

## FTC Settlement with Activist Fund Clarifies Scope of HSR Passive Investment Exemption

August 26, 2015 | Client Update

The Federal Trade Commission (“FTC”) and the United States Department of Justice (“DOJ”) on Monday [reached a settlement](#) with fund management company Third Point LLC and its affiliated funds (“Third Point”) concerning agency allegations that Third Point violated pre-merger reporting laws in connection with certain acquisitions in 2011 of stock in Yahoo! Inc. (“Yahoo”). Specifically, the agencies alleged that Third Point (founded by activist investor Daniel Loeb) acquired Yahoo shares valued greater than the reporting threshold and that this acquisition was not undertaken “solely for purposes of investment.” Accordingly, Third Point could not avail itself of the HSR Act’s “investment” exemption. The settlement provides important guidance as to how the FTC interprets that exemption, particularly in the context of investments by activist funds.

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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