

FTC Proposes Rule Changes and Issues Updated Guidance for Hart-Scott-Rodino Filings

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On September 21, 2020, the Federal Trade Commission published a Notice of Proposed Rulemaking pertaining to pre-merger notification rules under the Hart-Scott-Rodino Act that was joined by the Department of Justice. The FTC proposes changing the definition of “person” under the HSR rules to include “associates,” and adding a new “de minimis” exemption to cover investments up to 10% where the acquiring person does not already have a “competitively significant relationship” with the issuer, such as being a competitor, officer or director, or vendor. The FTC additionally published a blog post on September 23 modifying their guidance regarding the issuance of special dividends as an HSR avoidance mechanism. The Agencies are requesting comments on the proposed new rules, but the new guidance on avoidance mechanisms is effective immediately. We have briefly summarized each proposed change in the attached memo, and offer a high-level analysis of the respective impact of each. At this point, the proposals have not been adopted and they are not binding.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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