

HSR Update: Annual Jurisdictional Thresholds Revisions Effective February 28, 2018

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PRACTICES Capital Markets and Securities, Corporate, Mergers and Acquisitions

Increase in HSR Thresholds. The jurisdictional thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) will increase February 28, 2018 and will apply to any transaction closing on or after that date. The revised thresholds will remain in effect until the next annual adjustment, expected in the first quarter of 2019.

- **“Size of Transaction” Threshold.** Under the new thresholds, the minimum “size of transaction” threshold has increased from \$80.8 million to \$84.4 million. This test is generally met if, as a result of the acquisition, the buyer will hold voting securities or assets (or noncorporate interests if the buyer will also “control” the acquired entity) of the seller with a value above \$84.4 million.
- **“Size of Person” Threshold.** For transactions valued between \$84.4 million and \$337.6 million, the “size of person” test must also be met for premerger notification to be required. With the new thresholds, a transaction will generally meet the “size of person” test if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$16.9 million, and the other person has annual net sales or total assets equal to or exceeding \$168.8 million. However, if the acquired person is not engaged in manufacturing, the acquired person must have total assets over \$16.9 million (annual net sales are not relevant) to meet the lower side of the threshold. If the transaction is valued above \$337.6 million, the “size of person” test does not need to be met for premerger notification to be required.
- **Increase in Civil Penalties for HSR Act Violations.** The FTC also increased the maximum civil penalty for violations of the HSR Act to \$41,484 per day. The new maximum applies to penalties assessed after January 22, 2018.
- **Increase in Interlocking Directorates Thresholds.** The FTC also revised the thresholds that trigger the Clayton Act’s prohibition on interlocking directorates (service as a director or officer of two competing corporations). The new thresholds are \$34,395,000 for Section 8(a)(1) and \$3,439,500 for Section 8(a)(2)(A), and the revised thresholds were effective as of January 29, 2018.
- **Filing Fees.** The filing fees remain unchanged, but the FTC adjusted the fee structure to reflect the new thresholds. The filing fees and updated transaction value ranges are as follows:

Filing Fee	2018 Size of Transaction Thresholds
\$45,000	For transactions valued between \$84.4 million and \$168.8 million
\$125,000	For transactions valued at or above \$168.8 million and below \$843.9 million

\$280,000 For transactions valued at or above \$843.9 million

- **Revised Thresholds.** The complete list of revised thresholds are as follows:

Original Threshold	2017 Threshold	2018 Threshold
\$10 Million	\$16.2 Million	\$16.9 Million
\$50 Million	\$80.8 Million	\$84.4 Million
\$100 Million	\$161.5 Million	\$168.8 Million
\$110 Million	\$177.7 Million	\$185.7 Million
\$200 Million	\$323.0 Million	\$337.6 Million
\$500 Million	\$807.5 Million	\$843.9 Million
\$1 Billion	\$1,615.0 Million	\$1,687.8 Million

The rules governing HSR filing requirements remain complex and the penalties for failing to comply are serious: as noted above, parties can face fines of up to \$41,484 per day. We would be pleased to assist with your analysis and any required filing.

If you have any questions, please contact one of the following attorneys.