

February 28, 2018

## The Increased HSR Thresholds for 2018 Became Effective on Feb. 28, 2018

On Jan. 26, 2018, the Federal Trade Commission announced the 2018 adjusted thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). The HSR Act notification requirements apply to transactions that satisfy the specified “size of transaction” and “size of person” dollar thresholds. These thresholds, however, change from year to year. The HSR Act requires an annual threshold adjustment based on changes in the U.S. gross national product for each fiscal year. The newly announced 2018 thresholds became effective on Feb. 28, 2018, and will be applicable until recalculated in early 2019.

The key HSR Act threshold adjustments are summarized in the following chart:

Test	2017 Threshold	2018 Adjusted Threshold
<b>Size of Transaction</b>	\$80.8 million	\$84.4 million
<b>Size of Party (lower)</b>	\$16.2 million	\$16.9 million
<b>Size of Party (higher)</b>	\$161.5 million	\$168.8 million
<b>Size of Transaction Where Size of Party Threshold Is Not Satisfied</b>	\$323.0 million	\$337.6 million

Subject to certain exemptions, the “size of transaction” threshold is determined based on the value of voting securities, non-corporate interests (e.g., membership interests of a limited liability company or interests in a partnership) and assets held as a result of the transaction. Under the new 2018 thresholds, there will be no HSR Act notification requirements for transactions valued at less than \$84.4 million.

Subject to certain exemptions, the “size of parties” thresholds, on the other hand, will increase to \$16.9 million (in total assets or annual net sales) and \$168.8 million (in total assets or annual net sales), from \$16.2 million and \$161.5 million in 2017, respectively. If the ultimate parent entities of one or both parties to the transaction do not satisfy the applicable “size of parties” thresholds, then there is no HSR Act notification required for transactions valued at more than \$84.4 million but not more than \$337.6 million. Conversely, transactions valued at more than \$337.6 million (increased from \$323.0 million in 2017) will be reportable in 2018 regardless of the size of the parties, unless an HSR Act exemption applies.

The underlying HSR Act filing fees remain unchanged, but the applicable filing fee will be based on the new thresholds, as follows:

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Amount of the Filing Fee	Size of Transaction
\$45,000	Greater than <b>\$84.4 million</b> but less than <b>\$168.8 million</b>
\$125,000	<b>\$168.8 million</b> or greater but less than <b>\$843.9 million</b>
\$280,000	<b>\$843.9 million</b> or greater

Finally, the FTC also increased the maximum civil penalty for violations of the HSR Act to \$41,484 per day (from \$40,654 per day), effective on publication in the Federal Register.

As always, the value of a transaction is subject to certain exceptions and calculation adjustments that can affect either the obligation to make a notification filing or the amount of the filing fee required with the filing. If you have any questions regarding the matters covered in this publication, please contact Gino Maurelli or Matthew Nyberg or your regular Brownstein Hyatt Farber Schreck contact.

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*This document is intended to provide you with general information regarding 2018 adjusted thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*