

\$720,000 Civil Penalty for Failure to File Hart-Scott-Rodino (HSR)

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On June 21st, the Department of Justice (DOJ), on behalf of the **Federal Trade Commission (FTC)**, announced a settlement with MacAndrews & Forbes for failing to file Hart-Scott-Rodino (HSR) in connection with the acquisition of voting securities of Scientific Games (SG). MacAndrews & Forbes, which is a wholly-owned holding company of Ronald Perelman, will pay \$720,000 for failing to file HSR.

MacAndrews & Forbes had filed HSR and observed the waiting period for a prior acquisition of SG voting securities. Under the HSR Rules, a buyer that has filed HSR and observed the waiting period can continue to acquire voting securities of an issuer valued up to the next notification threshold for a period of five years following expiration of the HSR waiting period. (The relevant notification thresholds in acquisitions of less than 50 percent of the voting securities are \$50 million, \$100 million and \$500 million, each of which are adjusted annually.) However, if the buyer will pass the next notification threshold, or acquire additional stock after the five year period expires, a new HSR filing is required. The HSR size-of-transaction is determined by valuing what a buyer will hold as a result of the transaction. In other words, the buyer needs to look at the value of the voting securities of an issuer it currently holds aggregated with the value of the stock it will acquire. The value of publicly traded stock, such as SG's, is determined by looking at the lowest closing quotation price in the preceding 45 calendar days. As such, if a stock goes up in value over time, even acquisitions of small tranches of shares can put an acquiring person above a notification threshold.

That is what happened in MacAndrews & Forbes's case. It had filed HSR in February 2007 and the five year period in which it could make additional acquisitions expired when it acquired an additional 800,000 shares, valued at \$6.5 million, in June 2012. This acquisition, when aggregated with the value of SG stock MacAndrews & Forbes already held, exceeded the filing threshold. MacAndrews & Forbes realized the inadvertent failure to file, and submitted a corrective filing in September 2012. The takeaways here are to remember that HSR thresholds consider both what a buyer already holds in addition to what else it will acquire, and that subsequent potential HSR obligations need to be monitored over time.

To view the press release, [click here](#).

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National Law Review, Volume III, Number 174

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