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FTC Announces Important Changes to Hart-Scott-Rodino Program

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The Federal Trade Commission has recently issued a series of proposed amendments to the rules governing the Hart-Scott-Rodino (HSR) Premerger Notification Program. It has also proposed significant amendments to the HSR Report form itself. The link to the Commissions Notice of Proposed Rulemaking and request for public comment can be found here.

Three of the proposed changes will have substantial impact on financial buyers and other acquirers who operate multiple funds or other investment vehicles. First, HSR filers who share common managers with other entities will need to provide information on the other commonly managed entities—defined as "associates" in the amended rules—even though they are separately owned. Thus, funds that now share a common manager, or partnerships that share a common general partner, with the HSR filer will now be treated as "associates" of the filer and the filer will need to disclose information about them.

Second, acquiring firms will need to disclose whether their "associates" (or businesses that are owned by the associates) receive revenues from the same line of business as the acquired firm. This will require that the filer inquire into the business holdings and revenue sources of its associated entities.

Third, acquiring firms will also need to disclose minority holdings of their associates (holdings of 5-50%) in entities that also drive revenues from the same industry as the acquired firm.

For financial investors, private equity, and families of funds, these proposed amendments to the HSR rules are potentially quite significant. These changes will be addressed in greater detail in a Katten CLE seminar in New York on September 23.

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