[Billing Code: 6750-01-P]

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

RIN 3084-AB46

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is proposing amendments to the premerger notification rules ("the Rules") that implement the Hart-Scott-Rodino Antitrust Improvements Act ("the Act" or "HSR") to change the definition of "person" and create a new exemption. The Commission also proposes explanatory and ministerial changes to the Rules, as well as necessary amendments to the HSR Form and Instructions to effect the proposed changes.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Invitation to Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "16 CFR Parts 801-803: Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules; Project No. P110014" on your comment. File your comment online at https://www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver

your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert Jones (202-326-3100), Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC-5301, Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write "16 CFR Parts 801-803: Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules; Project No. P110014" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "16 CFR Parts 801-803: Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules; Project No. P110014" on your comment and on the envelope, and mail your comment to the following address: Federal

Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov*, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential," – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and

must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, *see* https://www.ftc.gov/site-information/privacy-policy.

Overview

The Act and Rules require the parties to certain mergers and acquisitions to file notifications ("HSR Filing") with the Federal Trade Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("the Assistant Attorney General") (collectively, "the Agencies"), and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when

appropriate, to seek an injunction in federal court in order to enjoin anticompetitive mergers prior to consummation.

In this notice of proposed rulemaking ("NPRM"), the Commission proposes amendments to the § 801.1(a)(1) definition of "person" to require certain acquiring persons to disclose additional information about their associates in Items 4 through 8 of the HSR Form and to aggregate acquisitions in the same issuer across their associates when making an HSR filing, as well as a ministerial change to § 801.1(d)(2). The Commission also proposes a new exemption, § 802.15, which would exempt the acquisition of 10% or less of an issuer's voting securities when the acquiring person does not already have a competitively significant relationship with the issuer. Finally, the Commission proposes explanatory and ministerial changes to the Rules, as well as necessary amendments to the HSR Form and Instructions to effect the proposed changes.

Section 7A(d)(1) of the Clayton Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Clayton Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act, exempt classes of transactions that are not likely to violate the antitrust laws, and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

The Commission notes that comments it receives in response to this NPRM may also inform the Advanced Notice of Proposed Rulemaking (ANPRM) published in the Federal Register at the same time as this NPRM.

Part 801—Coverage Rules

§ *801.1 Definitions.*
§ *801.2 Acquiring and acquired persons.*
§ *801.12 Calculating percentage of voting securities.*

Part 802—Exemption Rules

§ *802.15 De minimis acquisitions of voting securities.*

Part 803—Transmittal Rules

Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions
Appendix B to Part 803—Instructions to the Notification and Report Form for Certain Mergers and Acquisitions

Background

The HSR premerger notification program enables the Agencies to determine which acquisitions are likely to be anticompetitive and to challenge them before they are consummated when remedial action is most effective. Under the HSR program, the Agencies typically evaluate thousands of transactions every year. Given the large number of HSR filings submitted each year, the Agencies must use their resources effectively to focus on transactions that may harm competition. The Agencies have a strong interest in receiving HSR filings that contain enough information to conduct a preliminary assessment of whether the proposed transaction presents competition concerns, while at the same time not receiving filings related to acquisitions that are very unlikely to raise competition concerns. In the Agencies' experience, two particular categories of filings make it difficult for the Agencies to focus their resources effectively:

- Filings for acquisitions by certain investment entities. First, due to changes in investor structure and behavior since the HSR Act and Rules went into effect, filings from certain investment entities do not capture the complete competitive impact of a transaction. When certain investment entities file as acquiring persons, the Rules and Form do not currently require the disclosure of substantive information concerning both the complete structure of the acquiring person and the complete economic stake being acquired in an issuer.
- Filings for acquisitions of 10% or less of an issuer. At the same time, the Agencies regularly receive filings involving proposed acquisitions, not solely for the purpose of investment, that would result in the acquiring person holding 10% or less of an issuer. In the Agencies' experience, these filings almost never present competition concerns.[1]

To help the Agencies use their resources more effectively, the Commission proposes to address both issues in this proposed rulemaking. To obtain more complete filings from investment entities filing as acquiring persons, the Commission proposes amending the definition of person in § 801.1(a)(1) to include "associates," a term that is already defined in the Rules. This proposed change would require certain acquiring persons to disclose additional information about their associates in Items 4 through 8 of the HSR Form and to aggregate acquisitions in the same issuer across their associates

[1] From FY 2001 to FY 2017, the Agencies received a total of 26,856 HSR filings, including 1,804 for acquisitions of 10% of less of outstanding stock. During that same period, the Agencies did not challenge any acquisitions involving a stake of 10% or less. Occasionally, the Agencies will require merging parties to divest or make passive small investments in competitors that also carry rights to influence business decisions at the firm. See U.S. v. AT&T Inc. and Dobson Communications Corp., 1:07-cv-01952 (D.D.C. 2007) (parties divested small stakes that carried significant rights to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share).

when making an HSR filing. In addition, the Commission proposes a new exemption, § 802.15, which would exempt the acquisition of 10% or less of an issuer's voting securities when the acquiring person does not already have a competitively significant relationship with the issuer. Finally, the Commission proposes explanatory and ministerial changes to the Rules, as well as necessary amendments to the HSR Form and Instructions to effect the proposed changes.

I. Proposed Changes to Section 801.1 Definitions

A. Proposed Change to the Section 801.1(a)(1) Definition of "Person"

Since the promulgation of the Rules in 1978, the investment landscape has undergone vast changes, including the proliferation of investment entities such as investment funds and master limited partnerships ("MLPs"). Both investment funds and MLPs facilitate investment through structures utilizing limited partnerships and limited liability companies. The Rules define limited partnerships and limited liability companies as "non-corporate entities," and non-corporate entities are their own Ultimate Parent Entity ("UPE") under the Rules when no one holds the right to 50% or more of the profits or assets upon dissolution. Thus, although each non-corporate entity exists within an overall structure of a "family" of funds or MLP, each is typically its own UPE under the HSR Rules. For instance, Parent Fund creates Fund Vehicle 1, Fund Vehicle 2, and Fund Vehicle 3, each a non-corporate entity. No one controls these non-corporate entities, so each fund vehicle is its own UPE even though they exist within the same family of funds. The same is true when no one controls non-corporate entities within a MLP structure; although they exist within the same MLP, each non-corporate entity is its own UPE.

Treating these non-corporate entities as separate entities under HSR is often at odds with the realities of how fund families and MLPs are managed. In the fund context, a fund vehicle typically has an entity that manages how that fund vehicle will invest,[2] and this investment manager very often manages the investments of other fund vehicles within the same family of funds. As a result, Fund Vehicle 1, Fund Vehicle 2, and Fund Vehicle 3 might well have the same Investment Manager[3] and that Investment Manager can use Fund Vehicle 1, Fund Vehicle 2, and Fund Vehicle 3 to make separate investments in different issuers or the same issuer. MLPs, for their part, often have similar structures involving non-corporate entities that are their own UPEs but under common management.[4]

When non-corporate entities are their own UPEs but under common management as described above, this creates two scenarios in which it is difficult for the Agencies to assess the competitive impact of a transaction based on the HSR filing. The first involves filings from non-corporate entity UPEs as acquiring persons that do not contain a complete enough picture of the investment fund or MLP. The Commission first addressed this category of filings in 2011 when it created the "associates" concept.[5] Before that time, filings from non-corporate entity UPEs within families of funds and MLPs contained limited substantive information because non-corporate entity UPEs were not required to disclose information on any other entity within the investment structure. For instance, if Fund Vehicle 1 made a filing for a 100% interest in an Issuer, and Fund

[2] As defined in 16 CFR 801.1(d)(2).
[3] As defined in 16 CFR 801.1(d)(2).
[4] As defined in 16 CFR 801.1(d)(2); the management of MLPs does not have to involve investment management.
[5] 76 FR 42472 (July 19, 2011).

Vehicle 2, under common investment management with Fund Vehicle 1, held 100% of a competitor of the Issuer, Fund Vehicle 2's holding was not disclosed in the filing because Fund Vehicle 1 was its own UPE. A filing such as the one from Fund Vehicle 1 was of limited use to the Agencies because it did not reveal relevant holdings within the same family of funds. Filings received from newly-formed fund vehicles, which did not yet own anything, were of even less use because these filings were largely blank. Filings from non-corporate entities that were their own UPEs within MLP structures raised the same issues.

In light of these issues, the Commission determined that updates to the HSR Form would allow the Agencies to "receive the information they need to get a complete picture of potential antitrust ramifications of an acquisition."[6] Accordingly in 2010,[7] the Commission introduced and proposed to define the term "associates" to capture information in the HSR Form from certain entities that are under common management with the acquiring person. The 2011 final rule[8] required certain acquiring persons to disclose in their HSR filings what their associates hold in entities that generate revenue in the same NAICS codes as the target. With this change, any fund vehicle filing as an acquiring person must look to its investment manager to determine what other fund vehicles that investment manager manages. For instance, Fund Vehicle 1's investment manager also manages the investments of Fund Vehicle 2, making Fund Vehicle 1 and Fund Vehicle 2 associates. Fund Vehicle 1 makes an HSR filing for a 100% interest in Issuer Q. Fund Vehicle 2 controls Entity Y and has a minority position in Entity Z, both

[6] *Id.*
[7] 75 FR 57111 (Sept. 17, 2010).
[8] 76 FR 42471 (July 19, 2011).

of which report in the same NAICS code as Issuer Q. Fund Vehicle 1 must therefore disclose in its HSR filing Fund Vehicle 2's controlling interest in Y and minority interest in Z. Non-corporate entity UPEs within MLP structures must disclose the same information about their associates when filing as acquiring persons.

Although this additional information has been helpful in assessing the competitive impact of a transaction, it is too limited to provide the Agencies with a sufficient overview of investment funds and MLPs as acquiring persons. For instance, the information currently required from associates is limited to controlling or minority interests in entities that report in the same NAICS codes as the entity being acquired. In the Agencies' experience, competitors sometimes use different NAICS codes to describe the same line of business, particularly in the case of companies engaged in technology-based businesses. In addition, associates currently are not required to provide any substantive information, such as financials or revenues, about the entities they control, making it difficult for the Agencies to determine whether an entity within an associate might create a competitive concern in a given transaction.

It is also difficult for the Agencies to understand the potential competitive impact of a transaction when a filing does not represent the total economic stake being acquired in the same issuer. For instance, Investment Manager uses Fund Vehicle 1 to acquire 6% of Issuer D and Fund Vehicles 2 and 3 to each acquire 3% of Issuer D. Only Fund Vehicle 1's acquisition of 6% of Issuer D's voting securities is large enough to cross the $50 million (as adjusted) size of transaction threshold. Fund Vehicle 1 makes an HSR filing, but because it is its own UPE, it need not disclose the interests of Fund Vehicles 2 and 3 in Issuer D. As a result, the filing does not reflect the 12% aggregate interest in

Issuer D of the fund vehicles under common investment management. Another common example arises when Investment Manager uses Fund Vehicle 1, Fund Vehicle 2, and Fund Vehicle 3 to each acquire 2% in Issuer D. If none of these acquisitions of 2% is large enough to cross the $50 million (as adjusted) size of transaction threshold, the Agencies receive no HSR filing, even though the fund vehicles hold an aggregate 6% of Issuer D. Although more rare, both of these scenarios can also play out in the MLP context when non-corporate entity UPEs within the MLP structure make acquisitions in the same issuer.

To help the Agencies accurately assess the potential competitive impact of a pending transaction in these scenarios, the Commission proposes to amend the § 801.1(a)(1) definition of "person" to include associates, such that it would read as follows: "Except as provided in paragraphs (a) and (b) of § 801.12, the term *person* means (a) an ultimate parent entity and all entities which it controls directly or indirectly; and (b) all associates of the ultimate parent entity."

This proposed change would require a non-corporate entity UPE filing as an acquiring person to disclose additional information from its associates in Items 4 through 8 of the Form[9] and to aggregate acquisitions in the same issuer across its associates.

Under the proposed rule, a non-corporate entity UPE filing as an acquiring person would be part of a new, larger Acquiring Person. This Acquiring Person would include non-corporate entity UPE, its associates (which would also be UPEs) and the entity that manages non-corporate entity UPE and its associates (the "managing entity").[10] The

[9] For acquired persons, Items 5 through 7 of the Form will still be limited to the assets, voting securities, or non-corporate interests being sold.
[10] The same would be true for an Acquired Person under the proposed rule.

managing entity would make the filing on behalf of the Acquiring Person, identifying itself in proposed Item 1(a) of the Form, and identify the relevant UPE making the acquisition in proposed Item 1(c) of the Form.[11] If two UPEs within the same Acquiring Person are making reportable acquisitions in the same issuer, the managing entity can choose which one will be the relevant UPE for purposes of the form. The relevant UPE can also file on behalf of the managing entity, as noted in proposed Item 1(c) of the Form. For example:

Hypothetical #1

- Fund Vehicles 1, 2 and 3, each non-corporate entities and their own UPEs, exist within the same family of funds. Fund Vehicles 1, 2 and 3 have the same Investment Manager, and are thus associates. Fund Vehicle 1 will acquire 6% of Issuer D valued at $100 million, Fund Vehicle 2 will acquire 6% of Issuer D valued at $100 million and Fund Vehicle 3 will acquire 3% of Issuer D valued at $50 million. The Acquiring Person includes Fund Vehicles 1, 2 and 3, which are all UPEs, and Investment Manager.
    - Fund Vehicle 1 does not control any operating companies.
    - Fund Vehicle 2 controls Portfolio Company A and Portfolio Company B. Portfolio Company B was acquired two years ago and reports in the same NAICS code as Issuer D.
    - Fund Vehicle 3 controls Portfolio Company C, which does not report in the same NAICS code as Issuer D. Fund Vehicle 3 also holds a minority position in several entities, M, N, and O, which report in the same NAICS code as Issuer D.

- Investment Manager files on behalf of the Acquiring Person for the 15% aggregate interest in Issuer D valued at $250 million by placing its name in Item 1(a) of the Form. Although Investment Manager could designate Fund Vehicle 1 or 2 as the UPE making the acquisition, Investment Manager indicates in Item 1(c) of the filing that Fund Vehicle 1 is making the acquisition. Fund Vehicle 1 can also indicate in Item 1(c) of the Form that it is filing on Investment Manager's behalf. The filing must include the following:
    - Item 4(a): this item requires the Central Index Key (CIK) number of all entities within the Acquiring Person, which now includes Investment

[11] In the case of an Acquired Person, the managing entity would make the filing on behalf of the Acquired Person, identifying itself in proposed Item 1(a) of the Form, and identifying the selling UPE in proposed Item 1(c) of the Form. The selling UPE could also indicate in Item 1(c) of the Form that it is filing on the managing entity's behalf.

Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C.

- Item 4(b): this item requires financials from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C.
- Item 4(c): this item requires responsive documents from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C.
- Item 4(d): this item requires responsive documents from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C.
- Item 5: this item requires revenues by NAICS and NAPCS codes for the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C.
- Item 6: Items 6(a) and 6(b) require information from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C. Item 6(c) also requires information from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C. However, the information required by Item 6(c) is still limited to minority holdings in entities that report in the same NAICS code(s) as the target, here M, N and O.
- Item 7: this item requires all responsive information from the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C. However, the information required by Item 7 is still limited to entities that report in the same NAICS code(s) as the target, here Portfolio Company B.
- Item 8: this item requires information on prior acquisitions within the last five years by the Acquiring Person, which now includes Investment Manager, Fund Vehicle 1, Fund Vehicle 2, Fund Vehicle 3, Portfolio Company A, Portfolio Company B, and Portfolio Company C. However, the information required by Item 8 is still limited to entities that report in the same NAICS code(s) as the target, here Portfolio Company B.

Hypothetical #2

- MLP creates LP1, LP2, and LP3, each a non-corporate entity and its own UPE, to separately hold the MLP's investments. LP1, LP2 and LP3 have the same Manager, and are thus associates. LP1 will acquire 100% of Issuer R valued at

$500 million. LP1 is the UPE but the Acquiring Person includes Manager, LP2 and LP3.
    - LP1 controls two operating companies, OpCo 1 and OpCo 2, which report in the same NAICS code as Issuer R. OpCo 1 was acquired 10 years ago and OpCo 2 was acquired 3 years ago.
    - LP2 controls OpCo 3, which reports in the same NAICS code as Issuer R and was acquired 1 year ago, and OpCo 4, which does not report in the same NAICS code as Issuer R.
    - LP3 holds minority positions in OpCo 5 and OpCo 6, and each reports in the same NAICS code as Issuer R.

- Manager places its name in Item 1(a) of the Form to file on behalf of the Acquiring Person for the 100% interest in Issuer R, and indicates in Item 1(c) of the Form that LP1 is making the acquisition. LP1 can also indicate in Item 1(c) that it is filing on Manager's behalf. The filing must include the following:
    - Item 4(a): this item requires the CIK number of all entities within the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4.
    - Item 4(b): this item requires financials from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4.
    - Item 4(c): this item requires responsive documents from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4.
    - Item 4(d): this item requires responsive documents from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4.
    - Item 5: this item requires revenues by NAICS and NAPCS codes for the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4.
    - Item 6: Items 6(a) and 6(b) require information from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4. Item 6(c) also requires information from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4. However, the information required by Item 6(c) is still limited to minority holdings in entities that report in the same NAICS code(s) as the target, here OpCo 5 and OpCo 6.
    - Item 7: this item requires all responsive information from the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4. However, the information required by Item 7 is still limited to entities that report in the same NAICS code(s) as the target, here OpCo 1, OpCo 2, and OpCo 3.
    - Item 8: this item requires information on prior acquisitions within the last five years by the Acquiring Person, which now includes Manager, LP1, LP2, LP3, OpCo 1, OpCo 2, OpCo 3 and OpCo 4. However, the information required by Item 8 is still limited to entities that report in the

same NAICS code(s) as the target, here OpCo 2 and OpCo 3, but OpCo 1 would not be listed because it was acquired more than five years ago

As these examples illustrate, the proposed change to § 801.1(a)(1) would require a non-corporate entity UPE filing as an acquiring person to disclose more substantive information about its associates. The additional information required by the Form would be of tremendous value to the Agencies in assessing the potential competitive impact of a pending transaction. Specifically, the proposed changes to Items 4, 5 and 6(a) would give the Agencies a much better picture of what entities are under common management. The proposed changes to Item 6(b) would provide a clearer picture of the ways in which the entities within the acquiring person are connected, both within the investment structure and beyond. Proposed Item 8 would provide more complete information on entities within the acquiring person that have made acquisitions in the same industry as the target.[12] All of this additional information would give the Agencies a much more complete picture of who is making the filing in the case of investment funds and MLPs filing as acquiring persons.

The additional information concerning acquisitions made by a non-corporate entity UPE's associates in the same issuer would also be of great value to the Agencies. The proposed change to § 801.1(a)(1) would give the Agencies a much clearer understanding of the total economic stake being acquired in a single issuer by entities under common management. In some cases, looking across a non-corporate entity UPE's associates for acquisitions in the same issuer will result in a filing when one would not have been required previously. For instance, in a scenario where associates Fund Vehicle

[12] There would be no change to the information Items 6(c) and 7 require, because those items already require information from associates. Each of these items would, however, be consolidated in the HSR Instructions and Form to reflect the new definition of "person," as explained below.

1, Fund Vehicle 2, and Fund Vehicle 3 will each acquire 2% of Issuer D for $40 million, the Agencies currently do not receive a filing because none of the three $40 million acquisitions is large enough to cross the $50 million (as adjusted) size of transaction threshold. Under the proposed rule, the Agencies would now receive a filing for the aggregate 6% interest valued at $120 million (assuming an exemption does not apply).[13]

The Commission acknowledges that the proposed change to § 801.1(a)(1) would result in more filings and an increased burden for certain acquiring persons. Non-corporate entity UPEs within families of funds and MLPs would have to provide significant additional information on behalf of their associates under the proposed change. These entities are, however, already accustomed to looking into the holdings of those associates for filings where they are acquiring persons because some information about associates' holdings must be provided even under the current Rules. Given that these entities already conduct such inquiries, the Commission believes requiring additional information about entities that have already been identified should be manageable. The breadth of certain items will still be limited, and the burden should lessen after the first inquiry under the new rule. Nevertheless, the Commission acknowledges that there might be other ways to achieve the same result. The Commission invites comments on alternative ways the Agencies could obtain this necessary information that would result in a more limited burden for investment funds and MLPs filing as acquiring persons.

The proposed change to § 801.1(a)(1) would result in fewer filings and a reduced burden for certain other acquiring persons. The proposed rule would streamline the

[13] In addition, certain acquiring persons will also be much more likely to meet the size of person test when including information about their associates as required by the proposed rule.

number of filings and fees from families of funds and MLPs. For instance, in the scenario where associates Fund Vehicle 1, Fund Vehicle 2, and Fund Vehicle 3 will each acquire 7% of Issuer D for $200 million, each currently must make a filing and pay a separate $125,000 filing fee (assuming no exemptions apply). Under the proposed rule, the Agencies would receive one filing for 21% of Issuer D valued at $600 million and one $125,000 filing fee. In addition, the proposed rule would eliminate the need for a filing in the alternative. If the Investment Manager of associates Fund 1 and Fund 2 has not yet determined which of those funds should be the vehicle for a particular investment, the need to choose one for HSR filing purposes becomes moot under the proposed rule, eliminating the potential need to make two filings with two separate filing fees.

The Commission also proposes an additional reduction in burden for acquired persons. The HSR Form already limits what acquired persons must report in Items 5 through 7 to information on those assets, voting securities, and non-corporate interests being acquired in the transaction at issue. The limitation for acquired persons in these items is an acknowledgment that only what is being sold is relevant to the Agencies' competition analysis. This is also the case for the financial information required in Items 4(a) and 4(b), and the Commission therefore proposes amending the HSR Instructions to create a similar limit for acquired persons with respect to these items. Under the proposed changes, an acquired person would provide relevant CIK numbers in response to Item 4(a) or financials in response to Item 4(b) only for (1) the assets, voting securities and non-corporate interests being acquired in the transaction at issue, and (2) the UPE of those assets, voting securities and non-corporate interests. This proposed amendment to the HSR Instructions would significantly limit what non-corporate entity UPEs within

families of funds and MLPs would have to provide as acquired persons in response to Items 4(a) and 4(b) and would not adversely affect the Agencies' competitive analysis.

Finally, the Commission also acknowledges that certain non-corporate entity UPEs within families of funds and MLPs and their associates may be structured as index funds, exchange-traded funds (ETFs) or the like. Since these entities base their investments on an index, it is possible that it is not appropriate to apply the proposed change to § 801.1(a)(1) to these entities. The Commission invites comments on whether index funds, ETFs or the like should be differentiated under the proposed rule.

B. Proposed Changes to Section 801.1(d)

Along with the proposed change to § 801.1(a)(1), the Commission also proposes conforming changes to the definition of associate in § 801.1(d)(2). Under the current definition, associate is only relevant to Items 6 and 7 of the HSR Form and to acquiring persons.[14] But the proposed change to the § 801.1(a)(1) definition of person would apply the associates concept more broadly in the HSR Form and to both acquiring and acquired persons. The Commission therefore proposes to eliminate the phrase "For purposes of Items 6 and 7" from § 801.1(d)(2), capitalize the subsequent "An" in § 801.1(d)(2) and include "or acquired" in § 801.1 (d)(2), § 801.1 (d)(2)(A) and § 801.1 (d)(2)(B) to reflect this proposed change.

II. Proposed Section 802.15: De Minimis Acquisitions of Voting Securities

To use their resources as effectively as possible, the Agencies have a strong interest not only in receiving HSR filings that contain sufficient information to assess whether proposed transactions present real competition concerns, but also in eliminating

[14] 16 CFR 801.1(d)(2).

filings for categories of acquisitions that are unlikely to create competitive concerns. In 1996, the Commission acknowledged this concern in issuing final rules exempting certain ordinary course transactions, as well as certain types of acquisitions of realty and carbon-based mineral reserves.[15] The Commission explained, "[t]hese rules are designed to reduce the compliance burden on the business community by eliminating the application of the notification and waiting requirements to a significant number of transactions that are unlikely to violate the antitrust laws. They will also allow the enforcement agencies to focus their resources more effectively on those transactions that present the potential for competitive harm."[16]

Under the same rationale, the Commission has long contemplated the exemption of acquisitions of 10% or less of the voting securities of an issuer. These kinds of acquisitions can take many forms. The most typical is when an entity acquires 10% or less of an issuer in order to provide that issuer with needed capital. Sometimes certain shareholders of the target will acquire less than 10% of the buyer's voting securities as consideration for the transaction (typically called shareholder backside acquisitions). Except for a few instances when a shareholder backside acquisition of 10% or less of an issuer's voting securities was linked to a larger transaction that presented competitive concerns,[17] the Commission has not sought to block any acquisition of 10% or less of an issuer's voting securities.

Recognizing that some acquisitions of 10% or less are less likely than others to raise competitive concerns, the Act already includes an exemption for acquisitions of

[15] 61 FR 13666 (Mar. 28, 1996).
[16] 61 FR 13666 (Mar. 28, 1996).
[17] *See, e.g., In re Time Warner, Inc., et al.,* Docket No. C-3709, (Feb. 7, 1997).

10% or less of the voting securities of an issuer made "solely for the purpose of investment."[18] This exemption is codified in § 802.9,[19] and § 801.1(i)(1) defines the term "solely for the purpose of investment" so that filing parties may determine whether § 802.9 is available. "Voting securities are held or acquired 'solely for the purpose of investment' if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer."[20]

The Statement of Basis and Purpose for the original 1978 Rules ("1978 SBP") lays out specific factors that further illuminate the § 801.1(i)(1) definition. "[M]erely voting the stock will not be considered evidence of an intent inconsistent with investment purpose. However, certain types of conduct could be so viewed. These include but are not limited to: (1) Nominating a candidate for the board of directors of the Issuer; (2) proposing corporate action requiring shareholder approval; (3) soliciting proxies; (4) having a controlling shareholder, director, officer or employee simultaneously serving as an officer or director of the Issuer; (5) being a competitor of the Issuer; or (6) doing any of the foregoing with respect to any entity directly or indirectly controlling the Issuer. The facts and circumstances of each case will be evaluated whenever any of these actions have been taken by a person claiming that voting securities are held or acquired solely for the purpose of investment and thus not subject to the act's requirements."[21]

The Agencies have interpreted these factors narrowly: when an acquiring person takes any of the enumerated actions or is a competitor of the issuer, § 802.9 is generally

[18] 15 USC 18a(c)(9).
[19] 16 CFR 802.9.
[20] 16 CFR 801.1(i)(1).
[21] 43 FR 33450, 33465 (July 31, 1978).

not available.[22] On the other end of the spectrum, § 802.9 is clearly available if the acquiring person plans to do nothing but hold the stock. Given the changes in investor behavior since the HSR Act was passed,[23] however, a great deal of potential shareholder engagement involves more than merely holding (and potentially selling) stock, but does not encompass what the 1978 SBP discusses.[24]

Notably, some argue that communications between investors and management encourage corporate accountability to shareholders,[25] and that HSR filing requirements (and attendant obligations to provide notice to the issuer prior to purchase of the shares) might chill this beneficial interaction,[26] particularly since, depending on the degree of

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[22] Letter from Thomas J. Campbell, Dir., Bureau of Competition, FTC, to Michael Sohn, Esq., Arnold & Porter (Aug. 19, 1982) (on file with the 6th report to Congress).

[23] *See* Scott Hirst & Lucian Bebchuk, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721, 725-26 (2019). (In 1950, U.S. equities were predominantly held by households, with institutional investors accounting for only about six percent; now institutional investors hold 65 percent of U.S. equities); and then S&P Dow Jones Indices, Comment, *Re: FTC Hearing #8: Competition and Consumer Protection: Holdings of Non-Controlling Ownership Interests in Competing Companies,* (Jan. 15, 2019), https://www.ftc.gov/system/files/documents/public_comments/2019/01/ftc-2018-0107-d-0015-163643.pdf, at 1 ("Fifty years ago, there were no index funds; all institutional (and retail) asset management was conducted on an active basis. Today, we estimate that between 20 to 25 percent of the U.S. stock market is held by index funds.").

[24] *See, e.g., Blackrock, Investment Stewardship, Engagement Priorities for 2020*, https://www.blackrock.com/corporate/literature/publication/blk-stewardship-priorities-final.pdf (identifying and describing board quality, environmental risk and opportunities, corporate strategy and capital allocation, compensation that promotes long-termism, and human capital management as engagement priorities); *Vanguard Investment Stewardship 2019 Annual Report*, https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/2019_investment_stewardship_annual_report.pdf (discussing board composition (including diversity of gender, race and ethnicity) oversight of strategy and risk (including environmental risk), structure of executive compensation, and governance structures to support and ensure accountability of a company's board and management to shareholders); and then *State Street Global Advisors Stewardship Report 2018-2019*, https://www.ssga.com/library-content/products/esg/annual-asset-stewardship-report-2018-19.pdf (describing engagement with boards and management teams, including, among other issues, "fearless girl campaign" to increase diversity of boards, "climate risk and reporting", ethical issues in the pharmaceutical industry, including marketing of addictive substances, genetic engineering, and the use of personal data).

[25] *See* David Hirschmann, Comment, *FTC Hearings on Competition and Consumer Protection in the 21st Century*, (Dec. 6, 2018), https://www.ftc.gov/system/files/documents/public_events/1422929/ftc_hearings_session_8_transcript_12-6-18_0.pdf, at 102 ("Engagement allows management to communicate with their shareholder base as they implement strategies to generate long-term growth" and is "important for healthy capital markets.").

[26] *See* Council of Institutional Investors and the Managed Fuds Association, Comment, *Re: Competition and Consumption Protection in the 21st Century Hearings, Project Number P181201 – Investment Community Request for HSR Reform,* (Aug. 13, 2018),

shareholder engagement, it can be quite difficult to determine whether filing parties can rely on the § 802.9 exemption. For instance, a discussion between shareholders and company executives may begin with the amount of compensation each executive receives, but then evolve into how each executive's compensation will be determined by the company's performance. This discussion on a seemingly innocuous topic may touch on basic business decisions, precluding use of the § 802.9 exemption. In the Agencies' experience, even the simplest of topics can present subtleties that complicate whether § 802.9 might exempt an acquisition of 10% or less of an issuer's voting securities.

Over the years, the Agencies have considered revising § 802.9 in order to provide clearer guidance on when the acquisition of 10% or less of an issuer's voting securities is exempt from HSR filing requirements. In 1988, the Commission initiated a notice and comment proceeding on a proposed approach and two alternative approaches:

> The principal proposal would exempt from the premerger notification obligations all acquisitions of 10% or less of an issuer's voting securities on the grounds that such acquisitions are unlikely to violate the antitrust laws. The alternative proposals would alter existing notification procedures for acquisitions of 10% or less of an issuer's voting securities. One would permit the purchase, but require that the securities be placed in escrow pending antitrust review; the other would eliminate the reporting requirement imposed on the target firm, thus freeing the acquiror of its obligation to give the target prior notice.[27]

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https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0010-147719.pdf, at 1-2, and 7 ("[T]he investment community is concerned that the Commission's increasingly narrow interpretation and application of the investment-only exemption under the HSR Act is imposing an undue regulatory burden and unnecessary costs on institutional investors, such as employee pension funds, charitable foundations and university endowments. That burden undermines the strong public policy in favor of management-shareholder communications, involves significant and unnecessary costs, and is not justified by the Commission's mission to protect competition." … "CII and MFA are concerned that the current narrow application of the investment-only exemption is interfering with an animating policy objective of the federal securities laws to ensure a free flow of information and disclosure from issuers of securities to the investing public.").

[27] 53 FR 36831 (Sept. 22, 1988).

The Commission's principal proposal in 1988 was a new exemption, § 802.24, that would have subsumed § 802.9 "by eliminating the filing requirement for all acquisitions of 10 percent or less of an issuer's voting securities, regardless of the intent of the acquired person." Although the Commission had rejected calls to ignore investment intent in 1978 when the original Rules were promulgated, it proposed to exempt all acquisitions of 10% or less of an issuer's voting securities based on ten years of experience with reviewing those filings that were not solely for the purpose of investment. "It is not possible to say that voting securities acquisitions of 10 percent or less, or 5 percent or less, cannot violate the antitrust laws. The proposed exemption is rather based on the evidently low likelihood that 'the class of transactions' will violate the antitrust laws."[28]

But the Commission also considered alternative proposals that would more directly address concerns related to other aspects of the Act that could increase the cost of acquiring shares, specifically the requirement to wait for the expiration of the waiting period before acquiring shares, and the requirement to notify the target of the intended acquisition.[29] As a result, the Commission proposed two alternative approaches. The first, proposed § 801.34, "would permit acquirors to purchase, but not take possession of, up to 10 percent of an issuer's voting securities without filing a notification. The shares purchased would be placed in escrow and voted by the escrow agent in proportion to the votes cast by all other shares. The acquiror would be required to file and observe the waiting period prior to purchasing more than 10 percent of an issuer's voting securities or

[28] *Id*. at 36841.
[29] "Acquirors are reluctant to file premerger notifications because both the delay imposed by the waiting period and informing the target could increase the cost to them of acquiring the issuer's voting securities." 53 FR 36831, 36840 (Sept. 22, 1988).

prior to taking the shares out of escrow."[30] The second proposal was an optional notification for acquisitions of 10% or less of the voting securities of an issuer. "This optional system would require the acquiror to submit specified public documents describing the entity to be acquired, but would not require that the issuer be given notice of the intended acquisition."[31]

The 1988 proposed rulemaking received eighteen comments.[32] Some encouraged the Commission to move forward with the principal proposal that would exempt all acquisitions of 10% or less of an issuer's voting securities regardless of investment intent. Several comments in favor of the principal proposal agreed with the Commission's assertion in the proposed rulemaking that acquisitions of 10% or less of an issuer's voting securities were unlikely to violate the antitrust laws.[33] In addition, some of the comments noted that the proposed rule would "eliminate the incentive to avoid compliance with the

[30] 53 FR 36831, 36,842 (Sept. 22, 1988).
[31] 53 FR at 36843.
[32] All comments are available at https://www.ftc.gov/policy/public-comments/2020/08/initiative-122.
[33] *See* Robert S. Pirie, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Oct. 18, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/10/p812937hsrrulemakingcomment02.pdf; James E. Knox, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Nov. 8, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment07.pdf; Irving Scher, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Nov. 21, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment09.pdf; John A. Reid, Jr., Comment, *Re: Proposed Changes to Premerger Notification Rules, 53 FR 36831*, (Nov. 18, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment11-2.pdf; Howard E. Steinberg, Comment, *Re: Proposed Changes to Premerger Notification Rules, 53 FR 36831*, (Nov. 21, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment12.pdf; and then William J. Kolasky, Jr., Comment, *Re: Comments Submitted by Wilmer, Cutler & Pickering Regarding Proposed Amendments to the Hart-Scott-Rodino Improvement Act of 1976, 53 FR 36831*, (Nov. 21, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment13.pdf.

H-S-R Act without prejudicing antitrust enforcement efforts"[34] and benefit the Commission through the "freeing up of Commission resources currently expended on compliance investigations regarding transactions that lack antitrust significance."[35] Several comments also noted that the proposed rule would ease conflicts with the securities laws. A company wrote that "by allowing the acquisition of securities under the secrecy afforded by the securities laws, acquirors will be able to purchase stock at prices that are not artificially inflated by the publicity which can be generated by an HSR Act notification filing at the $15 million reporting threshold."[36]

Other comments noted concerns with the proposed rule. One company wrote:

> The proposed exemption for a person who acquires up to 10% of the securities of an issuer when such acquirer has the intent of influencing target's management (which is virtually always the case for an acquisition of 10% of an issuer's stock) is in diametric opposition to the fundamental purpose of the Act. Since power to

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[34] *See* Robert S. Pirie, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Oct. 18, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/10/p812937hsrrulemakingcomment02.pdf, at 1. *See also* James E. Knox, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Nov. 8, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment07.pdf.

[35] *See* Howard E. Steinberg, Comment, *Re: Proposed Changes to Premerger Notification Rules, 53 FR 36831*, (Nov. 21, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment12.pdf, at 2. *See also* Robert S. Pirie, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Oct. 18, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/10/p812937hsrrulemakingcomment02.pdf; and then James E. Knox, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Nov. 8, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment07.pdf.

[36] *See* James E. Knox, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Nov. 8, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment07.pdf, at 2. *See also* Robert S. Pirie, Comment, *RE: Proposed Rulemaking Concerning Premerger Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 53 FR 36831*, (Oct. 18, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/10/p812937hsrrulemakingcomment02.pdf; and then William J. Kolasky, Jr., Comment, *Re: Comments Submitted by Wilmer, Cutler & Pickering Regarding Proposed Amendments to the Hart-Scott-Rodino Improvement Act of 1976, 53 FR 36831*, (Nov. 21, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment13.pdf.

> influence the target's management is the primary concern of Section 7, it is beyond our comprehension why the FTC would exempt review for acquisitions of up to 10% of an issuer's stock when the acquisitions may be made for the purpose of influencing management.[37]

A trade association wrote: "The real thrust of the suggestion is not that the $15 million threshold test serves no antitrust purpose, but rather that the FTC finds it difficult to force compliance by those who wish to make hostile tender offers. That, however, is not by itself an appropriate reason for the rules change. Violations cannot be ignored."[38]

Members of Congress also weighed in on the proposed rulemaking. One argued that filing requirements should be enforced instead of changed[39] while another argued that the Agencies lacked the authority to create an exemption that would, in effect, render irrelevant the statutory minimum threshold.[40] Representative James J. Florio (then Chairman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness of the Committee on Energy and Commerce) wrote: "[t]he rulemaking notice points out that Congress was definitely interested in subjecting some types of acquisitions of 10 percent or less to premerger review. In light of this Congressional

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[37] *See* Dennis P. Codon, Comment, *Re: Premerger Notification; Reporting and Waiting Period Requirements*, *53 FR 36831*, (Nov. 7, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment06.pdf, at 1.

[38] *See* John. W. Hetherington, Comment, *Re: 16 CFR Parts 801, 802, and 803 Premerger Notification; Reporting and Waiting Period Requirements*, *53 FR 36831*, (Dec. 19, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/12/p812937hsrrulemakingcomment17.pdf, at 2.

[39] *See* Jim Sasser, Comment, *Re: Premerger Notification*, *53 FR 36831*, (Oct. 25, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/11/p812937hsrrulemakingcomment08.pdf, at 1, ("Indeed, I find the rationale for the proposed amendments flawed. The premerger notification rules should not be relaxed because, as you say, there is too much incentive to avoid them; rather, they should be strengthened.").

[40] *See* Jack Brooks, Comment, *53 FR 36831*, (Dec. 9, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/12/p812937hsrrulemakingcomment14.pdf, at 1, ("The proposal would, for all practical purposes, eliminate the $15 million premerger notification threshold. I do not believe that Congress delegated authority to the Commission to repeal that statutory notification threshold.").

intent, I am puzzled by the Commission's proposal to overrule Congressional intent by a blanket exemption."[41]

The Commission did not issue a final rule.

Since 1988, the parameters of the HSR premerger notification program have undergone considerable change. In 2000, Congress amended the Act to raise the minimum reportability threshold from $15 million to $50 million, and at the same time built in an automatic annual adjustment of all of the Act's thresholds based on the change in gross national product. Currently, a transaction must be valued at more than $94 million to be potentially reportable, and the parties to that transaction must have sales or assets of at least $188 million and $18.8 million, respectively, unless the transaction is valued at more than $376 million. The statutory thresholds have increased steadily since 2000,[42] which has reduced significantly the number of filings received by the Agencies.[43]

Since 1988, the Commission has also gained over 30 years of additional experience reviewing filings for acquisitions of 10% or less of an issuer's voting securities. Since the promulgation of the Rules in 1978, the Agencies have not challenged a stand-alone acquisition of 10% or less of an issuer, and have rarely engaged in a substantive initial review of a proposed acquisition of 10% or less of an issuer.[44] The Commission believes that proposed acquisitions of 10% or less of an issuer should be exempt when they are unlikely to violate the antitrust laws and that exempting this

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[41] *See* James J. Florio, Chairman, Comment, *Re: Premerger Notification; Reporting and Waiting Period Requirements, 53 FR 36831*, (Oct. 12, 1988), https://www.ftc.gov/system/files/documents/public_comments/1988/10/p812937hsrrulemakingcomment01.pdf, at 2.

[42] The thresholds have increased every year except for 2010. 75 FR 3468 (Jan. 21, 2010).

[43] As a result of these changes, many acquisitions of small stakes that would have resulted in an HSR filing prior to 2001 no longer trigger an HSR filing.

[44] Note 1 *supra.*

category of acquisitions will allow the Agencies to better focus their resources on transactions that create the potential for competition concerns. To achieve this goal, the Commission proposes a new approach to exempt acquisitions of 10% or less of an issuer's voting securities under certain conditions. Proposed § 802.15 reads as follows:

> § 802.15 De minimis acquisitions of voting securities
>
> An acquisition of voting securities shall be exempt from the requirements of the act if as a result of the acquisition:
>
> (a) the acquiring person does not hold in excess of 10% of the outstanding voting securities of the issuer; and
>
> (b)(i) the acquiring person is not a competitor of the issuer (or any entity within the issuer);
>
> (ii) the acquiring person does not hold voting securities in excess of 1% of the outstanding voting securities (or, in the case of a non-corporate entity, in excess of 1% of the non-corporate interests) of any entity that is a competitor of the issuer (or any entity within the issuer);
>
> (iii) no individual who is employed by, a principal of, an agent of, or otherwise acting on behalf of the acquiring person, is a director or officer of the issuer (or of an entity within the issuer);
>
> (iv) no individual who is employed by, a principal of, an agent of, or otherwise acting on behalf of the acquiring person, is a director or officer of a competitor of the issuer (or of an entity within the issuer); and
>
> (v) there is no vendor-vendee relationship between the acquiring person and the issuer (or any entity within the issuer), where the value of sales between the acquiring person and the issuer in the most recently completed fiscal year is greater than $10 million in the aggregate.

Proposed § 802.15 exempts acquisitions that would result in the acquiring person holding 10% or less of the issuer's outstanding voting securities, unless the acquiring person already has a competitively significant relationship with the issuer, such as where the acquiring person operates competing lines of business, has an existing vertical relationship with the issuer, or employs or is otherwise represented by an individual who

is an officer or director of the issuer or a competitor. Because these types of relationships render even a small stake potentially competitively significant, the Commission proposes to continue to receive filings for any such acquisitions that are not exempt under § 802.9.

Over the last several years, there has been ongoing discussion of the impact of a single entity holding small percentages of voting securities in competitors within the same industry, sometimes referred to as common ownership.[45] The debate is not yet settled, but it has raised concerns about the competitive effect of common ownership because investors with small minority stakes may influence the behavior of an issuer. Thus, the Commission proposes that the exemption in § 802.15 not apply if the acquiring person is a competitor of the issuer or if the acquiring person holds more than 1% in a competitor of the issuer on an aggregate basis. For instance, Fund Vehicle 1 will acquire 6% of Issuer D and Fund Vehicle 1 has two associates, Fund Vehicles 2 and 3. Fund Vehicle 1 is the UPE but the Acquiring Person includes Fund Vehicles 1, 2 and 3 under the proposed change to § 801.1(a)(1) discussed above. Fund Vehicles 1, 2 and 3 do not control any competitors of Issuer D and Fund Vehicle 1 does not hold any minority interest in a competitor of Issuer D, but Fund Vehicle 2 and Fund Vehicle 3 each holds a 1% minority interest in competitors of Issuer D. In this scenario, under the proposed rule, Fund Vehicle 1 would not be able to rely on proposed § 802.15 because its associates hold more than 1% in a competitor of Issuer D. This exception to the exemption would ensure the Agencies receive filings that provide insights into the influence of holdings in

[45] FTC Hearings on Competition and Consumer Protection in the 21st Century, Session 8, FTC.GOV. (Dec. 6, 2018), https://www.ftc.gov/news-events/events-calendar/ftc-hearing-8-competition-consumer-protection-21st-century. *See also* Submission of the United States to OECD Hearing on Common Ownership by institutional investors and its impact on competition, FTC.GOV. (Nov. 28, 2017), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/common_ownership_united_states.pdf.

competitors. The Commission invites comment on this approach, including whether a different level of ownership in a competitor of the issuer would be more appropriate in determining that the proposed exemption should not apply.

The Rules do not currently define the term "competitor," and to implement this exception to the exemption, a definition must be added. The Commission proposes the following definition for the purpose of implementing § 802.15: "§ 801.1(r) *Competitor*. For purposes of these rules, the term *competitor* means any person that (1) reports revenues in the same six-digit NAICS Industry Group as the issuer, or (2) competes in any line of commerce with the issuer." This proposed definition of "competitor" would require two separate assessments to determine whether an acquiring person is a competitor of the issuer or holds interests in a competitor of the issuer. The first prong of the proposed definition would ask an acquiring person to look at the six-digit NAICS codes of entities it controls and compare them with the NAICS codes the issuer reports. NAICS codes (and their predecessor Standard Industrial Classification ("SIC") codes) have long been the basis for reporting revenues in the HSR Form, and they provide an objective and easy to administer measure of whether an acquiring person and an issuer compete. Moreover, because acquiring persons already compare their NAICS codes with those of the issuer in order to respond to items in the Form, as discussed above, this approach would be familiar to acquiring persons.

Filing parties can still be "competitors" even if they report in different NAICS codes. Thus, the second prong of the proposed definition of "competitor" would rely on filing parties to conduct a good faith assessment to determine whether any part of the acquiring person competes with or holds interests in entities that compete with the issuer,

in any line of commerce.[46] The Commission expects that parties would do so consistent with their ordinary course documentation and informational practices and be able to defend reliance on proposed § 802.15 if challenged.

The Commission acknowledges that this proposed two-prong definition of "competitor" is broad. The Agencies and the public will benefit from such a broad definition because the Agencies, in fulfilling their obligations to enforce the antitrust laws, have a strong interest in receiving HSR filings that reveal any indicia of competition between the filing parties so the Agencies can fully evaluate the competitive impact of the proposed acquisition. Nevertheless, the Commission invites comment on other ways to define "competitor" that would still provide the Agencies with thorough information on the competition that exists between filing parties.

Proposed § 802.15 also asks filing parties to ascertain the existence of officer or director relationships between the acquiring person and the issuer. That is, the exemption in proposed § 802.15 would be unavailable if someone from the acquiring person is an officer or director of the issuer or a competitor of the issuer. To be an officer or director of any issuer is to be intimately connected to that issuer. Officers make the issuer's day-to-day business decisions, and directors determine the overall direction of the issuer. If someone within the acquiring person has that kind of influence over the issuer or a competitor of the issuer, the Agencies have a strong interest in receiving filings about that proposed transaction to better understand its competitive impact. Thus, this exception to

[46] As part of a typical antitrust compliance program, a company may already identify other companies that have competing sales in order to avoid violating Section 8 of the Clayton Act. Subject to certain minimum thresholds, Section 8 prohibits a person from serving as a director or an officer of two or more corporations that are horizontal competitors.

the proposed exemption would ensure that acquisitions of potential competitive significance do not become exempt.

Finally, the proposed § 802.15 exemption would not be available if the acquiring person and the issuer are in a vertical relationship valued at $10 million or greater. There can be important competitive implications in vertical relationships, and the Agencies have a strong interest in reviewing transactions that create or expand vertical relationships. This exception to the exemption would ensure the Agencies receive filings where the buyer and issuer have a vertical relationship beyond the ordinary course. The Commission intends to exclude the purchase of ordinary course services and goods (e.g., office supplies, financial services, etc.) and invites comment on whether $10 million is an appropriate threshold to distinguish ordinary course vertical relationships from those with competitive significance.

Proposed § 802.15 would allow the Agencies "to focus their resources more effectively on those transactions that present the potential for competitive harm."[47] Proposed § 802.15 would further the Agencies' goal of eliminating filings for acquisitions of 10% or less of an issuer where there is no existing competitive relationship or significant vertical relationship between the acquiror and the issuer and where the acquisition therefore is unlikely to violate the antitrust laws. At the same time, proposed § 802.15 would balance the exemption of these kinds of acquisitions with the Agencies' interest in making sure that acquisitions of potential competitive significance are not exempt. The Commission invites comment on whether there are other factors to

[47] 61 FR 13666 (Mar. 28, 1996).

consider in evaluating the proposed exceptions to the exemption, or if other categories should be the subject of exceptions to the exemption.

Under proposed § 802.15, acquiring persons would have to evaluate their connection to the issuer and the issuer's competitors in several ways. Although this approach is not without burden for acquiring persons, the Commission believes that information concerning competitors, relationships with the issuer's officers or directors, and vertical relationships will either already be in acquiring persons' possession or will be relatively straightforward to gather. On the whole, proposed 802.15 should benefit acquiring persons by exempting acquisitions of small amounts of voting securities without an examination of intent as required by § 802.9. Section 802.9 would remain unchanged and would still be available to exempt acquisitions of 10% or less of an issuer where there is no intention to be involved in the basic business decisions of that issuer. With the addition of proposed § 802.15, acquiring persons would have two potential ways to exempt the acquisition of 10% or less of an issuer's voting securities.[48]

III. Proposed Explanatory and Ministerial Changes to the Rules and the Form and Instructions

To help illustrate the proposed changes to § 801.1 discussed above, the FTC proposes adding some examples to the Rules. The proposed changes to § 801.1 would also require explanatory and ministerial updates to the Form and Instructions.

A. Revised Examples to §§ 801.1, 801.2

The Commission proposes revising the examples in §§ 801.1 and 801.2 to clarify the proposed definition of person.

[48] Institutional investors can also continue to rely on § 802.64.

Revised examples to § 801.1

1. Edit example 4 to § 801.1(a)(1) to make "example" plural:

Example 4: See the examples to § 801.2(a).

2. Add example 5 and 6 to § 801.1(a)(1):

Example 5. Fund 1, Fund 2, and Fund 3, each a UPE, are all associates under the common investment management of Manager, as defined by § 801.1(d)(2). Fund 1's portfolio company A is making a reportable acquisition. The acquiring person includes Manager, Fund 1, Fund 2, Fund 3, and A. Manager would file on behalf of the acquiring person by placing its name in Item 1(a) of the Form. Manager indicates in Item 1(c) of the filing that Fund 1 is making the acquisition. Fund 1 can also indicate in Item 1(c) of the Form that it is filing on Manager's behalf.

Example 6. Fund A will be selling its portfolio company P. Fund A's investments are managed by Investment Manager, and Fund A's associates are Fund B, Fund C, and Fund D. The acquired person includes Investment Manager, Fund A, Fund B, Fund C, and Fund D. Investment Manager would file on behalf of Fund A, the selling UPE, by placing its name in Item 1(a) of the Form. Fund A could also indicate in Item 1(c) of the Form that it is filing on Investment Manager's behalf.

3. Add example 4 to § 801.1(a)(3):

Example 4: See the examples to § 801.1(a)(1).

4. Edit text of § 801.1(d)(2) by removing "For purposes of Items 6 and 7 of the Form," capitalizing the subsequent "An," and including "or acquired" as appropriate, so that § 801.1(d)(2) reads as follows:

(d)(2) Associate. An associate of an acquiring or acquired person shall be an entity that is not an affiliate of such person but:

(A) Has the right, directly or indirectly, to manage the operations or investment decisions of an acquiring or acquired entity (a "managing entity"); or

(B) Has its operations or investment decisions, directly or indirectly, managed by the acquiring or acquired person; or

(C) Directly or indirectly controls, is controlled by, or is under common control with a managing entity; or

(D) Directly or indirectly manages, is managed by, or is under common operational or investment decision management with a managing entity.

Revised examples to § 801.2:

1. In § 801.2(a), number the current example as "Example 1" and add example 2.

Example 2: See the examples to § 801.1(a)(1).

2. Add examples 3 and 4 to § 801.2(b)

Example 3: See the examples to § 801.1(a)(1).

Example 4: See the examples to § 801.12(a).

Revised examples to § 801.12(a)

1. In § 801.12(a), number the current example as "example 1" and add example 2:

Example 2. Person "A" is composed of corporation A1 and subsidiary A2; person "B" is composed of Fund 1 and Fund 2, which are associates managed by Investment Manager. Both Fund 1 and Fund 2 hold shares of Issuer. A2 will acquire all of Issuer's voting securities held by Fund 1 and Fund 2. Under this paragraph, for purposes of calculating the percentage of voting securities to be held, the "acquired person" is Issuer. For all other purposes, the acquired person is "B." (For all purposes, the "acquiring person" is "A.")

B. Ministerial Changes to the Instructions and the Form

The Commission also proposes the following changes to the Instructions and Form to clarify the definition of person as well as to streamline the Form where appropriate in light of the proposed changes:

Definitions, p.I of Instructions:
The terms "person filing" or "filing person" mean an ultimate parent entity ("UPE") and its associates. Every person will have at least one UPE, and a person may be the same as its UPE. Not every person will have associates, but when a person has associates, the person will not be the same as its UPE(s). (See § 801.1(a)(1) and § 801.1(d)(2).)

Item 1(a), p.IV of Instructions:
Provide the name, headquarters address, and website (if one exists) of the person filing notification. A person includes associates, but not every person will have associates. In the case of a person that has associates, the person filing is the entity that manages the associates ("managing entity") as defined by § 801.1(d)(2). (See § 801.1(a)(1) and § 801.1(d)(2).)

Item 1(c), p.IV of the Instructions:

Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, managing entity or other (specify). If the person is a managing entity, indicate the UPE making the acquisition. Indicate if a UPE is filing on behalf of the managing entity. (See § 801.1 and § 801.1(d)(2).)

Item 1(c) in the Form:
This item will include a new box for managing entity and space for listing the name of the UPE making the acquisition.

Item 3(a), p.V of the Instructions:
Clarify that the item calls for information on the UPEs that are party to the transaction.

First paragraph: At the top of Item 3(a), list the name and mailing address of each acquiring and acquired UPE, and acquiring and acquired entity, that are party to the transaction whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned by an acquired entity.

Item 4(a), p.VI of the Instructions:
Add a requirement for acquiring persons to organize by UPE and by entity within each UPE. Specify limits for acquired persons.

Acquiring persons: provide the names of all entities within the person filing notification, including all UPEs, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key ("CIK") number for each entity. Responses must be organized by UPE and by entity within each UPE.

Acquired persons: provide the names of all entities within the selling UPE, including the UPE, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key (CIK) number for each entity.

Item 4(b), p.VI of the Instructions:
Specify limits for acquired persons. Add a requirement to organize by UPE and by entity within each UPE.

Acquiring persons: provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification. The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7. Responses must be organized by UPE and by entity within each UPE. If some of the UPEs or entities do not prepare separate financial statements, explain how their financial information is consolidated in the financial statements that are being submitted.

Acquired persons: provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the selling UPE. The acquired person should also provide the most recent reports of the acquired entity(s).

Item 5, p.VII of the Instructions:
Add a requirement to organize by UPE and by entity within each UPE.

Second paragraph: Responses must be organized by UPE and entity within each UPE. List all NAICS and NAPCS codes in ascending order.

Item 5(a), p.VII of the Instructions:
Clarify requirement for persons.

Last paragraph: Check the Overlap box for every 6-digit manufacturing and non-manufacturing NAICS code and every 10-digit NAPCS code in which both persons generate dollar revenues.

Item 6(a), p.VIII of the Instructions:
Add a requirement to organize by UPE and by entity within each UPE.

Subsidiaries of filing person. List the name, city, and state/county of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Responses must be organized by UPE and by entity within each UPE. Entities with total assets of less than $10 million may be omitted. Alternatively, the person filing notification may report all entities within it.

Item 6(b), p.VIII of the Instructions:
Add a requirement to organize by UPE and by entity within each UPE.

Minority shareholders. For the acquired entity(s) and for the acquiring entity(s) and its UPE(s) or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within the UPE(s), list the name and headquarters mailing address of each shareholder that holds 5% or more but less than 50% of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. Responses must be organized by UPE and entity within each UPE. (See § 801.1(c)).

Item 6(c), p.VIII-IX of the Instructions:
Item 6(c) is currently segmented into two different sections: Item 6(c)(i) deals with the person filing and Item 6(c)(ii) deals with that person's associates. Since the proposed definition of person would include associates, these two items within 6(c) would be collapsed and the Item renumbered to Item 6(c) with no subparts. The information required by this item would still be limited to entities within the acquiring person that report in the same NAICS code as the target. New 6(c) would read as follows:

Item 6(c)

Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, list the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquiring person may rely on its regularly prepared financials that list its investments, provided the financials are no more than three months old. Responses must be organized by UPE and by entity within each UPE.

The acquired person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the same 6-digit NAICS industry code as the acquiring person.

If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Item 6(c), it is permissible for the acquiring person to list all entities in which it holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than $10 million may be omitted.

Item 7, p.IX-X of the Instructions:
Item 7(a) currently requires information from both the acquiring person and its associates. Since the proposed definition of person would include associates, Item 7(a) would be revised to eliminate the separate reference to associates.

Item 7(b)
The information required by Item 7(b) would be incorporated into Items 5 and 6(a), so this item would be eliminated.

Items 7(c) and 7(d)
Current Item 7(c) deals with the person filing and Item 7(d) deals with that person's associates, so these two items would be collapsed and renumbered to new 7(b).

New Item 7 would read as follows:

If, to the knowledge or belief of the person filing notification, the acquiring person derived any amount of dollar revenues (even if omitted from Item 5) in the most recent year from operations:

1) in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived any amount of dollar revenues in the

most recent year; or

2) in which a joint venture corporation or unincorporated entity will derive dollar revenues;

then for each such 6-digit NAICS industry code follow the instructions below for this section.

Note that if the acquired entity is a joint venture, the only overlaps that should be reported are those between the assets to be held by the joint venture and any assets of the acquiring person not contributed to the joint venture.
Responses must be organized by UPE and by entity within each UPE.

Item 7(a)
Industry Code Overlap Information
Provide the 6-digit NAICS industry code and description for the industry.

Item 7(b)
Geographic Market Information
Use the 2-digit postal codes for states and territories and provide the total number of states and territories at the end of the response.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(b)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(b)(i)
NAICS Sectors 31-33
For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information in which, to the knowledge or belief of the person filing the notification, the products in that 6-digit NAICS industry code produced by the person filing notification are sold without a significant change in their form (whether they are sold by the person filing notification or by others to whom such products have been sold or resold). Except for industries covered by Item 7(b)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(b)(ii)
NAICS Sector 42
For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(b)(iii)
NAICS Industry Group 5241

For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a), list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(b)(iv)(a)
Other NAICS Sectors
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

11	agriculture, forestry, fishing and hunting
21	mining
22	utilities
23	construction
48-49	transportation and warehousing
511	publishing industries
515	broadcasting
517	telecommunications
71	arts, entertainment and recreation

Item 7(b)(iv)(b)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

2123	nonmetallic mineral mining and quarrying
32512	industrial gases
32732	concrete
32733	concrete products
44-45	retail trade, except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores)
512	motion picture and sound recording industries
521	monetary authorities - central bank
522	credit intermediation and related activities
532	rental and leasing services
62	health care and social assistance
72	accommodations and food services, except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses)
811	repair and maintenance, except 8114 (personal and household goods repair and maintenance)
812	personal and laundry services

Item 7(b)(iv)(c)

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

442	furniture and home furnishings stores
443	electronics and appliance stores
516	internet publishing & broadcasting
518	internet service providers
519	other information services
523	securities, commodity contracts and other financial investments and related activities
5242	insurance agencies and brokerages, and other insurance related activities
525	funds, trusts and other financial vehicles
53	real estate and rental and leasing
54	professional, scientific and technical services
55	management of companies and enterprises
56	administrative and support and waste management and remediation services
61	educational services
7212	recreational vehicle parks and recreational camps
7213	rooming and boarding houses
813	religious, grantmaking, civic, professional, and similar organizations
8114	personal and household goods repair and maintenance

Item 8, p.XI of the Instructions:
Add a requirement to organize by UPE and by entity within each UPE.

For each such acquisition, supply:

1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;

2) the name of the entity from which the assets, voting securities or non-corporate interests were acquired;

3) the headquarters address of that entity prior to the acquisition;

4) whether assets, voting securities or non-corporate interests were acquired; and

5) the consummation date of the acquisition.

Responses must be organized by UPE and by entity within each UPE.

IV. Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small entities, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small entities.[49] The 2000 amendments to the Act exempted all transactions valued at $50 million or less, with subsequent automatic adjustments to take account of changes in Gross National Product resulting in a current threshold of $94 million. Further, none of the proposed amendments expands the coverage of the premerger notification rules in a way that would affect small entities. Accordingly, the Commission certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501-3521, requires agencies to submit "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance before instituting them. Such collections of information include

[49] See 13 CFR part 121 (regulations defining small business size).

reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the HSR Rules and Form have been reviewed and approved by OMB under OMB Control No. 3084-0005. The current clearance expires on January 31, 2023. Because the rule amendments proposed in this NPRM would change existing reporting requirements, the Commission is submitting a Supporting Statement for Information Collection Provisions ("Supporting Statement") to OMB.

Amending § 801.1(a)(1) – Acquiring Persons

The Commission proposes to amend the § 801.1(a)(1) definition of "person" to require certain acquiring persons to disclose additional information about their associates when making an HSR filing. Thus, Items 4 through 8 (excluding Items 6(c) and 7)[50] on the Notification and Report Form (HSR Form) would be revised to seek information about associates of certain acquiring persons, including the aggregation of acquisitions in the same issuer across its associates. The Commission acknowledges that this proposed change would result in an increased burden for certain acquiring persons. Non-corporate entity UPEs within families of funds and MLPs would be required to provide significant additional information on behalf of their associates under the proposed change. These entities are, however, already accustomed to looking into the holdings of those associates for filings where they are acquiring persons as a result of the treatment of associates under the current Rules. Given that these entities already conduct such inquiries, the Commission believes requiring additional information about entities that have already been identified should result in limited additional burden for filers. Based on filing data

[50] There would be no changes to what Items 6(c) and 7 require, because those items already require information from associates.

from the past five fiscal years, the Commission estimates that 17.28% of entities would be required to provide additional information on behalf of associates. From this, we anticipate 846 filings would be affected per fiscal year (17.28% x 4894 filings per year, as estimated in the FTC's most recent PRA clearance for the HSR Rules). The Commission also estimates that each affected filer will need about 10-15 additional hours per filing to comply. Thus, the aggregation is expected to lead to 10,575 additional annual hours of burden (846 filings x 12.5 hours per filing). The Commission seeks comments to help inform such burden estimates, to the extent applicable.

The proposed change to § 801.1(a)(1) would also result in a reduced burden for certain acquiring persons by eliminating the potential need for families of funds and MLPs to make multiple filings with multiple filing fees. Based on filing data from the past five fiscal years, the Commission estimates that 39 filings would be affected per fiscal year. Since the FTC's current clearance with OMB estimates an average reporting burden per responding filer of 37 hours per filing, the proposed change to § 801.1(a)(1) would be a reduction of 1,443 hours of annual burden (39 filings x 37 hours per filing). The Commission seeks comments to help inform such burden estimates, to the extent applicable.

Acquired Persons

Additionally, the Commission's proposal to revise the HSR Instructions to limit the financial information required in Items 4(a) and 4(b) should reduce burden for certain acquired persons. The HSR Form already limits what acquired persons must report in Items 5 through 7 to information on those assets, voting securities and non-corporate interests being acquired in the transaction at issue. The Commission's proposal to amend

the HSR Instructions would create a similar limit for acquired persons with respect to Items 4(a) and 4(b) and should result in a reduction in the burden for families of funds and MLPs filing as acquired persons who will now face a more limited reporting burden after the amendments. Based on filing data from the past five fiscal years, the Commission estimates that 357 filings would be affected per fiscal year. The Commission also estimates that the burden on each affected filer will be reduced by 5 hours per filing. Thus, the proposed limit for acquired party reporting is expected to lead to a reduction in burden of 1,785 annual hours (357 filings x 5 hours per filing). The Commission seeks comments to help inform such burden estimates, to the extent applicable.

Amending § 802.15 – Acquisition of 10% or less

Additionally the Commission proposes a new exemption, § 802.15, which would exempt the acquisition of 10% or less of an issuer's voting securities in certain circumstances. Proposed § 802.15 exempts the acquisition of 10% or less of an issuer's voting securities unless the acquiring person already has a competitively significant relationship with the issuer, such as operating competing lines of business or having an existing vertical relationship, or where the investor (or its agent) is an officer or director of the issuer or a competitor. This proposed exemption would allow the acquisition of small amounts of voting securities without an examination of intent as required by § 802.9. As a result, the Commission anticipates that this exemption will reduce somewhat the number of transactions subject to review under the Rule and the number of entities that must engage in reporting under the Rule. Over the period from FY 2001 to FY 2017, the Commission received an average of 106 filings per fiscal year for

acquisitions of 10% or less.[51] Some of these filings would fall within the exemption in proposed § 802.15, leading to a reduction in burden for entities that would no longer need to report under the Rule. However, the Commission does not currently possess information as to how many entities would qualify for the proposed § 802.15 exemption. The Commission therefore requests comment on the percentage of entities that would qualify for the proposed exemption.

Explanatory and Ministerial Changes

Finally, the Commission proposes explanatory and ministerial changes to the rules, as well as necessary amendments to the HSR Form and Instructions to effect the proposed changes. These changes will result in no change to the information collection burden under the Rule.

Request for Comments

As noted above, the Commission invites comments on anticipated burdens for the proposed amendments and comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who

[51] As set out in footnote 1, the Agencies received a total of 1,804 HSR filings from FY 2001 to FY 2017 for acquisitions of 10% of less of outstanding stock. During that same period, the Agencies did not challenge any acquisitions involving a stake of 10% or less.

must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on the proposed reporting requirements subject to Paperwork Reduction Act review by OMB should additionally be submitted to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

List of Subjects in 16 CFR Parts 801, 802, and 803

Antitrust

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR parts 801, 802, and 803 as set forth below:

PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by revising paragraph (a)(1) , revising the examples to paragraph (a)(1), revising the examples to paragraph (a)(3), revising paragraph (d)(2), and adding paragraph (r), to read as follows:

§ 801.1 Definitions.

* * *

(a)(1) *Person*. Except as provided in paragraphs (a) and (b) of § 801.12, the term *person* means (a) an ultimate parent entity and all entities which it controls directly or indirectly; and (b) all associates of the ultimate parent entity.

Examples:

* * *

4. See the examples to § 801.2(a).

5. Fund 1, Fund 2, and Fund 3, each a UPE, are all associates under the common investment management of Manager, as defined by § 801.1(d)(2). Fund 1's portfolio company A is making a reportable acquisition. The acquiring person includes Manager, Fund 1, Fund 2, Fund 3, and A. Manager would file on behalf of the acquiring person by placing its name in Item 1(a) of the Form. Manager indicates in Item 1(c) of the filing that Fund 1 is making the acquisition. Fund 1 can also indicate in Item 1(c) of the Form that it is filing on Manager's behalf.

6. Fund A will be selling its portfolio company P. Fund A's investments are managed by Investment Manager, and Fund A's associates are Fund B, Fund C, and Fund D. The acquired person includes Investment Manager, Fund A, Fund B, Fund C, and Fund D. Investment Manager would file on behalf of Fund A, the selling UPE, by placing its name in Item 1(a) of the Form. Fund A could also indicate in Item 1(c) of the Form that it is filing on Investment Manager's behalf.

* * * * *

(a) * * *

(3) * * *

Examples:

* * *

4. See the examples to § 801.1(a)(1).

* * * * *

(d) * * *

(2) *Associate*. An associate of an acquiring or acquired person shall be an entity that is not an affiliate of such person but

(A) Has the right, directly or indirectly, to manage the operations or investment decisions of an acquiring or acquired entity (a "managing entity"); or

(B) Has its operations or investment decisions, directly or indirectly, managed by the acquiring or acquired person; or

(C) Directly or indirectly controls, is controlled by, or is under common control with a managing entity; or

(D) Directly or indirectly manages, is managed by, or is under common operational or investment decision management with a managing entity.

* * * * *

(r) *Competitor*. For purposes of these rules, the term *competitor* means any person that (1) reports revenues in the same six-digit NAICS Industry Group as the issuer, or (2) competes in any line of commerce with the issuer.

3. Amend § 801.2 by revising the examples to paragraph (a) and revising the examples to paragraph (b) to read as follows:

§ 801.2 Acquiring and acquired persons.

(a) * * *

Examples:

1. Assume that corporations A and B, which are each ultimate parent entitles of their respective “persons,” created a joint venture, corporation V, and that each holds half of V's shares. Therefore, A and B each control V (see § 801.1(b)), and V is included within two persons, “A” and “B.” Under this section, if V is to acquire corporation X, both “A” and “B” are acquiring persons.

2. See the examples to § 801.1(a)(1).

(b) * * *

Examples:

* * *

3. See the examples to § 801.1(a)(1).

4. See the examples to § 801.12(a).

4. Amend § 801.12(a) by revising the examples to paragraph (a) to read as follows:

§ 801.12 Calculating percentage of voting securities.

(a) * * *

Examples: 1. Person “A” is composed of corporation A1 and subsidiary A2; person “B” is composed of corporation B1 and subsidiary B2. Assume that A2 proposes to sell assets to B1 in exchange for common stock of B2. Under this paragraph, for purposes of calculating the percentage of voting securities to be held, the “acquired person” is B2. For all other purposes, the acquired person is “B.” (For all purposes, the “acquiring persons” are “A” and “B.”)

2. Person “A” is composed of corporation A1 and subsidiary A2; person “B” is composed of Fund 1 and Fund 2, which are associates managed by Investment Manager. Both Fund 1 and Fund 2 hold shares of Issuer. A2 will acquire all of Issuer’s voting securities held by Fund 1 and Fund 2. Under this paragraph, for purposes of calculating the percentage of voting securities to be held, the “acquired person” is Issuer. For all other purposes, the acquired person is “B.” (For all purposes, the “acquiring person” is “A.”)

* * * * *

PART 802—EXEMPTION RULES

5. The authority citation for part 802 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

6. Add § 802.15 to read as follows:

§ 802.15 De minimis acquisitions of voting securities.

An acquisition of voting securities shall be exempt from the requirements of the act if as a result of the acquisition:

(a) the acquiring person does not hold in excess of 10% of the outstanding voting securities of the issuer; and

(b)(i) the acquiring person is not a competitor of the issuer (or any entity within the issuer);

(ii) the acquiring person does not hold voting securities in excess of 1% of the outstanding voting securities (or, in the case of a non-corporate entity, in excess of 1% of the non-corporate interests) of any entity that is a competitor of the issuer (or any entity within the issuer);

(iii) no individual who is employed by, a principal of, an agent of, or otherwise acting on behalf of the acquiring person, is a director or officer of the issuer (or of an entity within the issuer);

(iv) no individual who is employed by, a principal of, an agent of, or otherwise acting on behalf of the acquiring person, is a director or officer of a competitor of the issuer (or of an entity within the issuer); and

(v) there is no vendor-vendee relationship between the acquiring person and the issuer (or any entity within the issuer), where the value of sales between the acquiring person and the issuer in the most recently completed fiscal year is greater than $10 million in the aggregate.

Examples: 1. Investment Manager manages the investments of Fund 1 and Fund 2, which are associates. Investment Manager, Fund 1 and Fund 2 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. Fund 1 has a .4% interest in a competitor of Issuer and Fund 2 has a .5% interest in the same competitor of Issuer. The acquisition of the 5% interest in Issuer would be exempt under § 802.15.

2. Investment Manager manages the investments of Fund 1 and Fund 2, which are associates. Investment Manager, Fund 1 and Fund 2 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. Fund 1 has a .4% interest in a competitor of Issuer and Fund 2 has a .3% interest in a different competitor of Issuer. The acquisition of the 5% interest in Issuer would be exempt under § 802.15.

3. Investment Manager manages the investments of Fund 1 and Fund 2, which are associates. Investment Manager, Fund 1 and Fund 2 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. Fund 1 controls an operating company that is a competitor of Issuer. The acquisition of the 5% interest in Issuer would not be exempt under § 802.15.

4. Investment Manager manages the investments of Fund 1, Fund 2, Fund 3, and Fund 4, which are associates. Investment Manager, Fund 1, Fund 2, Fund 3 and Fund 4 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. Fund 2, Fund 3 and Fund 4 each have a .4% interest in a competitor of Issuer. The acquisition of the 5% interest in Issuer would not be exempt under § 802.15.

5. Investment Manager manages the investments of Fund 1 and Fund 2, which are associates. Investment Manager, Fund 1 and Fund 2 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. One of Fund 2’s officers (or the equivalent thereof) also serves as an officer of Issuer. The acquisition of the 5% interest in Issuer would not be exempt under § 802.15.

6. Investment Manager manages the investments of Fund 1, Fund 2, Fund 3, and Fund 4, which are associates. Investment Manager, Fund 1, Fund 2, Fund 3 and Fund 4 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. One of Fund 4’s officers (or the equivalent thereof) also serves as an officer of a competitor of Issuer’s subsidiary. The acquisition of the 5% interest in Issuer would not be exempt under § 802.15.

7. Investment Manager manages the investments of Fund 1 and Fund 2, which are associates. Investment Manager, Fund 1 and Fund 2 are all part of the Acquiring Person. Fund 1 is acquiring 5% of Issuer. Fund 1 controls an operating company that has

a vendor-vendee relationships with Issuer valued in excess of $10 million. The acquisition of the 5% interest in Issuer would not be exempt under § 802.15.

PART 803—TRANSMITTAL RULES

7. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

8. Revise Appendix A and Appendix B to Part 803 as follows:

Definitions, p.I of Instructions:
The terms “person filing” or “filing person” mean an ultimate parent entity (“UPE”) and its associates. Every person will have at least one UPE, and a person may be the same as its UPE. Not every person will have associates, but when a person has associates, the person will not be the same as its UPE(s). (See § 801.1(a)(1) and § 801.1(d)(2).)

Item 1(a), p.IV of Instructions:
Provide the name, headquarters address, and website (if one exists) of the person filing notification. A person includes associates, but not every person will have associates. In the case of a person that has associates, the person filing is the entity that manages the associates (“managing entity”) as defined by § 801.1(d)(2). (See § 801.1(a)(1) and § 801.1(d)(2).)

Item 1(c), p.IV of the Instructions:
Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, managing entity or other (specify). If the person is a managing entity, indicate the UPE making the acquisition. Indicate if a UPE is filing on behalf of the managing entity. (See § 801.1 and § 801.1(d)(2).)

Item 3(a), p.V of the Instructions:

First paragraph: At the top of Item 3(a), list the name and mailing address of each acquiring and acquired UPE, and acquiring and acquired entity, that are party to the transaction whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned by an acquired entity.

Item 4(a), p.VI of the Instructions:
Acquiring persons: provide the names of all entities within the person filing notification, including all UPEs, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key (“CIK”) number for each entity. Responses must be organized by UPE and by entity within each UPE.

Acquired persons: provide the names of all entities within the selling UPE, including the UPE, that file annual reports (Form 10-K or Form 20-F) with the United States Securities

and Exchange Commission, and provide the Central Index Key (CIK) number for each entity.

Item 4(b), p.VI of the Instructions:
Acquiring persons: provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification. The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7. Responses must be organized by UPE and by entity within each UPE. If some of the UPEs or entities do not prepare separate financial statements, explain how their financial information is consolidated in the financial statements that are being submitted.

Acquired persons: provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the selling UPE. The acquired person should also provide the most recent reports of the acquired entity(s).

Item 5, p.VII of the Instructions:
Second paragraph: Responses must be organized by UPE and entity within each UPE. List all NAICS and NAPCS codes in ascending order.

Item 5(a), p.VII of the Instructions:
Last paragraph: Check the Overlap box for every 6-digit manufacturing and non-manufacturing NAICS code and every 10-digit NAPCS code in which both persons generate dollar revenues.

Item 6(a), p.VIII of the Instructions:
Subsidiaries of filing person. List the name, city, and state/county of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Responses must be organized by UPE and by entity within each UPE. Entities with total assets of less than $10 million may be omitted. Alternatively, the person filing notification may report all entities within it.

Item 6(b), p.VIII of the Instructions:

Minority shareholders. For the acquired entity(s) and for the acquiring entity(s) and its UPE(s) or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within the UPE(s), list the name and headquarters mailing address of each shareholder that holds 5% or more but less than 50% of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. Responses must be organized by UPE and entity within each UPE. (See § 801.1(c)).

Item 6(c)
Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the

case of an unincorporated entity, list the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquiring person may rely on its regularly prepared financials that list its investments, provided the financials are no more than three months old. Responses must be organized by UPE and by entity within each UPE.

The acquired person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the same 6-digit NAICS industry code as the acquiring person.

If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Item 6(c), it is permissible for the acquiring person to list all entities in which it holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than $10 million may be omitted.

Item 7, p.IX-X of the Instructions:
If, to the knowledge or belief of the person filing notification, the acquiring person derived any amount of dollar revenues (even if omitted from Item 5) in the most recent year from operations:

1) in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived any amount of dollar revenues in the most recent year; or

2) in which a joint venture corporation or unincorporated entity will derive dollar revenues;

then for each such 6-digit NAICS industry code follow the instructions below for this section.

Note that if the acquired entity is a joint venture, the only overlaps that should be reported are those between the assets to be held by the joint venture and any assets of the acquiring person not contributed to the joint venture.
Responses must be organized by UPE and by entity within each UPE.

Item 7(a)
Industry Code Overlap Information
Provide the 6-digit NAICS industry code and description for the industry.

Item 7(b)
Geographic Market Information
Use the 2-digit postal codes for states and territories and provide the total number of states and territories at the end of the response.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(b)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(b)(i)
NAICS Sectors 31-33
For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information in which, to the knowledge or belief of the person filing the notification, the products in that 6-digit NAICS industry code produced by the person filing notification are sold without a significant change in their form (whether they are sold by the person filing notification or by others to whom such products have been sold or resold). Except for industries covered by Item 7(b)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(b)(ii)
NAICS Sector 42
For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(b)(iii)
NAICS Industry Group 5241
For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a), list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(b)(iv)(a)
Other NAICS Sectors
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

11	agriculture, forestry, fishing and hunting
21	mining
22	utilities
23	construction
48-49	transportation and warehousing
511	publishing industries
515	broadcasting
517	telecommunications

71 arts, entertainment and recreation

Item 7(b)(iv)(b)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

2123 nonmetallic mineral mining and quarrying
32512 industrial gases
32732 concrete
32733 concrete products
44-45 retail trade, except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores)
512 motion picture and sound recording industries
521 monetary authorities - central bank
522 credit intermediation and related activities
532 rental and leasing services
62 health care and social assistance
72 accommodations and food services, except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses)
811 repair and maintenance, except 8114 (personal and household goods repair and maintenance)
812 personal and laundry services

Item 7(b)(iv)(c)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

442 furniture and home furnishings stores
443 electronics and appliance stores
516 internet publishing & broadcasting
518 internet service providers
519 other information services
523 securities, commodity contracts and other financial investments and related activities
5242 insurance agencies and brokerages, and other insurance related activities
525 funds, trusts and other financial vehicles
53 real estate and rental and leasing
54 professional, scientific and technical services
55 management of companies and enterprises
56 administrative and support and waste management and remediation services
61 educational services
7212 recreational vehicle parks and recreational camps

7213 rooming and boarding houses
813 religious, grantmaking, civic, professional, and similar organizations
8114 personal and household goods repair and maintenance

Item 8, p.XI of the Instructions:
For each such acquisition, supply:

1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;

2) the name of the entity from which the assets, voting securities or non-corporate interests were acquired;

3) the headquarters address of that entity prior to the acquisition;

4) whether assets, voting securities or non-corporate interests were acquired; and

5) the consummation date of the acquisition.

Responses must be organized by UPE and by entity within each UPE.

By direction of the Commission.

April J. Tabor,

Acting Secretary.