



## SIDLEY UPDATE

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### FTC Announces HSR Premerger Notification and Clayton Act § 8 Thresholds

#### FTC Revises Hart-Scott-Rodino Act Premerger Notification Thresholds

The Federal Trade Commission (FTC) has approved new thresholds for premerger notification under the Hart-Scott-Rodino (HSR) Act. The statute requires the FTC to revise the thresholds annually based on changes in gross national product. The newly-revised thresholds apply to transactions that close on or after February 27, 2017.

With the changes just approved, the minimum “size-of-transaction” threshold for any acquisition of voting securities, non-corporate interests, or assets not exempt from HSR notification requirements will increase from \$78.2 million to **\$80.8 million**.

Currently, acquisitions resulting in holdings valued at more than \$78.2 million, but not more than \$312.6 million, are potentially reportable only if the size-of-person test described below is met, and acquisitions resulting in holdings greater than \$312.6 million are potentially reportable regardless of whether the size-of-person test is met. These thresholds will increase, respectively, to **\$80.8 million and \$323 million**.

The size-of-person test currently provides generally that at least one “person” involved in the transaction must have annual net sales or total assets of at least \$156.3 million and the other must have annual net sales or total assets of at least \$15.6 million. These thresholds will increase, respectively, to **\$161.5 million and \$16.2 million**.

With the revisions, the five thresholds for acquisitions of voting securities (which specify whether a filing, or successive filing, is necessary) will potentially require notification where the acquisition results in:

- Aggregate holdings of an issuer’s voting securities valued at **greater than \$80.8 million, but less than \$161.5 million**.
- Aggregate holdings of an issuer’s voting securities valued at **\$161.5 million or greater, but less than \$807.5 million**.
- Aggregate holdings of an issuer’s voting securities valued at **\$807.5 million or greater**.
- 25 percent of the outstanding voting securities of an issuer if the holdings are valued at **greater than \$1.615 billion**.
- 50 percent of the outstanding voting securities of an issuer if the holdings are valued at **greater than \$80.8 million**.

The graduated HSR filing fee schedule will shift as follows:

<b>Size (Value) of Transaction</b>	<b>Fee</b>
Greater than \$80.8 million but less than \$161.5 million	\$45,000
\$161.5 million or greater but less than \$807.5 million	\$125,000
\$807.5 million or greater	\$280,000

The text of the Federal Register notice can be found [here](#).

## FTC Revises Clayton Act Section 8 Thresholds for Interlocking Directorates

The FTC also announced revised thresholds for interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, a person from serving as a director or officer of two competing corporations if two thresholds are met. Section 8 as enacted applies if each competitor corporation has capital, surplus, and undivided profits of more than \$10,000,000, though not if the competitive sales of either corporation are less than \$1,000,000. These amounts are subject to annual revision; following last year's revision, they were \$31,841,000 and \$3,184,100, respectively. The new thresholds, which took effect on January 26, 2017, are **\$32,914,000** and **\$3,291,400**, respectively.

The text of the Federal Register notice can be found [here](#).

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

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