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# $500,000 Fine for CEO Highlights Risk of Vesting Shares

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The Federal Trade Commission (FTC) announced that a public company CEO will pay a fine of $500,000 for failure to make timely filings under the Hart-Scott-Rodino Act (HSR Act). The CEO was awarded restricted stock units (RSU) that converted to voting shares between 2007 and 2009, but did not make an HSR filing at the time of vesting. This enforcement action and settlement underline the importance for individuals of considering the risk of HSR Act violations caused by passive acquisitions, such as awards that automatically convert into voting shares.

The HSR Act requires a person to make a filing with the FTC and the Department of Justice and to observe a waiting period before making an acquisition of voting securities as a result of which the person will hold voting securities valued at more than one or more HSR Act thresholds. The HSR thresholds (adjusted annually based on U.S. gross national product) are $50 million (now $66 million); $100 million (now $131.9 million); $500 million (now $659.5 million); an interest of 25 percent or more that is in excess of $1 billion (now $1,319 million); and an interest of 50 percent or more of an entity.

The CEO had made an HSR filing at the time of a corporate transaction in 2002, which allowed him to continue for five years to acquire voting shares in the company above the $50 million threshold (as adjusted), as long as he did not pass the next threshold of $200 million (as adjusted). However, after his 2002 HSR filing expired in 2007, the CEO did not make a new HSR filing when RSUs that were part of his compensation converted into voting shares.

The HSR Act authorizes daily fines ($16,000 per day after Feb. 10, 2009), which could have translated into a fine of almost $9 million for the CEO. Weighing against him was the fact that he had already twice failed to make an HSR filing, but weighing in his favor was the fact that his failure to file was based on erroneous advice of counsel, was inadvertent, did not benefit him financially, and was reported promptly when it was discovered.

This case is a reminder for executives that they must be careful to avoid passive and inadvertent violations of the HSR Act. Counsel should also keep this cautionary tale in mind when advising companies and executives on compensation issues, including awards that will convert automatically into voting shares, to be sure that they are not setting time bombs.

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