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Hart-Scott-Rodino Filing Thresholds Decrease for First Time Since 2010

The Federal Trade Commission (FTC) announced a decrease in monetary thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act), that will apply to transactions closing on or after March 4, 2021. The minimum transaction value (also known as the size-of-transaction threshold) is decreasing to \$92 million, and the size-of-person thresholds are decreasing to \$18.4 million and \$184 million. Transactions in which the acquirer will hold voting securities, non-corporate interests, or assets valued above \$92 million but below \$368 million will be reportable if the size-of-person thresholds are satisfied and no exemptions apply. On or after the effective date of the 2021 thresholds, if a transaction is valued at \$368 million or above (the “alternative size-of-transaction” value), a filing will be required without regard to whether the size-of-person thresholds are met unless an exemption applies.

Revised HSR Act thresholds

The HSR Act thresholds are adjusted annually based on changes to the gross national product and determine whether companies or individuals are required to notify the FTC and the U.S. Department of Justice Antitrust Division (DOJ) of a proposed merger, acquisition, joint venture or other combination. Transactions falling below the applicable thresholds are not reportable; however, if the thresholds are met, the parties must submit their respective HSR Act premerger notification forms to the FTC and the DOJ, pay the applicable filing fee, and wait to close the transaction until the 30-day waiting period expires, or it is otherwise terminated.

The chart below sets forth the revised HSR Act thresholds that affect jurisdictional requirements, and impact whether an exemption to HSR Act reportability may apply. The 2020 HSR Act thresholds remain in effect until

the revised 2021 thresholds go into effect 30 days after publication in the Federal Register on February 2, 2021.

HSR Threshold	Revised 2021 Threshold	2020 Threshold
Size-of-transaction	\$92 million	\$94 million
Alternative size-of-transaction	\$368 million	\$376 million
Size-of-person	\$18.4 million and \$184 million	\$18.8 million and \$188 million

The FTC also announced the following revised notification thresholds for acquisitions of additional voting securities from the same party: (i) \$92 million; (ii) \$184 million; (iii) \$919.9 million; (iv) 25 percent of the voting securities if their value exceeds \$1,839.8 million; (v) and 50 percent of the voting securities if their value exceeds \$92 million.

The 2021 filing fees remain the same, and the amount of the filing fee that the acquirer must pay (unless otherwise agreed to by the parties) is tied to the revised 2021 size-of-transaction thresholds as follows:

HSR Filing Fee	Revised 2021 Threshold
\$45,000	\$92 million or greater but less than \$184 million
\$125,000	\$184 million or greater but less than \$919.9 million
\$280,000	\$919.9 million or more

Revised thresholds for interlocking directorates

Additionally, new monetary thresholds went into effect on January 21, 2021, relating to prohibitions on interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits a person from serving as a director or officer of two competing corporations if each corporation has capital, surplus, and undivided profits in the aggregate of more than \$37,382,000, unless the competitive sales of either corporation are less than \$3,738,200.

Increased penalties for noncompliance

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Determining whether the HSR Act, Clayton Act and potential exemptions apply to a transaction involves knowledge and interpretation of the laws, regulations and the FTC's informal guidance. Noncompliance with the HSR Act may result in increased civil penalties as of the effective date of up to \$43,792 per day.

Contact us

If you have any questions relating to the revised HSR Act thresholds, including whether a transaction is reportable, please contact Wendy Arends, Victoria (Tori) Sitz, Mark Tobey, Reagan Kays or your Husch Blackwell attorney.