

2018 Increases to HSR Act Thresholds

01.30.2018

On January 26, 2018, the Federal Trade Commission (“FTC”) announced the annual changes to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the “HSR Act”) pre-merger notification thresholds (see attached Federal Register publication). These changes will become effective February 28, 2018. However, please note that if a transaction is entered into prior to February 28, 2018, the new thresholds will still apply to the transaction as long as it closes on or after February 28, 2018.

As a brief background summary, under the HSR Act, the FTC and Department of Justice must be notified before mergers, acquisitions and other transactions that meet certain monetary thresholds are consummated. Once the parties have filed their HSR Act Notification and Report Forms, the enforcement agencies have up to 30 days to decide whether to seek additional information—a process commonly known as a “second request.” The parties also have the option to request “Early Termination” which, if granted, will shorten the 30-day waiting period to approximately two weeks. If the 30-day waiting period expires without the issuance of a second request, or if Early Termination is granted, the parties are free to close the transaction immediately. If a second request is issued, the government has 30 days from the date the parties comply with the request to decide whether to let the transaction proceed or attempt to block it in court. Failure to file an HSR Act Notification and Report Form is subject to a statutory penalty of up to \$40,000 per day for noncompliance.

The new thresholds will increase the minimum value of a transaction that could trigger an HSR Act filing as follows:

ATTORNEYS

Jeffery R. Schaffart

PRACTICE AREAS

Mergers & Acquisitions
Securities

2018 Increases to HSR Act Thresholds

Size of Transaction

Transaction Value

HSR Act Filing Required?

\$84.4 million or less (from 2017 threshold of \$80.8 million)

No

More than \$84.4 million up to \$337.6 million (from 2017 threshold of \$323 million)

Only if size-of-person test is met (see below)

More than \$337.6 million (from 2017 threshold of \$323 million)

Yes

Size of Person

Total assets or annual net sales of

2017 Threshold

Adjusted 2018 Threshold

Acquiring/acquired person

\$161.5 million

\$168.8 million

Other person

\$16.2 million

\$16.9 million

Filing Fee

Although the filing fee itself has not changed, the new filing-fee thresholds will also take effect on the effective date and will apply to transactions filing an HSR Act Notification and Report Form on or after the effective date. For transactions that have been signed but have not closed

2018 Increases to HSR Act Thresholds

yet, the applicable filing-fee thresholds are those in effect at the time of filing the HSR Act Notification and Report Form.

Transaction Value

Filing Fee

More than \$84.4 million but less than \$168.8 million

\$45,000

\$168.8 million but less than \$843.9 million

\$125,000

\$843.9 million or more

\$280,000

Releases: [Revised Jurisdictional Thresholds](#)