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HSR Act Filing Thresholds, Civil Penalty Maximum, and Interlocking Directorate Thresholds Revisions

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On February 15, 2019, the US Federal Trade Commission (FTC) announced revisions to the jurisdictional thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), which will become effective on April 3, 2019 and apply to transactions consummated on or after the effective date. The HSR Act requires the FTC to revise the thresholds annually based on changes in the gross national product.

Under the revisions, the size of transaction threshold has been increased from \$84.4 million to \$90 million. Consequently, the HSR Act notification and waiting requirements will now apply to acquisitions resulting in the acquiring person holding assets and/or voting securities of the acquired person valued in excess of \$90 million. The HSR Act requirements also will apply to purchases of partnership interests and membership interests of a limited liability company provided that (i) the acquiring person obtains control and (ii) the interests held by the acquiring person are valued in excess of \$90 million.

Acquisitions that do not exceed \$359.9 million in value (previously \$337.6 million) also have to meet the size of person threshold to trigger the HSR Act requirements. Under the revisions, the size of person threshold generally will be met if one of the parties has total assets or annual net sales of \$180 million or more (previously \$168.8 million) and the other party has total assets or annual net sales of \$18 million or more (previously \$16.9 million).

In addition, acquisitions that result in the ownership of less than 50 percent of the outstanding voting securities of a corporation require HSR notification when certain dollar thresholds are reached. Under the revisions, a premerger filing is now required for such acquisitions when the value of the total voting securities acquired and held reaches each of the following dollar thresholds: (a) \$90 million, (b) \$180 million, (c) \$899.8 million and/or (d) 25 percent of an issuer's outstanding voting securities if valued in excess of \$1.7995 billion.

Summary of threshold changes:

Original Threshold	2019 Adjusted threshold
\$10 million	\$18 million
\$50 million	\$90 million
\$100 million	\$180 million
\$200 million	\$359.9 million
\$500 million	\$899.8 million
\$1 billion	\$1.7995 billion

The HSR Act filing fee thresholds also have been revised as shown in the following chart.

Transaction Valued at:	HSR Act Filing Fee
More than \$90 million but less than \$180 million	\$45,000
\$180 million or more but less than \$899.8 million	\$125,000
\$899.8 million or more	\$280,000

Revisions to Maximum Civil Penalty for HSR Violations

The FTC also has revised the maximum civil penalty for HSR Act violations. Such maximum civil penalties, which became effective February 14, 2019, increased

from \$41,484 per day to \$42,530 per day. The FTC is required to revise the maximum civil penalty for annual inflation adjustments.

The increased maximum will apply to civil penalties assessed after the effective date, including violations that predate the effective date, but does not change penalties already assessed or enforced penalties that the FTC is actively collecting.

Revisions in Thresholds for Section 8 of the Clayton Act

Finally, the FTC has revised the thresholds for interlocking directorates prohibited by Section 8 of the Clayton Act, which became effective March 4, 2019. The FTC is required to revise the Section 8 thresholds annually based on changes in the gross national product.

Section 8 of the Clayton Act prohibits, with certain exceptions, one person serving as a director or officer of two competing corporations if certain thresholds are met. As revised, Section 8 now covers situations where each corporation has capital, surplus, and undivided profits aggregating \$36,564,000 or more, unless either corporation has competitive sales of less than \$3,656,400.

Please click [here](#) for the Revised Transaction Thresholds for Premerger Notification Filings and Interlocking Directorates.

The Revised Maximum Civil Penalty is available [here](#).

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