million; \$807.5 million; 25% of the shares if the value of shares to be held is above \$1,615.0 million; and 50% of the shares if their value is above \$80.8 million. Acquisitions of additional voting securities that do not meet or exceed the next notification threshold for a period of five years after expiration or termination of the HSR waiting period are exempt, assuming that the acquiring person crosses the threshold for which it filed within the first year of expiration or termination of the HSR waiting period.

The filing fees for reportable transactions will not change, but the size-of-transaction thresholds that trigger those fees will change. The acquiring person will pay a filing fee of \$45,000 for transactions valued above \$80.8 million but less than \$161.5 million, \$125,000 for transactions valued at or above \$161.5 million but

less than \$807.5 million, and \$280,000 for transactions valued at or above \$807.5 million.

The dollar amounts used for determining the applicability of certain exemptions to filing have also been adjusted to reflect the new thresholds, where indicated by the term “as adjusted” in the HSR rules.

Finally, the FTC separately announced that the maximum civil penalty for violations of the HSR Act will increase from \$40,000 to \$40,654 per day. The revised penalty was published in the Federal Register on January 24, 2017 and is effective as of that date. The new penalty level applies to civil penalties assessed after the effective date of the adjustment, including civil penalties whose associated violation predated the effective date.

For further information regarding the issues raised above or any other aspects of the HSR Act and rules, please contact:

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