

CLIENT ALERT

# FTC Revises HSR Thresholds and Section 8 Thresholds – Significant Increase

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## AUTHORS

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The Federal Trade Commission (the “FTC”) has announced revised thresholds for merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). As statutorily mandated, the various thresholds incorporated into the HSR Act and its rules and regulations are revised annually based on the change in the U.S. gross national product. In addition, the FTC has revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits certain interlocking directorates and officerships. The Federal Register has now published the revisions. The notice concerning the HSR Act thresholds can be accessed [here](#), and the notice concerning Section 8 of the Clayton Act can be accessed [here](#).

## HSR Act Thresholds

The new HSR Act thresholds will become effective for any transaction that closes on or after February 23, 2022. Most importantly, the minimum notification threshold under the HSR Act will **increase significantly** from \$92 million to \$101 million. Thus, an acquisition may trigger an HSR reporting obligation only if, as a result of an acquisition, an acquirer would hold voting securities, noncorporate interests (but only where “control” of a noncorporate entity would pass to the acquiring person as a result of the acquisition), and/or assets of an acquired person, that are valued in excess of \$101 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

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Threshold	Original Threshold	2021 Adjusted Threshold	2022 Adjusted Threshold
Minimum Size of Transaction	\$50 million	\$92 million	\$101 million
Minimum Size of Transaction (above which the Size of Person Test does not apply)	\$200 million	\$368 million	\$403.9 million
Size of Person Test <sup>1</sup> (applicable to transactions valued at not more than \$403.9 million)	Person 1: \$10 million	\$18.4 million	\$20.2 million
	Person 2: \$100 million	\$184 million	\$202 million
Notification Thresholds	\$50 million	\$92 million (\$45,000 filing fee)	\$101 million (\$45,000 filing fee)
	\$100 million	\$184 million (\$125,000 filing fee)	\$202 million (\$125,000 filing fee)
	\$500 million	\$919.9 million (\$280,000 filing fee)	\$1.0098 billion (\$280,000 filing fee)
	25% or more of an issuer's voting securities if valued in excess of \$1 billion	25% or more of an issuer's voting securities if valued in excess of \$1,839.8 million (\$280,000 filing fee)	25% or more of an issuer's voting securities if valued in excess of \$2.0196 billion (\$280,000 filing fee)

Any monetary or limitation value included in a rule or regulation promulgated under the HSR Act that includes the term “(as adjusted)” (for example, the exemption that may be available for certain acquisitions of foreign assets or stock of

<sup>1</sup> Generally speaking, the “size of person test” is based on annual net sales and total assets of the relevant “acquiring” and “acquired” persons as stated on ordinary course financial statements.

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foreign issuers where the exemption is dependent upon the nexus to U.S. commerce) has also been adjusted and will become effective on February 23, 2022.

### **Section 8 Thresholds**

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not apply. Pursuant to the new thresholds, effective January 24, 2022, competing corporations are covered by Section 8 if each corporation's capital, surplus, and undivided profits exceed in the aggregate \$41,034,000, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$4,103,400; (ii) the competitive sales of either corporation are less than 2% of that corporation's total sales; or (iii) the competitive sales of each corporation are less than 4% of that corporation's total sales.

If you have any questions regarding these announcements, or the HSR Act generally, please contact the following attorneys or the attorney with whom you regularly work.

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