Cooley

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Filing thresholds under the Hart-Scott-Rodino (HSR) Act will increase by about half a percent (0.5%) effective February 20, 2015. The new, higher thresholds apply to all transactions closing on or after that date but before the next round of adjustments takes effect in early 2016.

Most transactions valued over $76.3 million, closing on or after the effective date, will trigger an HSR filing as a result of this year's adjustments, which reflect growth in the Gross National Product (GNP).

Parties entering transactions which would satisfy current HSR thresholds but not trigger a filing based on the adjusted figures should keep in mind that it is the closing date—not the date of the agreement—which governs which set of thresholds will apply. Although parties are allowed to submit a filing if their transaction satisfies the current thresholds, regardless of when their transaction is set to close, those for whom the new thresholds put them outside the reach of HSR have the option of simply waiting until February 20, and then closing without a filing.

Notification thresholds

The HSR Act requires parties to file notifications with the Federal Trade Commission and Department of Justice when a proposed transaction—such as a merger, joint venture, stock or asset acquisition, or 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.

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 party to the transaction has $152.5 million or more in annual sales or total assets and the other has $15.3 million or more in annual sales or total assets. If the acquired party is not engaged in manufacturing, the test is slightly different: while one party must meet the $15.3 million test and the other party must meet the $152.5 million test, in addition the acquired company must have $15.3 million of assets or $152.5 million of revenues.

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 $76.3 million.

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

The key threshold changes are summarized in the table below.

BASE HSR THRESHOLDS	2014 THRESHOLDS	2015 THRESHOLDS *(effective 2/20)*
$50 million "size of transaction" test	$75.9 million	$76.3 million
$10 million "size of person" test	$15.2 million	$15.3 million

$100 million "size of person" test	$151.7 million	$152.5 million
$200 million "size of transaction" test (renders size of person test inapplicable)	$303.4 million	$305.1 million
$50 million notification threshold	$75.9 million	$76.3 million
$100 million notification threshold	$151.7 million	$152.5 million
$500 million notification threshold	$758.6 million	$762.7 million
25 percent of stock worth $1 billion notification threshold	25 percent of stock (if worth at least $1,517.1 million)	25 percent of stock (if worth at least $1,525.3 million)
50 percent (if over $50 million) notification threshold	50 percent (if over $75.9 million)	50 percent (if over $76.3 million)
$45,000 filing fee is required	Value of the acquisition is greater than $75.9 million but less than $151.7 million	Value of the acquisition is greater than $76.3 million but less than $152.5 million
$125,000 filing fee	Value of the acquisition is at least $151.7 million but less than $758.6 million	Value of the acquisition is at least $152.5 million but less than $762.7 million
$280,000 filing fee (highest HSR filing fee tier)	Value of the acquisition reaches or exceeds $758.6 million	Value of the acquisition reaches or exceeds $762.7 million

Exemption thresholds applicable to acquisitions of voting securities or assets of foreign issuers; indirect acquisitions of exempt assets	Level ties to a $75.9 million threshold	Level ties to a $76.3 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, 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.

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