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Revised 2016 Hart-Scott-Rodino Antitrust Thresholds – Effective February 25, 2016

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Filing thresholds under the Hart-Scott-Rodino (HSR) Act will increase by about 2.5%, effective February 25, 2016, raising the level that a transaction's value must exceed to trigger a filing from $76.3 million to $78.2 million and making adjustments to the Act's other key dollar thresholds.

The thresholds, which are adjusted annually to reflect changes in Gross National Product (GNP) will apply to transactions closing on or after February 25, 2016 until the next round of adjustments in early 2017.

Parties entering transactions that meet current HSR thresholds but which fall below the new adjusted figures should keep in mind that it is the *closing* date – not the date of the agreement—that governs which set of thresholds applies. Although parties may submit a filing if their transaction satisfies current thresholds, regardless of when their transaction is set to close, those for whom the new thresholds place them outside the reach of HSR may choose to wait until February 25, 2016, and then close without a filing.

Notification thresholds

The HSR Act requires parties to file notifications with the Department of Justice (DOJ) and Federal Trade Commission (FTC) when a proposed transaction – such as a merger, joint venture, stock or asset acquisition, or grant of an exclusive license – meets specified thresholds and no exemptions apply. If a notification is required, the transaction cannot close while the statutory waiting period runs and the agencies review the transaction.

An HSR filing is usually required if the parties meet both the "size of person" and "size of transaction" thresholds, which under the new thresholds are as follows:

Size-of-Person Test: met if one party (including the party's ultimate parent and its controlled subsidiaries) to the transaction has $156.3 million or more in annual sales or total assets and the other has $15.6 million or more in annual sales or total assets. If the acquired party is not "engaged in manufacturing," and is not controlled by an entity that is, the test applied to the acquired side is annual sales of $156.3 million or total assets of $15.6 million.

Size-of-Transaction Test: met if, as a result of the transaction, the buyer will acquire or hold voting securities or assets of the seller valued in excess of $78.2 million. Transactions meeting a larger size-of transaction threshold of $312.6 million will obviate the need to satisfy the size-of-person test.

The thresholds for HSR filing fees will also increase, though the filing fees themselves will not change.

Failure to file an HSR Notification and Report Form remains subject to a statutory penalty of up to $16,000 per day of noncompliance.

The HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, and the rules are complex, so we suggest consulting with an HSR expert when contemplating any transaction that may be subject to HSR notification requirements.

The key threshold changes are summarized in the table below.

Base HSR Thresholds	2015 Thresholds	2016 Thresholds *(effective 2/25)*
$50 million "size of transaction" test	$76.3 million	$78.2 million
$10 million "size of person" test	$15.3 million	$15.6 million
$100 million "size of person" test	$152.5 million	$156.3 million
$200 million "size of transaction" test (renders size of person test inapplicable)	$305.1 million	$312.6 million
$50 million notification threshold	$76.3 million	$78.2 million
$100 million notification threshold	$152.5 million	$156.3 million
$500 million notification threshold	$762.7 million	$781.5 million
25 percent of stock worth $1 billion notification threshold	25 percent of stock (if worth at least $1,525.3 million)	25 percent of stock (if worth at least $1,563.0 million)
50 percent (if over $50 million) notification threshold	50 percent (if over $76.3 million)	50 percent (if over $78.2 million)
$45,000 filing fee is required	Value of the acquisition is greater than $76.3 million but less than $152.5 million	Value of the acquisition is greater than $78.2 million but less than $156.3 million

$125,000 filing fee	Value of the acquisition is at least $152.5 million but less than $762.7 million	Value of the acquisition is at least $156.3 million but less than $781.5 million
$280,000 filing fee (highest HSR filing fee tier)	Value of the acquisition reaches or exceeds $762.7 million	Value of the acquisition reaches or exceeds $781.5 million
Exemption thresholds applicable to acquisitions of voting securities or assets of foreign issuers; indirect acquisitions of exempt assets	Level ties to a $76.3 million threshold	Level ties to a $78.2 million threshold

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