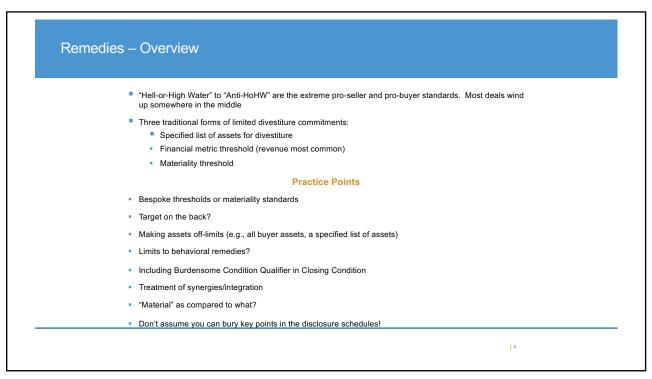
More New Kids on the Block: State-of-the-Art M&A Clauses That You Need to Know Moderator: Jenny Hochenberg Freshfields - New York, NY Panelists: Scott B. Crofton Sullivan & Cromwell LLP - New York, NY Robert B. Little Gibson, Dunn & Crutcher LLP - Dallas, TX Kimberly Spoerri Cleary Gottlieb Steen & Hamilton LLP - New York, NY

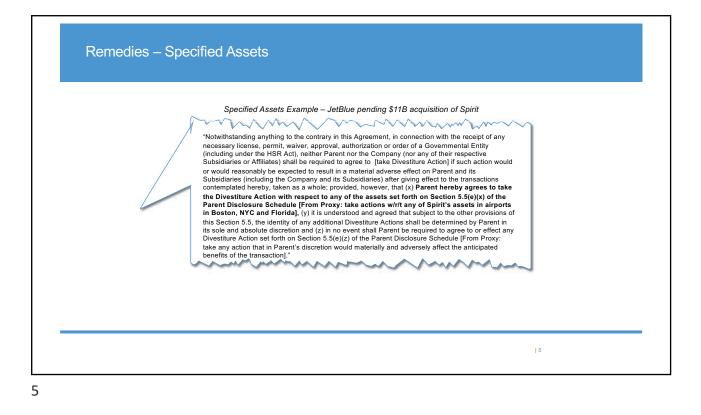
Overview:	<ul> <li>Biden administration has ramped up an aggressive focus on antitrust and competition issues</li> </ul>
	<ul> <li>FTC and DOJ have been suffering from resource constraints rendered particularly acute by a historic boom in the M&amp;A markets</li> </ul>
	<ul> <li>The factors above have yielded generally longer timelines applicable to getting deals through the antitrust clearance process</li> </ul>
HSR Waiting Period:	<ul> <li>30 days for most transactions; 15 days in the case of cash tender offers and certain bankruptcies</li> </ul>
Early Termination:	<ul> <li>If FTC/DOJ will not issue Second Request (discussed below), agencies can let waiting period expire or grant early termination</li> </ul>
	<ul> <li>Early termination has been suspended since February 4, 2021</li> </ul>
Second Request:	<ul> <li>FTC or DOJ can issue a "Second Request" if they seek additional time and information to evaluate competitive effects of a transaction</li> </ul>
	<ul> <li>Comprehensive investigatory and documentary request issued to both acquiring and acquired persons</li> </ul>
	<ul> <li>Generally extends waiting period until 30 days after substantial compliance by both parties with the second request (10 days for cash tender offers and certain bankruptcies)</li> </ul>
	<ul> <li>Second request process was revised in September 2021 to be even more comprehensive and rigorous</li> </ul>
	<ul> <li>Time periods for completing second request reviews have lengthened from around 6 months to 9-10 months or longer</li> </ul>

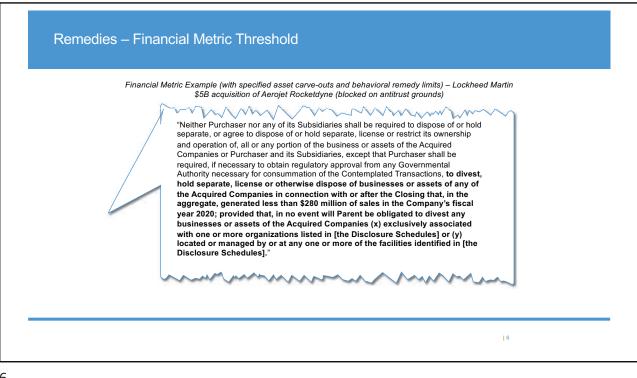
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<ul> <li>her Factors:</li> <li>Pre-consummation "warning letter" can inject additional timing uncertainty</li> <li>For cross-border transactions, antitrust timing requirements of other jurisdictions can significantly affect timelines, with some non-U.S. competition authorities also striking a decidedly more aggressive tone</li> <li>Need to provide careful guidance to parties on gun-jumping and information exchange in v of lengthy antitrust process</li> </ul>	Pull-and-Refile:	<ul> <li>Tactic that parties may decide to use to avoid the issuance of a second request</li> <li>Parties may determine to withdraw an HSR filing voluntarily prior to termination of waiting period and refile within two business days</li> <li>Resets the original 30 day HSR waiting period</li> <li>Allows additional time to negotiate a settlement with the agencies or to close an investigation</li> </ul>
<ul> <li>For cross-border transactions, antitrust timing requirements of other jurisdictions can significantly affect timelines, with some non-U.S. competition authorities also striking a decidedly more aggressive tone</li> <li>Need to provide careful guidance to parties on gun-jumping and information exchange in v of lengthy antitrust process</li> </ul>		<ul> <li>First pull-and-refile does not require payment of a new HSR filing fee but doing so more than</li> </ul>
<ul> <li>Consider whether the acquisition agreement should address potential for new risks such a government shutdowns to cause further delay</li> </ul>	Other Factors:	<ul> <li>For cross-border transactions, antitrust timing requirements of other jurisdictions can significantly affect timelines, with some non-U.S. competition authorities also striking a decidedly more aggressive tone</li> <li>Need to provide careful guidance to parties on gun-jumping and information exchange in vie of lengthy antitrust process</li> <li>Consider whether the acquisition agreement should address potential for new risks such as</li> </ul>







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## Title search: More New Kids on the Block: State-of-the-Art M&A Clauses That You Need to Know

Also available as part of the eCourse 2022 Mergers and Acquisitions eConference

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