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FTC Announces Increased Hart-Scott-Rodino and Clayton Act Section 8 Thresholds for 2018

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The Federal Trade Commission (FTC) has announced its 2018 jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). The thresholds, adjusted annually, determine whether parties involved in proposed mergers, consolidations or other acquisitions of voting securities, assets or unincorporated interests must notify the FTC and the Antitrust Division of the Department of Justice (DOJ) of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated. The increased thresholds were published in the Federal Register on January 29 and will apply to all covered transactions that will close on or after February 28, 2018. A very brief summary of the changes is as follows:

- The Size of Transaction Threshold has increased to **\$84.4 million** (up from \$80.8 million).
- Acquisitions that do not exceed **\$337.6 million** in value (up from \$323.0 million) must also meet the Size of Person Threshold to require notification to the FTC and DOJ. This threshold requires that one of the parties to the transaction has total assets or annual net sales of **\$168.8 million** (up from \$161.5 million) or more and the other party has total assets or annual net sales of **\$16.9 million** (up from \$16.2 million) or more.
- HSR Act Filing Fee Thresholds have been revised as follows:

Transaction Valued at:

more than **\$84.4 million** (up from
\$80.8 million) but less than **\$168.8 million**
(up from \$161.5 million)

\$168.8 million or more but less
than **\$843.9 million** (up from \$807.5 million)

\$843.9 million or more

Filing Fee:

\$45,000

\$125,000

\$280,000

- HSR Act filing thresholds for acquisitions that result in ownership of less than 50 percent of the outstanding voting securities of a corporation also have increased (based upon value and percentage of the issuer’s voting securities).

- The FTC has increased Maximum Civil Penalties for noncompliance with the HSR Act from \$40,654 to now **\$41,484** per day.
- The FTC also has revised the thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. Section 8 generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards.
 - Section 8(a)(1) prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds \$34,395,000.
 - Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than \$3,439,500.

The above is only a general summary. A multitude of exceptions may apply. Please contact us if you have questions or desire additional details.