

FTC Proposes Amendments To Hart-Scott-Rodino Reporting

The Federal Trade Commission recently announced proposed amendments to the Hart-Scott-Rodino (“HSR”) Premerger Notification Rules and Notification and Report Form. If enacted, the proposed amendments – the first major revisions since 2005 -- will both contract and expand the scope of information required to be disclosed to regulators. Although all filers will benefit from the proposed streamlining of certain requirements, the increased disclosure called for by the proposed new rules will particularly impact private equity funds and master limited partnerships, both of which will be required to divulge information about investments of entities under common management.

Among the most notable proposed changes are:

- the creation of an “associate” definition, which captures entities that manage, are managed by, or are under common management with, the acquiring person (for example, a fund’s general partner and all funds sharing the same general partner or investment committee);
- the requirement to disclose such associates’ controlled and non-controlled investments to the extent their activities overlap with the target’s activities;
- the requirement to provide additional deal documents, referred to as Item 4(d) documents, now explicitly including offering memoranda, investment banker and other third-party materials and synergy and efficiency documents, in each case prepared within two years of the HSR filing and in some cases whether or not prepared by or for a director or officer; and
- a departure from the Census revenue reporting concepts currently embodied in the form, including a new requirement to disclose products manufactured outside of the U.S. but sold into the U.S. and more detailed disclosure of manufactured products for the reporting person’s most recent completed year.

Among the changes that will reduce the filing burden are:

- the elimination of the statistical base year for revenue reporting and the need to report manufactured products that have been added or deleted;
- the elimination of the need to provide balance sheets for controlled entities; and
- reduced disclosure requirements about subsidiaries.

The FTC is soliciting public comment on the proposed amendments through October 18, 2010.

Please feel free to contact any member of Ropes & Gray’s Antitrust Practice Group with any questions about the new requirements.