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# Hart-Scott-Rodino Act Filing Thresholds Increase in 2020

The Federal Trade Commission (FTC) announced the revised monetary thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act), that will apply to transactions closing on or after February 27, 2020. The minimum transaction value (also known as the size-of-transaction threshold) is increasing to \$94 million, and the size-of-person thresholds are increasing to \$18.8 million and \$188 million. Transactions in which the acquirer will hold voting securities, non-corporate interests, or assets valued above \$94 million but below \$376 million will be reportable if the size-of-person thresholds are satisfied and no exemptions apply. On or after the effective date of the 2020 thresholds, if a transaction is valued at \$376 million or above (the “alternative size-of-transaction” value), a filing will be required without regard to whether the size-of-person thresholds are met unless an exemption applies.

## Revised HSR Act Thresholds

The HSR Act thresholds are adjusted annually based on changes to the gross national product and determine whether companies or individuals are required to notify the Federal Trade Commission (FTC) and the U.S. Department of Justice Antitrust Division (DOJ) of a proposed merger, acquisition, joint venture, or other combination. Transactions falling below the applicable thresholds are not reportable; however, if the thresholds are met, the parties must submit their respective HSR Act premerger notification forms to the FTC and the DOJ, pay the applicable filing fee, and wait to close the transaction until the 30-day waiting period expires, or it is otherwise terminated.

The chart below sets forth the revised HSR Act thresholds that affect jurisdictional requirements, and impact whether an exemption to HSR Act

reportability may apply. The 2019 HSR Act thresholds remain in effect until the revised 2020 thresholds go into effect on February 27, 2020.

HSR Threshold	Revised 2020 Threshold	2019 Threshold
Size-of-Transaction	\$94 million	\$90 million
Alternative Size-of-Transaction	\$376 million	\$359.9 million
Size-of-Person	\$18.8 million and \$188 million	\$18 million and \$180 million

The FTC also announced the following revised notification thresholds for acquisitions of additional voting securities from the same party: (i) \$94 million; (ii) \$188 million; (iii) \$940.1 million; (iv) 25 percent of the voting securities if their value exceeds \$1,880.2 million; (v) and 50% of the voting securities if their value exceeds \$94 million.

The 2020 filing fees remain the same, and the amount of the filing fee that the acquirer must pay (unless otherwise agreed to by the parties) is tied to the revised 2020 size-of-transaction thresholds as follows:

HSR Filing Fee	Revised 2020 Threshold
<b>\$45,000</b>	greater than \$94 million but less than \$188 million
<b>\$125,000</b>	\$188 million or greater but less than \$940.1 million
<b>\$280,000</b>	\$940.1 million or more

The FTC previously provided three rules of thumb to help determine the relevant thresholds and any resulting reportability obligation under the HSR Act. These include:

1. The correct threshold for determining HSR Act reportability is the one effect at the time of closing.
2. The filing fee is determined by the value of the transaction at the time of the HSR Act filing.
3. Notification thresholds for subsequent purchases of additional shares adjust annually.

## Revised thresholds for interlocking directorates

Additionally, new monetary thresholds went into effect on January 21, 2020 relating to prohibitions on interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits a person from

serving as a director or officer of two competing corporations if each corporation has capital, surplus, and undivided profits in the aggregate of more than \$38,204,000, unless the competitive sales of either corporation are less than \$3,820,400.

### **Increased penalties for noncompliance**

Determining whether the HSR Act, Clayton Act, and potential exemptions apply to a transaction involves knowledge and interpretation of the laws, regulations, and the FTC's informal guidance. Noncompliance with the HSR Act may result in increased civil penalties as of the effective date of up to \$43,280 per day.

### **Contact us**

If you have any questions relating to the revised HSR Act thresholds, including whether a transaction is reportable, please contact Wendy Arends, Victoria (Tori) Sitz or Mark Tobey.