CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NEW YORK 10005-1702
TELEPHONE: (212) 701-3000
FACSIMILE: (212) 269-5420

January 31, 2008

HSR Pre-Merger Reporting Threshold Increased to $63.1 Million

The thresholds for the premerger reporting of proposed acquisitions to United States antitrust authorities under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the "HSR Act"), will be increased effective February 28, 2008.[1] The minimum size-of-transaction threshold will be $63.1 million.

The HSR Act requires all persons contemplating certain mergers or acquisitions of voting securities or assets, which meet or exceed the jurisdictional thresholds in the Act, to notify the Federal Trade Commission and the Antitrust Division of the Department of Justice and observe a waiting period before completing such transactions. Pursuant to the 2000 amendments to the Act, the HSR thresholds are adjusted annually, based on the change in gross national product.

Under the new thresholds, transactions that will result in one person holding $63.1 million (originally $50 million) or more of another person's assets, voting securities or non-corporate interests may be subject to the HSR Act's premerger reporting requirements.

The HSR rules are complex. They include many exemptions and exceptions and at times require the aggregation of pre-acquisition holdings and reporting of subsequent acquisitions when a secondary threshold is crossed. Therefore, the rules should be carefully reviewed with respect to any particular transaction.

In addition, the agencies have brought HSR enforcement actions even in situations that do not raise substantive antitrust concerns, including acquisitions of minority positions by investment firms and financial institutions.

---

1 73 Fed. Reg. 5191 (Jan. 29, 2008).

For example, the FTC and the Department of Justice recently announced the settlement of charges that an investment firm failed to comply with the premerger reporting requirements of the HSR Act when it acquired additional shares of publicly-traded companies in which it already held minority positions.[2]

The HSR rules require a filing when an acquisition results in the holding of voting securities valued at above one of the HSR thresholds (even if the buyer's holdings already exceeded that threshold prior to the acquisition due to a previous nonreportable transaction or an increase in the market value of the shares). In addition, if more than five years have passed since the last HSR filing was made, a new filing may be required before acquiring any additional voting securities.[3]

* * *

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or e-mail Elai Katz at (212) 701-3039 or ekatz@cahill.com or Laurence T. Sorkin at (212) 701-3209 or lsorkin@cahill.com.

---

[2] *United States v. ValueAct Capital Partners, L.P.*, Civ. Action No. 1:07-CV-02267 (Dec. 19, 2007), CCH Trade Reg. Rep. ¶16,901, ¶45,107 (No. 4919), *available at* http://www.ftc.gov/opa/2007/12/valu.shtm. The investment firm agreed to pay a $1.1 million fine for three separate HSR violations. The complaint alleged that the firm failed to make HSR filings to report acquisitions that resulted in crossing a second HSR threshold, $100 million (as adjusted for inflation), even though it had previously complied with its obligation to report plans to cross the first, $50 million (again, as adjusted), threshold. According to the FTC, the firm violated the HSR Act when it aggregated the holdings of separate funds into a single master fund that held voting securities of three issuers, each valued at over $100 million, and then made additional acquisitions of those issuers' securities.

[3] 16 C.F.R. §§ 801.20, 802.21.