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# Corporate M&A Advisor

Finance and Transactions Group

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## Groundbreaking Legislation Changes Thresholds and Filing Fees for Premerger Notification Under HSR Act

New legislation effective February 1, 2001, dramatically changes notification thresholds and filing fees for the reporting of mergers, acquisitions and joint venture formation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). This is the first change in notification thresholds since passage of the HSR Act nearly 25 years ago, and it is expected to reduce by approximately 50 percent the number of transactions for which notification is required.

Significant changes to the HSR Act are as follows:

- ✦ The "size of transaction" threshold is increased to \$50 million in place of the current \$15 million threshold, and the 15 percent threshold is eliminated. Previously, notification was required for transactions resulting in the acquiring person's holding more than \$15 million or 15 percent of the assets or voting securities of an acquired person. Following February 1, a transaction will be reportable only if it results in an acquiring person's holding more than \$50 million of assets or voting securities of an acquired person.
- ✦ Notification will be required for all transactions that result in the acquiring person's holding more than \$200 million of assets or voting securities of an acquired person, without regard to "size of person" thresholds. Previously, notification was required only if the acquired person had total assets or annual net sales of \$10 million or more. Thus, notification now may be required for large venture capital investments in small companies that previously were not covered by the HSR Act.

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- ⚡ Filing fees will increase for larger transactions. The current \$45,000 fee still will apply to transactions under \$100 million; a fee of \$125,000 will apply for transactions of \$100 million or more but less than \$500 million; and a \$280,000 fee will apply for transactions of \$500 million or more.
- ⚡ The notification and filing fee thresholds will be adjusted annually, beginning with FY 2005, reflect changes in the GNP during the previous year.
- ⚡ If a second request for information is made by the reviewing agency during the initial waiting period following notification, the waiting period following substantial compliance with such a request now will be 30 days. The waiting period previously was 20 days for negotiated transactions. The current 10-day waiting period for cash tender offers and bankruptcy transactions has not changed.

The Federal Trade Commission shortly will issue amendments to its Premerger Notification Rules, and Notification and Report Form, to reflect these changes as well as others it previously has proposed, including elimination of Item 8 in the Form (concerning vendor/vendee relationships), minor modification of exemptions in the Rules for acquisitions of foreign assets or voting securities of a foreign issuer, and narrowing the exemption for agricultural property to cover only real property.

The new legislation also requires the FTC and Department of Justice to implement internal procedures to resolve disputes about the scope of second requests for information and whether there has been substantial compliance with same, and to promptly implement reforms of the merger review process to eliminate necessary burden, cost and delay. In May 2000, the FTC adopted a new policy authorizing its general counsel to resolve disputes concerning second requests.

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