Cooley

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The Federal Trade Commission has now published its notice of adjustments to the Hart-Scott-Rodino thresholds in the Federal Register, with the revised thresholds to go into effect on **February 27, 2012**. The thresholds, which impact both triggers for filing requirements and filing fee tiers are adjusted annually for changes in GNP.

The HSR Act requires parties to notify the Federal Trade Commission and Department of Justice when a deal meets specified thresholds and no exemption applies. If notification is required, the parties cannot close while the statutory waiting period runs and the agencies review the transaction. Most commonly, a filing is required if the parties meet both the "size of person" and "size of transaction" thresholds, which will be modified by the new thresholds to be:

**Size-of-Person Test:** met if one company has over $136.4 million in annual sales or total assets and the other company has over $13.6 million in annual sales or total assets.

**Size-of-Transaction Test:** met if, as a result of the transaction, the buyer will hold voting securities or assets, including voting securities currently held in the seller and assets recently acquired from the seller, valued in excess of $68.2 million.

All threshold changes are summarized in the chart below.

| BASE HSR THRESHOLDS | 2011 THRESHOLDS | 2012 THRESHOLDS |
|---|---|---|
| $50 million "size of transaction" test | $66 million | $68.2 million |
| $10 million "size of person" test | $13.2 million | $13.6 million |
| $100 million "size of person" test | $131.9 million | $136.4 million |
| $200 million "size of transaction" test (renders size of person test inapplicable) | $263.8 million | $272.8 million |
| $50 million notification threshold | $66 million | $68.2 million |
| $100 million notification threshold | $131.9 million | $136.4 million |
| $500 million notification threshold | $659.5 million | $682.1 million |

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|---|---|---|
| 25 percent of stock worth $1 billion notification threshold | 25 percent of stock (if worth at least $1,319 million) | 25 percent of stock (if worth at least $1,364.1 million) |
| 50 percent (if over $50 million) notification threshold | 50 percent (if over $66 million) | 50 percent (if over $68.2 million) |
| Level at which $45,000 filing fee is required | Value of the acquisition is greater than $66 million but less than $131.9 million | Value of the acquisition is greater than $68.2 million but less than $136.4 million |
| Level at which the $45,000 filing fee increases to a $125,000 filing fee | Value of the acquisition is at least $131.9 million but less than $659.5 million | Value of the acquisition is at least $136.4 million but less than $682.1 million |
| Level at which the $125,000 filing fee increases to a $280,000 filing fee—the highest HSR filing fee tier | Value of the acquisition reaches or exceeds $659.5 million | Value of the acquisition reaches or exceeds $682.1 million |
| Exemption thresholds applicable to acquisitions of voting securities or assets of foreign issuers; indirect acquisitions of exempt assets | Level ties to a $66 million threshold | Level ties to a $68.2 million threshold |

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, so please contact a Cooley antitrust contact with any reportability questions.

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# Key Contacts

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