

Higher HSR Reporting Thresholds Effective February 27, 2017

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The Federal Trade Commission (FTC) recently announced its annual changes to the dollar thresholds under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), which are expected to become effective on February 27, 2017. The revisions, which are based on changes in US gross national product, increase the dollar thresholds necessary to trigger the HSR Act's reporting requirements.

The FTC also increased the thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors under Section 8 of the Clayton Act, effective January 26, 2017.

You can read the FTC's press release [here](#).

Increased "Size of Transaction" and "Size of Person" Thresholds

The HSR Act generally applies to mergers and acquisitions of voting securities, assets and non-corporate interests (for example, partnership and limited liability company interests) that meet the "size of person" and/or "size of transaction" tests. Any transaction closing on or after February 27, 2017 (even if the transaction agreement was entered into prior to such date) may be reportable if it meets the following revised criteria:

- **Size of transaction.** The transaction is reportable if (1) the transaction is valued in excess of \$323 million (up from \$312.6 million) or (2) the transaction is valued in excess of \$80.8 million (up from \$78.2 million) but less than \$323 million **and** the "size of person" test is also met.
- **Size of person.** For transactions in category (2) above, the transaction is only reportable if one party has total assets or annual net sales of at least \$161.5 million (up from \$156.3 million) **and** the other party has total assets or annual net sales of at least \$16.2 million (up from \$15.6 million).

While the HSR Act reporting thresholds have increased, the filing fees remain unchanged and range from \$45,000 to \$280,000 depending on the size of the transaction.

Increased Interlocking Directorate Thresholds

As revised and effective January 26, 2017, Section 8 of the Clayton Act prohibits a person from serving as a director or officer of two “competing” corporations if each corporation has capital, surplus and undivided profits totaling more than \$32,914,000 (up from \$31,841,000), unless the “competitive sales” of either corporation are less than \$3,291,400 (up from \$3,184,100).

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