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FTC Announces Increased Hart-Scott-Rodino and Clayton Act Section 8 Thresholds for 2022

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Executive Summary

The Federal Trade Commission (“FTC”) announced on January 21 its 2022 jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). The thresholds determine whether parties involved in proposed mergers, consolidations or other acquisitions of voting securities, assets or unincorporated interests must notify the FTC and the Antitrust Division of the Department of Justice (“DOJ”) of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated. The FTC is required to revise HSR Act thresholds annually based on changes in the gross national product and this year’s changes reflect an approximate 10% increase. The new thresholds will go into effect on February 23, 2022, 30 days after official publication in the Federal Register on January 24, 2022. The FTC also has announced an increase in the maximum civil penalty for non-compliance with the HSR Act, as well as increased thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. A brief summary of the changes is as follows:

- The Size of Transaction Threshold under the HSR Act has increased to **\$101 million** (up from \$92 million).
- Acquisitions that do not exceed **\$403.9 million** in value (up from \$368 million) must also meet the Size of Person Threshold to require notification to the FTC and DOJ under the HSR Act. This threshold requires that one of the parties to the transaction has total assets or annual net sales of **\$202 million** (up from \$184 million) or more and the other party has total assets or annual net sales of **\$20.2 million** (up from \$18.4 million) or more.
- HSR Act Filing Fee Thresholds have been revised as follows:

| <i>Transactions Valued at:</i> | <i>Filing Fee:</i> |
|---|--------------------|
| more than \$101 million (up from \$92 million) but less than \$202 million (up from \$184 million) | \$45,000 |

| | |
|---|------------------|
| | |
| \$202 million or more but less than \$1.0098 billion (up from \$919.9 million) | \$125,000 |
| \$1.0098 billion or more | \$280,000 |

- HSR Act filing thresholds for acquisitions that result in ownership of less than 50 percent of the outstanding voting securities of a corporation also have increased (based upon value and percentage of the issuer's voting securities).
- Additionally, the FTC announced an increase in the Maximum Civil Penalty for noncompliance with the HSR Act of **\$46,517 per day** (up from \$43,792 per day).
- The FTC also has revised the thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act, which became effective January 21, 2022. Section 8 generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards.
 - Section 8(a)(1) prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds **\$41,034,000** (up from \$37,382,400).
 - Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than **\$4,103,400** (up from \$3,738,200).

The above is only a general summary. Any number of exceptions may apply. Please contact us if you have questions or desire additional details.