

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

March 19, 2002

FTC AMENDS HART-SCOTT-RODINO RULES GOVERNING FOREIGN TRANSACTIONS

The Federal Trade Commission has recently amended the exemptions from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), governing acquisitions of foreign assets and voting securities of foreign issuers. The amendments were published in the Federal Register on March 18, 2002 (67 Fed. Reg. 11,898) and will become effective on April 17, 2002. They adopt a single \$50 million sales and assets threshold for measuring the nexus with the United States to replace the old \$15 million U.S. assets and \$25 million U.S. sales thresholds. They also narrow certain existing exemptions for acquisitions by foreign persons. The amended exemptions are summarized below.

Acquisitions of Foreign Assets.

Acquisitions by U.S. or foreign persons of assets located outside the U.S. will be exempt from the requirements of the Act unless the foreign assets to be held as a result of the acquisition generated sales in or into the U.S. of more than \$50 million during the acquired person's most recent fiscal year.

If the above threshold is exceeded, the acquisition will nevertheless be exempt where: (a) both acquiring and acquired persons are foreign; (b) their aggregate sales in or into the U.S. are less than \$110 million in their respective most recent fiscal years; (c) their aggregate total assets located in the U.S. are less than \$110 million; and (d) the transaction has a value of \$200 million or less.

In determining the value of the assets located in the U.S. for purposes of the Act, the following may be excluded: cash and cash equivalents, voting and non-voting securities of another person and any amount of credit or any obligations of a joint venture which any person contributing to the formation of such joint venture has agreed to extend or guarantee at any time.

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Acquisitions of Voting Securities of Foreign Issuers.**A. By U.S. Persons.**

The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the Act unless the acquired issuer (including all entities controlled by it) either:

Holds assets located in the U.S. having an aggregate fair market value of more than \$50 million; or

Made aggregate sales in or into the U.S. of more than \$50 million in its most recent fiscal year.

If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the U.S. and the sales in or into the U.S. of all the acquired issuers must be aggregated in order to determine whether either \$50 million threshold is exceeded.

B. By Foreign Persons.

An acquisition of voting securities of a foreign issuer by a foreign person will be exempt from the requirements of the Act, unless the acquisition will confer *control* of the acquired issuer and the acquired issuer (including all entities controlled by it) either:

Holds assets located in the U.S. with an aggregate fair market value of more than \$50 million; or

Made aggregate sales in or into the U.S. of more than \$50 million in its most recent fiscal year.

If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the U.S. and the sales in or into the U.S. of all the acquired issuers must be aggregated in order to determine whether either \$50 million threshold is exceeded.

In addition, even where the \$50 million sales or assets threshold is exceeded, the acquisition nevertheless will be exempt where: (a) both acquiring and acquired persons are foreign; (b) their aggregate sales in or into the U.S. are less than \$110 million in their respective most recent fiscal years; (c) their aggregate total assets located in the U.S. are less than \$110 million; and (d) the voting securities to be held as a result of the transaction have a value of \$200 million or less.

The definitions of the terms “foreign person” and “foreign issuer” remain unchanged:

The term “foreign person” is defined as “a person, the ultimate parent entity of which (A) is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States; or (B) if a natural person, neither is a citizen of the United States nor resides in the United States.”

The term “foreign issuer” is defined as “an issuer which is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States.”

The table attached as Exhibit A compares the amended exemptions to the old rules.

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This memorandum constitutes only a general description of the amendments to the Hart-Scott-Rodino regulations and should not be construed as legal advice. For further information or to discuss these amendments, please contact Aidan Synnott (212-373-3213) or Didier Malaquin (212-373-3343).

EXHIBIT A

Summary of Amendments to HSR Rules Governing Foreign Transactions

	<u>Old Rules</u>	<u>New Rules</u>
<u>Acquisitions of Foreign Assets</u>	<p><u>By U.S. Persons</u></p> <p>Exempt unless the acquired assets generated \$25 million or more of sales in or into the U.S. during the acquired person's most recent fiscal year.</p>	<p><u>By U.S. Persons</u></p> <p>Exempt unless the acquired assets generated more than \$50 million of sales in or into the U.S. during the acquired person's most recent fiscal year.</p>
	<p><u>By Foreign Persons</u></p> <p>Always exempt.</p>	<p><u>By Foreign Persons</u></p> <p>Exempt unless the acquired assets generated more than \$50 million of sales in or into the U.S. during the acquired person's most recent fiscal year.</p> <p>Also exempt (even if the above threshold is exceeded) if the following conditions are met: (a) the acquired person is also a foreign person; (b) the aggregate sales of the acquiring and acquired persons in or into the U.S. are less than \$110 million in their respective most recent fiscal years; (c) the aggregate total assets of the acquiring and acquired persons located in the U.S. are less than \$110 million; and (d) the transaction has a value of \$200 million or less.</p>
<u>Acquisitions of Voting Securities of Foreign Issuers</u>	<p><u>By U.S. Persons</u></p> <p>Exempt unless the acquired issuer either: (a) holds assets located in the U.S. with an aggregate <i>book value</i> of \$15 million or more; or (b) made aggregate sales in or into the U.S. of \$25 million or more in its most recent fiscal year.</p>	<p><u>By U.S. Persons</u></p> <p>Exempt unless the acquired issuer either: (a) holds assets located in the U.S. with an aggregate <i>fair market value</i> of more than \$50 million; or (b) made aggregate sales in or into the U.S. of more than \$50 million in its most recent fiscal year.</p>
	<p><u>By Foreign Persons</u></p> <p>Exempt unless the acquisition will confer <i>control</i> of: (a) an issuer which holds assets located in the U.S. having an aggregate <i>book value</i> of \$15 million or more; or (b) a U.S. issuer with annual net sales or total</p>	<p><u>By Foreign Persons</u></p> <p>Exempt unless the acquisition will confer <i>control</i> of an issuer which either holds assets in the U.S. with an aggregate <i>fair market value</i> of more than \$50 million or made aggregate sales in or into the U.S. of more than \$50 million in its most recent</p>

	<p>assets of \$25 million or more.</p> <p>Also exempt (even if one of the above thresholds is exceeded) if the following conditions are met: (a) the acquired person is also a foreign person; (b) the aggregate annual sales of the acquiring and acquired person in or into the U.S. are less than \$110 million; and (c) the aggregate total assets of the acquiring and acquired person located in the U.S. are less than \$110 million.</p>	<p>fiscal year.</p> <p>Also exempt (even if one of the above thresholds is exceeded) if the following conditions are met: (a) the acquired person is also a foreign person; (b) the aggregate sales of the acquiring and acquired persons in or into the U.S. are less than \$110 million in their respective most recent fiscal years; (c) the aggregate total assets of the acquiring and acquired persons located in the U.S. are less than \$110 million; and (d) the transaction has a value of \$200 million or less.</p>
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