

FTC ANNOUNCES INCREASED 2012 HSR THRESHOLDS

Corporate & Securities Alert
January 27, 2012

On January 27, 2012, the Federal Trade Commission (FTC) announced the revised transaction thresholds that trigger the requirement to file a premerger notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act (HSR). As most readers know, HSR requires that certain acquisitions of stock or assets and certain joint venture transactions be reported to the Department of Justice, Antitrust Division (DOJ), and the FTC before closing. Reportable transactions cannot be consummated until after a designated period of time (usually 30 days, but sometimes less in certain circumstances).

With these recent adjustments to HSR thresholds, transactions closing on or after **February 27, 2012**, must file an HSR notification if a deal meets one of two tests:

- **Size-of-persons test:** The total assets or sales for one party exceeds **\$136.4 million** and for the other party exceeds **\$13.6 million** (these size-of-persons thresholds were previously \$131.9 million and \$13.2 million, respectively). This test only applies if the value of the assets or securities being acquired exceeds **\$68.2 million** (previously \$66 million).
- **Size-of-transaction test:** The total value of a proposed transaction exceeds **\$272.8 million** (previously \$263.8 million), regardless of the size of the parties.

Although there are certain statutory exemptions to HSR filing requirements, the \$68.2 million threshold is a key figure to keep in mind. Any transaction that falls below that threshold is exempt from the filing requirements.

The filing fees under HSR have not been adjusted and are as follows:

Value of Transaction	Filing Fee
\$68.2 million to \$136.4 million	\$45,000
\$136.4 million to \$682.1 million	\$125,000
\$682.1 million or more	\$280,000

In addition, the FTC revised the thresholds that trigger the prohibition on interlocking directorates under Section 8 of HSR. With certain exceptions, a person will be prohibited from serving simultaneously as a director or officer of two competing corporations if *both* of the following two thresholds are met:

- Each of the corporations has capital, surplus, and undivided profits aggregating more than **\$27,784,000** (previously, \$26,867,000)

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- The competitive sales (gross revenues for all products and services sold by one corporation in competition with the other) of either corporation are more than **\$2,778,400** (previously, \$2,686,700)

The new thresholds prohibiting interlocking directorates are effective as of today's date.