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AMENDMENTS TO THE HART-SCOTT-RODINO  
ACT ARE ENACTED

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In the final days of the 106th Congress, Congress passed significant amendments to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “Act”). The bill, which was signed by the President on December 21, 2000 and will become effective on February 1, 2001 amends the Act as follows:

- ! **The size-of-transaction threshold is raised to \$50 million from the current \$15 million.** If, as a result of an acquisition, the acquiring person would hold voting securities and assets of the acquired person with a value in excess of \$50 million, the transaction will satisfy the size-of-transaction test of the Act and thus will be potentially reportable.
- ! **The size-of-parties test is eliminated for transactions with a value of \$200 million or more.** The size-of-parties test is maintained at the current levels for transactions with a value in excess of \$50 million but not exceeding \$200 million. Under current law, a transaction is reportable if it meets both the size-of-parties and size-of-transaction tests. The size-of-parties test is satisfied in any of three circumstances: (a) if the acquiring person has \$100 million of either annual net sales *or* total assets, and the acquired person has \$10 million in total assets; *or* (b) if the acquiring person has \$100 million in annual net sales *or* total assets and the acquired person is a manufacturer with \$10 million of either annual net sales *or* total assets; *or* (c) if the acquiring person has \$10 million in annual net sales *or* total assets and the acquired person has \$100 million annual net sales *or* total assets. Under the amendments to the Act, an acquisition with a value of \$200 million or more will be potentially reportable regardless of the sales and assets of the parties to the transaction.
- ! **The filing fees are increased for transactions worth \$100 million or more.** The increase in the size-of-transaction threshold to \$50 million is expected to cut in half the approximately 5,000 filings received by the antitrust agencies every year. In order to make up for this loss of revenue, the filings fees were increased for transactions with a value of \$100 million or more. Under current law, the filing fee is \$45,000 regardless of the transaction size. The amendments establish a tiered fee structure. The filing fee remains \$45,000 for transactions with a value of more than \$50 million but less than \$100 million and is increased to (a) \$125,000 for transactions with a value of \$100 million or more but less than \$500 million; and (b) \$280,000 for transactions with a value of \$500 million or more. As was already the case, the filing fee is payable by the acquiring person.
- ! **The thresholds will be adjusted.** Beginning with fiscal year 2005, the above dollar thresholds are subject to adjustment to reflect the percentage change in the gross national product during the previous year.
- ! **The antitrust agencies are required to amend the merger review process.** The amendments require the Federal Trade Commission and the Department of Justice to adopt internal reforms in order to make the merger review process more effective and less burdensome, including implementing appeals procedures for second requests. Both agencies have already adopted appeals procedures for second requests but the

amendments to the Act require them to report to Congress within six months (a) which reforms each agency has adopted, (b) which steps it has taken to implement such reforms and (c) the effect of such reforms.

**!** **The waiting periods are modified.** The additional waiting period after substantial compliance with a second request is increased to 30 days from the current 20 days for transactions other than cash tender offers. With respect to cash tender offers, the additional waiting after substantial compliance with a second request remains 10 days. In addition, if a waiting period ends on a Saturday, Sunday or legal public holiday, it is now deemed to be extended to the end of the next business day.

The Federal Trade Commission is expected to publish conforming amendments to the Hart- Scott-Rodino regulations and Form during January. These regulatory changes will also take effect February 1, 2001.

This memorandum constitutes only a general description of the amendments to the Hart-Scott-Rodino Antitrust Improvements Act and should not be construed as legal advice.

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