

**MEMO# 33082**

February 2, 2021

## **IDC Comments on FTC's Proposed Notification Rules under the Hart-Scott-Rodino Act**

[33082]

February 2, 2021 TO: ICI Members

Investment Company Directors SUBJECTS: Fund Governance RE: IDC Comments on FTC's Proposed Notification Rules under the Hart-Scott-Rodino Act

IDC submitted the attached comment letter on the FTC's proposed notification rules<sup>[1]</sup> under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). Under current FTC rules, HSR filing requirements generally are limited to entities controlled by the ultimate parent entity of the acquiring entity. The recent FTC proposal, however, would require all registered funds and other client accounts for which an investment adviser provides investment management services to be aggregated. This could result in potentially hundreds or thousands of different accounts being aggregated with a registered fund for purposes of filings and compliance under the HSR Act.

IDC's letter, prepared with the assistance of Dechert LLP, seeks to educate the FTC about the unique governance and regulatory structure of registered funds under the Investment Company Act of 1940, the role of fund independent directors, and the potential impact of its proposal on fund shareholders. In particular, the letter highlights that each registered fund is a separate legal entity that is overseen by a board of directors, subject to their fiduciary duty, as well as comprehensive and stringent governance requirements in place for the benefit of fund shareholders.

IDC's letter, therefore, observes that the proposed aggregation of registered funds with all other investment vehicles and accounts paints with too broad a brush, while imposing real and negative consequences. Among them, portfolio management could be disrupted. Significant filing expenses and potentially insurmountable data-gathering requirements also would harm the interests of registered funds and their shareholders without a commensurate benefit.

Lisa C. Hamman  
Associate Managing Director

[Attachment](#)

**endnotes**

[1] Notice of Proposed Rulemaking and Advanced Notice of Proposed Rulemaking with respect to the Premerger Notification Rules under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 85 Fed. Reg. 77053, 85 Fed. Reg. 77042 (Dec. 1, 2020).

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