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Officer and Director HSR Filing Requirements

A Reminder About the Need to Monitor Officer and Director Stock Compensation and Other Acquisitions for Potential HSR Filing Requirements

In this time of heightened antitrust scrutiny, we encourage businesses to review their compliance programs to ensure that the share ownership positions of officers and directors are being monitored for purposes of assessing whether an officer or director's planned acquisition of stock may trigger a filing obligation under the Hart-Scott-Rodino (HSR) Act. This memo provides a brief overview of the relevant issues.

Under the HSR Act, an officer or director planning a stock acquisition that would result in the individual holding an aggregate amount of voting securities valued in excess of specified dollar thresholds (the lowest of which is currently $92 million) is often required to file an HSR notification form with the FTC and DOJ and observe a 30-day waiting period before consummating the acquisition. There are exceptions to this requirement, including situations in which the individual's other investment assets are valued under a specific threshold set forth in the HSR Act (currently $18.4 million).

Acquisitions by officers and directors triggering an HSR filing obligation can occur in a number of ways, including (1) the grant of restricted stock, (2) the delivery of shares underlying restricted stock units or performance stock units, (3) the exercise of options, warrants or stock-settled stock appreciation rights, and (4) the acquisition of shares on the open market. When an officer or director acquires a share that has voting rights (such as in the open market), the relevant date for HSR notification purposes is the date the officer or director gains beneficial ownership of the share (which is the right to vote or the right to dispose of the share). When an officer or director receives a right to acquire a share in the future and that does not carry the present right to vote (such as a restricted stock unit), then the relevant date for HSR notification purposes is usually the date on which the shares are delivered under the right (and therefore the acquirer gains beneficial ownership of the share).

If an HSR Act filing is required, the officer or director must file notifications with the FTC and DOJ and await the expiration of the 30-day waiting period before consummating the transaction. Once the officer or director has submitted an HSR Act filing and the waiting period has expired, he or she can acquire additional shares in the company for five years from the day the waiting period expired without being required to submit an additional filing, so long as he or she does not cross a dollar threshold higher than the one indicated in the filing.

Failing to comply with these requirements can result in a civil penalty for each day that a person is deemed to be in violation of the HSR Act (running from the date of acquisition to the date the 30-day waiting period expires following an appropriate filing). The penalty is currently $43,792 per day.

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