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Notification Threshold Under the Hart-Scott-Rodino Act Increased to \$90 Million

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The US Federal Trade Commission recently announced increased thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and for determining whether parties trigger the prohibition against interlocking directors under Section 8 of the Clayton Act.

Notification Threshold Adjustments

The US Federal Trade Commission (FTC) announced revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) pre-merger notifications on February 15, 2019. These increased thresholds **will become effective mid-to-late March**. These new thresholds apply to any transaction that closes on or after the effective date.

- The base filing threshold, which frequently determines whether a transaction requires filing of an HSR notification, will increase to \$90 million.
- The alternative statutory size-of-transaction test, which captures all transactions valued above a certain size (even if the “size-of-person” threshold is not met), will be adjusted to \$359.9 million.
- The statutory size-of-person thresholds will increase slightly to \$18 million and \$180 million.

The adjustments will affect parties contemplating HSR notifications in various ways. Transactions that meet the current “size-of-transaction” threshold, but will not meet the adjusted \$90 million threshold, will only need to be filed if they will close before the new thresholds take effect mid-to-late March.

Parties may also realize a benefit of lower notification filing fees for certain transactions. Under the rules, the acquiring person must pay a filing fee, although the parties may allocate that fee amongst themselves. Filing fees for HSR-reportable transactions will remain unchanged; however, the size of transactions subject to the filing fees will shift upward as a result of the gross national product (GNP)-indexing adjustments:

Filing Fee	Size-of-Transaction
\$45,000	\$90 million, but less than \$180 million
\$125,000	\$180 million, but less than \$899.8 million
\$280,000	\$899.8 million or more



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Interlocking Directorate Thresholds Adjustment

The FTC also announced revised thresholds for interlocking directorates. The FTC revises these thresholds annually based on the change in the level of GNP. Section 8 of the Clayton Act prohibits a person from serving as a director or officer of two competing corporations if certain thresholds are met. Pursuant to the recently revised thresholds, Section 8 of the Clayton Act applies to corporations with more than \$36,564,000 in capital, surplus and undivided profits, but it does *not* apply where either interlocked corporation has less than \$3,656,400 in competitive sales. These new thresholds are effective immediately upon publication in the Federal Register, expected within the week.

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