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Date: Mon, Mar 19, 2001 5:00 PM
Subject: Comments

From James Sonda and Dani Jachino at Kirkland & Ellis:

We have two comments regarding the Interim Rules and proposed rulemaking drafted in connection with the 2000 Amendments. There are two areas in which the interim and proposed rules would create significant costs and uncertainties that are not justified by an enforcement need. Each is a major departure from the old and existing rules.

Section 801.1(h) The Interim rules establish new dollar value reporting thresholds. Using these dollar value thresholds for subsequent acquisitions of voting securities (after an initial acquisition has been reported) means that an acquisition of even a single share of stock could require a new report and filing fee. This filing requirement could be generated by an increase in value of the issuer

's equity through no action of the shareholder. While the value of the securities could increase, the percentage would remain the same. The shareholder would incur substantial costs unrelated to any significant change in ownership position. The acquisition would not create new competitive issues (the original purpose of HSR). While some administrative problems may be avoided by using the fee thresholds as filing thresholds, other problems are created by using dollar value thresholds.

In addition, the complexities of the valuation issues involved to determine which threshold will be crossed and which fee will be paid is creating a significant burden on the parties to transactions. No enforcement problem has been shown to exist under the old system: a filing was made and a fee was paid. Under the three tier filing fee and threshold system, new costs and uncertainties are created. The emphasis of the HSR has become the value of the transaction rather than the competitive issues.

Sections 802.50 and 802.51 The proposed changes to the foreign exemptions will create a significant burden on the parties and are not consistent with the Act or Rules. The imposition of a requirement to consider sales made during the current year, with a floating end date creates uncertainties: (1) the period for which US sales need to be determined is not known until a filing requirement is determined or a closing date is known; and (2) most foreign businesses will not have standard accounting records on which they can rely to determine sales for such a "floating" period. The Act and Rules consistently require annual net sales. Requesting current year sales is above and beyond the spirit of the Act. While we understand the possible benefit to the agencies, relying on annual sales data for only the most recent year is less burdensome and more certain. This approach should be retained.

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