

**HART-SCOTT-RODINO REPORTING
REQUIREMENTS FOR CERTAIN
ACQUISITIONS INVOLVING BANKING AND
NON-BANKING BUSINESSES**

SIMPSON THACHER & BARTLETT LLP

JUNE 12, 2000

The Premerger Notification Office of the Federal Trade Commission (the “FTC”), with the concurrence of the Department of Justice (the “DOJ”), has adopted a Formal Interpretation of the Hart-Scott-Rodino (“HSR”) Act antitrust reporting requirements¹ following enactment of the Gramm-Leach-Bliley Act, the financial services modernization law. Under the Gramm-Leach-Bliley Act, bank holding companies are allowed to conduct new financial services, such as securities and insurance underwriting and merchant banking, through financial holding companies. National banks are also permitted to engage in new financial activities through financial subsidiaries.

Formal Interpretation 17 provides that the following transactions are subject to the reporting requirements of the HSR Act if the applicable size-of-person and size-of-transaction tests are met:

- transactions in which financial holding companies and banks seek to acquire non-banking businesses; and

-
1. The HSR Act mandates both advance notification to the FTC and the DOJ and a thirty-day waiting period before completing certain transactions. In general, the HSR Act applies to any acquisition of voting securities or assets where
 - (a) one party to the acquisition has annual net sales or total assets of \$100 million or more and the other party has annual net sales or total assets of \$10 million or more; *and*
 - (b) as a result of the transaction, the party making the acquisition holds either
 - (i) voting securities and/or assets of the party whose voting securities or assets were acquired having a value of more than \$15 million; or
 - (ii) 50% or more of the voting securities of an issuer which, together with all the entities it controls, has annual net sales or total assets of \$25 million or more, regardless of the value of the voting securities.

In connection with the notification, the acquiring person must pay a \$45,000 filing fee.

- the non-bank portion of “mixed” transactions that are now permitted under the Gramm-Leach-Bliley Act, such as where a financial holding company seeks to acquire a bank that owns a non-bank business.

Under the Gramm-Leach-Bliley Act, financial holding companies do not require prior approval of the Federal Reserve Board to make non-bank acquisitions. Accordingly, the Interpretation requires financial holding companies (absent the availability of an applicable exemption) to comply with the HSR reporting requirements when acquiring a non-bank entity. Similarly, when a financial holding company or a bank holding company seeks to acquire a bank with a non-banking subsidiary, the bank portion of the transaction is exempt from the HSR Act, but the acquisition of the non-banking subsidiary is subject to the reporting requirements of the HSR Act.

Under Formal Interpretation 17, when one bank holding company seeks to acquire another bank holding company that has both banking and non-banking entities, the FTC will not review the portion of the transaction relating to the acquisition of the subsidiary bank(s). However, as to any non-banking subsidiaries that are so-called “Section 4(c)(8) affiliates,” Formal Interpretation 17 requires the acquiring bank holding company (which is *not* a financial holding company) to comply with the HSR requirement that the bank holding company contemporaneously file with the FTC and the DOJ copies of the materials filed with the Federal Reserve Board and wait at least thirty days prior to consummation.

Transactions that involve only banking lines of business remain exempt under the HSR Act. For example, a financial holding company seeking to acquire a bank will be exempt from HSR reporting requirements as long as the bank does not own a non-bank entity. Similarly, a securities company seeking to acquire a bank will be exempt from HSR reporting requirements as long as the bank does not own a non-bank entity. The Interpretation also states that the acquisition of a bank that has an operating subsidiary, which engages only in activities that the bank is permitted to engage in directly, is exempt from HSR reporting requirements. However, if a bank acquires a non-bank company (*e.g.*, a mortgage company) as a operating subsidiary, such acquisition is subject to HSR reporting requirements.

* * * *

If you have any questions or require additional guidance, please contact Joseph Tringali (212-455-3840; j_tringali@stblaw.com) or Jack D’Angelo (212-455-2722; j_dangelo1@stblaw.com) of the Firm’s Antitrust Practice Group.

SIMPSON THACHER & BARTLETT LLP