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Annual Adjustments to Hart-Scott-Rodino and Interlocking Directorates Thresholds

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The annually adjusted thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a) (HSR) and Section 8 of the Clayton Act (15 U.S.C. § 19) were published in the Federal Register on January 26, 2016.

For HSR purposes, the revised thresholds will apply for transactions that close on or after February 25, 2016. For Section 8 purposes, the revised thresholds are effective January 26, 2016.

SIZE-OF-THE-TRANSACTION TEST (ORIGINAL: $50 MILLION; NEW AS OF FEBRUARY 25, 2016: $78.2 MILLION)

The 2000 HSR amendments raised the size-of-the-transaction test to $50 million. This figure is currently $76.3 million based upon the 2015 annual adjustment. On February 25, 2016, it will increase to $78.2 million. Accordingly, for transactions that close on or after February 25, 2016, no HSR filing will be required unless the acquisition will result in the acquiring person holding an aggregate total amount of voting securities, non-corporate interests, and/or assets of the acquired person in excess of **$78.2 million**.

SIZE-OF-THE-PARTIES TEST
(ORIGINAL: $10 MILLION/$100 MILLION; NEW AS OF FEBRUARY 25, 2016: $15.6 MILLION/$156.3 MILLION)

Under the new adjustments, acquisitions valued above $312.6 million will be reportable regardless of the size of the parties, and acquisitions valued at greater than $78.2 million, but less than or equal to $312.6 million, will only be reportable if the size-of-the-parties test is met. The revised thresholds

adjust the size-of-the-parties test so that it typically will be met if the acquiring or acquired person has annual net sales or total assets of $156.3 million or more, and the other person has annual net sales or total assets of $15.6 million or more.

NOTIFICATION THRESHOLDS

For acquisitions of voting securities, an acquiring person files for the highest applicable notification threshold among five choices. Acquiring 50 percent or greater of an issuer's voting securities is the highest threshold; but below that level, there are four different tiers for reporting acquisitions of minority interests in voting securities. The notification threshold may determine, for example, whether a subsequent acquisition of additional voting securities in the same issuer will require another HSR filing. The new notification thresholds that will become effective with the forthcoming adjustments are, in ascending order:

- An aggregate total amount of voting securities valued at greater than **$78.2 million**, but less than **$156.3 million**
- An aggregate total amount of voting securities valued at **$156.3 million** or greater, but less than **$781.5 million**
- An aggregate total amount of voting securities valued at **$781.5 million** or greater
- Twenty-five percent of an issuer's outstanding voting securities, if valued at greater than **$1.563 billion**
- Fifty percent of an issuer's outstanding voting securities, if valued at greater than **$78.2 million**

FILING FEE THRESHOLDS

The filing fee amounts are not changing; in fact, the HSR filing fee amounts have not been adjusted for inflation in more than a decade. However, the thresholds for the application of the fees are increasing.

- For transactions where the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition will be more than $78.2 million, but less than $156.3 million, the filing fee under the new notification thresholds will be $45,000
- For transactions where the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition will be $156.3 million or more, but less than $781.5 million, the filing fee under the new notification thresholds will be $125,000
- For transactions where the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition will be $781.5 million or more, the filing fee under the new notification thresholds will be $280,000

PREVIOUS SIZE-OF-THE-TRANSACTION THRESHOLDS

For purposes of disclosing past assets acquisitions for Item 8 of the HSR form, and for analyzing a potential past failure to file under HSR, it remains necessary to look at the thresholds that were in place at the time of the prior acquisition. The size-of-the-transaction thresholds since the 2000 HSR amendments have been:

- $50 million as of February 1, 2001
- $53.1 million as of March 2, 2005
- $56.7 million as of February 17, 2006
- $59.8 million as of February 21, 2007
- $63.1 million as of February 28, 2008
- $65.2 million as of February 12, 2009
- $63.4 million as of February 22, 2010
- $66.0 million as of February 24, 2011
- $68.2 million as of February 27, 2012
- $70.9 million as of February 11, 2013
- $75.9 million as of February 24, 2014
- $76.3 million as of February 20, 2015
- $78.2 million as of February 25, 2016

Most, although not all, of the dollar amounts in the HSR rules will be adjusted upward based upon the threshold indexing discussed above. It remains important for parties to be very careful in determining if a threshold is met given that the process can be very complex, the rules are highly technical, and failure to comply with HSR can result in significant civil penalties.

INTERLOCKING DIRECTORATES THRESHOLD
(ORIGINAL: $10 MILLION; NEW AS OF JANUARY 26, 2016: $31,841,000)

Finally, in a separate Federal Register notice, the Federal Trade Commission updated the jurisdictional threshold for interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits, subject to certain exceptions, persons from serving as an officer or director of two competing corporations (a practice known as “interlocking”), provided that each corporation has “capital, surplus, and undivided profits” above the statutory threshold. The 1990 amendments to Section 8 set this threshold at $10 million, but based on the latest annual adjustment, the threshold has been increased to $31,841,000.

Section 8 also has three safe harbor exceptions. One exception states that Section 8 does not apply if the competitive sales of either interlocked corporation are less than $1 million in 1989 dollars, as

adjusted annually. This safe harbor has adjusted to $3,184,100 based on the new thresholds.

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