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## FTC and DOJ Revise HSR Form and Filing Requirements

The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have announced major revisions to the [Hart-Scott-Rodino \(HSR\) Report Form and the Premerger Notification Rules](#).

The revisions are expected to come into effect in early August, 30 days after publication in the Federal Register.

The changes sweep away the requirements for parties to provide information including:

- Copies of documents already filed with the Securities and Exchange Commission;
- Economic code "base year" data; and
- Detailed breakdowns on all the voting securities to be acquired.

Despite the FTC's aim to streamline the filing process, in some areas the filing burden has arguably increased. In particular, some controversial changes survived an 11-month consultation, albeit in a watered-down form.

In new Item 4(d) of the Form, all parties will be required to disclose all "confidential information memoranda" prepared by or for officers or directors of their ultimate parent companies in the year before the date of filing. This extends to studies, surveys, analyses and reports prepared by investment bankers, consultants and other advisers.

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### Contacts:

[Edward A. Geltman](#)  
+1.202.626.6681

[Christopher H. Gordon](#)  
+1.202.626.6284

[Iain R. Mcphie](#)  
+1.202.626.6688

[Barry A. Pupkin](#)  
+1.202.626.6662

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Perhaps more significantly, the revised Form provides a broad definition of a new term, "associate," to define entities under common management with the acquiring person, but not controlled by the acquiring person. The FTC has been concerned about the lack of information available about families of entities that fall outside the scope of the HSR Rules, and the antitrust ramifications of acquisitions involving them. (Master Limited Partnerships in the energy industry are highlighted in particular.) The new reporting demands apply to entities under "common investment or operational management" with the filing party and place detailed notification requirements upon them. The change means that private equity and investment funds could now be caught by disclosure requirements.

Under new Item 6(c)(ii), an acquiring party must report associates' holdings of voting securities and non-corporate interests in the target, where they are of five percent or more but less than 50 percent. This requirement extends to entities that have six-digit NAICS industry codes that overlap with the target's. Similarly, Item 7 will require information about "associate" entities.

The method of reporting revenue has also been revised (Item 5). All manufacturers – whether domestic or foreign – will be required to report revenue from sales of their products only under 10-digit NAICS codes. Sales of products that are only sold, and not manufactured, by the parties will continue to be reported under wholesaling or retailing codes.

Other minor revisions have been made to complete the changes made to the HSR Rules in 2005 that related to unincorporated entities.

The revisions will be published in the Federal Register within the next few days and will take effect 30 days after the date of publication.

For further information on the Hart-Scott-Rodino (HSR) Report Form and the Premerger Notification Rules, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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