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August 29, 2016

## **Amendments to the HSR Rules Including Allowing Submission of HSR Filings via DVD**

On August 26, 2016, the Federal Trade Commission (“FTC”) approved several final amendments to the Hart-Scott-Rodino Premerger Notification Rules (“HSR Rules”), the most notable of which permits the submission of HSR Notification and Report Forms (“HSR Forms”) on DVD, rather than by paper, which are often quite voluminous. Parties may, however, continue to submit filings in hard copy if they prefer. The amendments also include several form clarifications and additional instructions intended to streamline the filing process and clarify formatting requirements and the HSR Form instructions consistent with existing practice.

HSR notifications and accompanying attachments have historically been filed in hard copy. For a brief period in 2006, an electronic filing option was created but was soon discontinued due to technological and logistical issues.

There are certain instructions for and limitations to existing practice and the use of DVD filings under the new HSR Rules:

- Submitting an HSR notification partially in hard copy with certain attachments on a DVD will no longer be permitted. In the past, the agencies have accepted paper filings with certain attachments on DVD (for example, extensive modeling spreadsheets), but now the agencies will require any use of a DVD to contain the entire filing.
- The filer must still provide original hard copies of the cover letter, certification and affidavit. Parties may continue to file with a scanned version of the executed affidavit and certification (submitted on the DVD), with the originals to be provided to the FTC as soon as possible.
- The filer may no longer incorporate by reference to prior HSR filings financial statements responsive to Item 4(b) of the HSR Form due to the cited ease with which those documents can be placed on a DVD.
- The HSR Form must be a searchable PDF document. All other files must be in searchable PDF or MS Excel spreadsheet format and saved in color, if applicable.
- If the DVD or files contain viruses, passwords or are not readable, the filing will not be accepted and the waiting period will not start.

These procedural amendments were finalized without public comment and are effective immediately.

The HSR Act requires parties intending to merge or to acquire assets, voting securities or interests in non-corporate entities to notify the FTC and the Antitrust Division of the Department of Justice (“DOJ”) and to observe certain waiting periods before consummating the acquisition if certain thresholds of the HSR Act are satisfied, if no exemption applies. The requirement to file is based on the “size of the transaction” and the “size of the parties” to the transaction. The current minimum size of transaction threshold is \$78.2 million, and adjusts annually each February. Failure to file, regardless of whether there are substantive antitrust issues, may subject the parties to civil penalties of \$40,000 per day.

The final amendments to the HSR Rules are available at:

[https://www.ftc.gov/system/files/documents/federal\\_register\\_notices/2016/08/pmn\\_rules\\_formal\\_interpretations\\_frn\\_with\\_instructions.pdf](https://www.ftc.gov/system/files/documents/federal_register_notices/2016/08/pmn_rules_formal_interpretations_frn_with_instructions.pdf)

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Any questions concerning these changes or the premerger notification requirements of the HSR Act should be addressed to any of the following:

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