Message from the Chair

William D. Johnston
Chair, Business and Corporate Litigation Committee

I hope that this message finds you well and looking forward to Springtime. Indeed, we have much to look forward to in the months to come. I'll touch quickly on five subjects.

1. New Business Court Representatives. For years, the Business and Corporate Litigation Committee and the Business Law Section have benefited greatly from the involvement of business court judges, adding to contributions on the part of our Committee's Judicial Designees and the Section's Advisors and Continuing Advisors. I am delighted to announce that the newest business court representatives, or "BCR's," are The Honorable Elihu M. Berle of the Los Angeles Superior Court, The Honorable Audrey J.S. Carrion of the Circuit Court for Baltimore City, MD, The Honorable Joseph C. Iannazzone of the State Court of Gwinnett County, Georgia, and The Honorable Christine A. Ward of the Court of the Common Pleas of Allegheny County, PA. Please join me in welcoming Judges Berle, Carrion, Iannazzone, and Ward and thanking them in advance for their time and insights.

2. "Advance IV" Strategic Planning by the Business Law Section. Our Section continues to pursue strategic planning (known as "Advance IV") identifying and addressing membership, content, and technology issues -- all with the goal of doing the best we can to deliver value to Section current and future members. Reports were presented during the recent Section leadership meeting and valuable feedback was received. During the next few months, the Section's Council Committee on Planning will be working to incorporate various specific strategies into the Section's business plan.

3. Working Group Directed to the Eradication of Forced Labor in Supply Chains. Our Committee, at the request of the Section, is working with the ABA Human Trafficking Task Force to develop standards that will assist businesses in eradicating forced labor in supply chains - modern day slavery that affects more than 20 million persons each year. Special thanks to Business and Corporate Litigation Committee leaders Brad Newman and Denise Seastone Kraft for their co-chairmanship of the Working Group.

4. Spring Meeting of the Business Law Section. Our Section will be meeting in Washington, D.C. on April 4-6. As usual, we will enjoy one another's company during the Committee Dinner on Thursday, and we will present three outstanding CLE programs and hold a meeting of our full Committee and meetings of our subcommittees, task forces, and working groups. Please note the day and time of each of our CLE programs: "Alternative Entities from Start to Finish - What Business Lawyers Need to Know about Formation, Governance, Litigation, and Dissolution" (Thursday, 10:30 a.m. - 12:30 p.m.), "2013 Annual Review of Review of Developments in Business and Corporate Litigation" (Thursday, 2:00 p.m. - 5:00 p.m.), and "Olympic Disputes - How and Why to Litigate Because of or at the Olympic Games" (Saturday, 10:30 a.m. - 12:30 p.m.). Please also consider attending the first-ever "Lunch with the Judges" roundtable gathering (Saturday, 12:30 p.m.), sponsored by our Trial Practice Subcommittee.

If you haven't already registered for the Spring Meeting and made your hotel reservation, please do so soon via the Section's website, www.americanbar.org/groups/business_law.html. (Early bird registration ends February 1st.) And, if you will not be able to attend in-person, please join us for meetings through the phone dial-in capability (again, details on the Section's website).
5. **Member Recruitment and Leadership Development.** Last, a few words about membership recruitment and leadership development. As I’ve urged in previous communications with Business and Corporate Litigation Committee members, each of us has a wonderful opportunity to assist in recruiting and retaining new members of our Committee. I hope that you will agree that our Committee is an “easy sell,” since it costs nothing to join (for a Section member) and because the benefits of membership are many - including early and frequent opportunities to write, speak, and network. So, if you haven’t already done so, please invite your colleagues to join our Committee (signing up through the Section’s website), and please make them welcome once they join and assure them that our Committee is their home within the Business Law Section and, more broadly, within the ABA.

Turning to leadership, I will be working in coming months with Committee Co-Vice Chairs Pat Clendenen and Heidi McNeil Staudenmaier to identify folks who will be asked to serve as subcommittee, task force, and working group chairs and vice chairs starting with the conclusion of this August’s Annual Meeting. (Our Committee follows the three-year term limit prescribed by the Section.) If you have an interest in a leadership position, please let me know at your earliest convenience.

I hope to see you in Washington in April. In the meantime, all the best, and please let me know if I can be of assistance in any way.

Bill Johnston is a partner with Young Conaway Stargatt & Taylor, LLP in Wilmington, Delaware. He can be contacted at (302) 571-6679 or wjohnston@y cst.com.

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### FTC Announces Annual Changes to Thresholds in Clayton Act

**Barbara T. Sicalides, Sarah Sandok Rabinovici and Alexander L. Harris**

The Federal Trade Commission (FTC) announced the annual changes to the thresholds contained in Sections 7A (Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act)) and 8 of the Clayton Act (15 USC 18a and 19) (Interlocking Directors). The thresholds applicable under both these statutes is adjusted annually.

The highlights are:

**Hart-Scott-Rodino**

Section 7 prohibits mergers and other acquisitions of "stock or other share capital ... or part of the assets of another person ... where ... the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly." 15 U.S.C. § 18. The HSR Act is designed to permit the U.S. antitrust enforcement agencies to evaluate the potential competitive effects of and challenge, if appropriate, a transaction before it is consummated.

Under Section 7A, the new size-of-transaction threshold (the $50 million threshold) increased from $68.2 million to $70.9 million; the size-of-person thresholds (the $10 and $100 million thresholds) will be $14.2 million and $141.8 million respectively; and the former $200 million threshold will be $283.6 million.

As to Section 7A, the new size-of-transaction thresholds ($70.9 million and $283.6 million) refer to the purchase price or the fair market value of the voting securities, assets or non-corporate interests acquired. The size-of-transaction threshold can also be triggered by the formation of a new entity or the conversion of a non-voting security into a voting security (including as a result of executive compensation in the form of equity grants, etc.).

Unless an exemption applies, transactions in excess of $283.6 million are reportable regardless of the size of the parties. For all other transactions in excess of $70.9 million, one party must have assets or revenues in excess of $14.2 million and the other party must have assets or revenues in excess of $141.8 million. The new $14.2 million and $141.8 million size-of-person
thresholds refer to the total current assets or total annual revenues of each of
the acquiring and acquired parties.

The revised HSR thresholds will apply to all transactions closing on or after
February 11, 2013.

Interlocking Directors

Section 8 of the Clayton Act prohibits, with certain exceptions, one person
from serving as a director or officer of two competing corporations if certain
thresholds are met: (1) if each corporation has capital, surplus, and
undivided profits aggregating more than $10 million and (2) each
corporation has sales of $1 million or more. The statute requires the FTC
to revise the thresholds annually, based on the change in gross national
product.

The "$10 million" threshold in the statute will be $28,883,000 and the "$1
million" threshold will be $2,888,300. For Section 8's prohibition on
interlocking directors to apply, the competing corporations must have capital,
surplus and undivided profits in the aggregate of more than $28,883,000
AND the extent of competitive overlap between the two corporations must
satisfy one of three tests: (a) each company has competitive sales of at least
$2,888,300; or (b) each company has competitive sales of at least 2 percent
of its respective total sales; or (c) the competitive sales of either of the two
companies is at least 4 percent of its total sales.

The thresholds for Section 8 became effective upon publication in the
Federal Register.

Subcommittee Updates

Bankruptcy Litigation Subcommittee

As in years past the Bankruptcy Litigation Subcommittee once again has
assisted in the preparation of the Annual Review, specifically the Bankruptcy
Litigation Chapter. In addition, the Subcommittee is co-sponsoring a
program at the Business Law Section Spring Meeting as follows:

CLE program - Thursday April 4 from 10:30 to 12:30 - Extreme Makeover
Consumer Protection Edition: A Look at the CFPB’s New Regulations and
Compliance Expectations.

This program will focus on the tightening of mortgage lending rules under
the Dodd-Frank 2013 regulations issued by the Consumer Financial
Protection Bureau. The Ability-to Repay rule was issued by the CFPB in
January. Under that rule, new underwriting standards are imposed on
mortgage lenders. What is the rule and how will it affect mortgage lending?
Our subcommittee has arranged for the panel to include an industry
specialist, Laurie Goodman, who is with Amherst Securities Group’s New
York office. She will address whether the underwriting standards in the
Ability-to Repay rule will invigorate or dampen the mortgage lending and
securitization industry. The rule also contains a safe harbor for lenders that
make qualifying loans, and thus our committee members may be interested
in the benefits of the safe harbor to lenders, who find themselves defending
lawsuits asserted by consumers who claim that the lender knew the
borrower never had the ability to repay the loan.

Sports-Related Disputes Subcommittee

After the successful launch of the Subcommittee at the Spring Meeting 2012
in Las Vegas, the Subcommittee has now turned its attention to the
preparation of the Session that will take place at the 2013 Spring meeting in
Washington DC. The Session is currently scheduled on Saturday, April 6,
2013, from 10:30 a.m. to 12:30 p.m.

The Session will focus on commercial and on sporting disputes arising out
or in connection with big sport events, like for instance the Olympic Games. It
The Subcommittee will also meet on Thursday, April 4, between 10:00 and 12:00, with as focus the planning for next sessions and the welcoming of new members.

Members interested in becoming involved in the activities of the Subcommittee are warmly invited to contact the Chair, Michael Bernasconi (m.bernasconi@baerkerar.ch), or the Vice-Chair, the Hon. J. Allen Goldberg (goldie90@sbcglobalnet.net).

Antitrust Subcommittee

The Antitrust Subcommittee completed the chapter for the Annual Review, sent two updates to our listser, and reviewed a blanket authority request regarding the Fred Meyer FTC guidelines.

Membership Subcommittee

The Membership Subcommittee serves as the Committee's liaison to the Section on matters related to member recruitment and retention. Our recent efforts include developing targeted e-mail campaigns and value propositions to prospective members in line with the Section's redesign of its marketing materials, as well as participation in the Section's monthly Membership Committee conference calls. Subcommittee Vice Chair Caroline Pham will report on the Membership Subcommittee's efforts at the Spring Meeting. We welcome the input of all Committee members in our outreach efforts.

Partnership and Alternative Business Entities Subcommittee

The Partnership and Alternative Business Entities Subcommittee is finishing its work preparing Chapter 20 - General Partnerships, Joint Ventures, Limited Partnerships and Limited Liability Companies - for the Annual Review of Developments in Business and Corporation Litigation. We are also pleased to announce that we will be hosting a CLE program at the 2013 Spring Meeting in Washington, D.C., titled "Alternative Entities from Start to Finish: What Business Lawyers Need to Know about Formation, Governance, Litigation, and Dissolution." The program will cover a variety of alternative entity related issues from both a transactional and litigation perspective, including governance, fiduciary duties, exit mechanisms and bankruptcy, among others. The Corporate Counsel Committee and the Corporate Governance Committee are co-sponsoring the program. The time and date of the program have not yet been determined, but we should have more information for you in early 2013. We continue to look for new members. If you, or someone you know, is interested in joining our subcommittee, please do so through the ABA website at the following link: http://www.americanbar.org/membership/join_and_renew.html. We look forward to seeing you at the Spring Meeting in Washington, D.C.

If you have questions, please contact the Partnership and Alternative Business Entities Subcommittee Chair, Dominick Gattuso, via email: dgattuso@proctorheyman.com. You can also contact the subcommittee's Vice Chairs, Jason Jowers and Steve Brauerman, by email: jowers@morrisjames.com and sbrauerman@bayardlaw.com.
William D. Johnston, Committee Chair

Heidi McNeil Staudenmaier, Committee Co-Chair
Patrick Thomas Clendenen, Committee Co-Chair
Peter J. Walsh, Jr., Immediate Past-Chair

Complete Committee Photo Roster...

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