

CLIENT ALERT

# FTC Revises HSR Thresholds and Section 8 Thresholds — Downward

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## AUTHORS

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The Federal Trade Commission (the “FTC”) has announced revised thresholds applicable to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). As statutorily mandated, the various thresholds incorporated in 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 March 4, 2021. Most significantly, the minimum notification threshold under the HSR Act will **decrease** from \$94 million to \$92 million. This decrease, the first since 2010, is a result of the lower U.S. GNP in 2020. 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 valued in excess of \$92 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

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Threshold	Original Threshold	2020 Adjusted Threshold	2021 Adjusted Threshold
Minimum Size of Transaction	\$50 million	\$94 million	\$92 million
Minimum Size of Transaction (above which the Size of Person Test does not apply)	\$200 million	\$376 million	\$368 million
Size of Person Test (applicable to transactions valued at not more than \$368 million)	Person 1: \$10 million Person 2: \$100 million	\$18.8 million \$188 million	\$18.4 million \$184 million
Notification Thresholds	\$50 million  \$100 million  \$500 million  25% or more of an issuer's voting securities if valued in excess of \$1 billion	\$94 million  \$188 million  \$940.1 million  25% or more of an issuer's voting securities if valued in excess of \$1,880.2 million	\$92 million (\$45,000 filing fee)  \$184 million (\$125,000 filing fee)  \$919.9 million (\$280,000 filing fee)  25% or more of an issuer's voting securities if valued in excess of \$1,839.8 million (\$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

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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 March 4, 2021.

### **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 21, 2021, competing corporations are covered by Section 8 if each corporation's capital, surplus, and undivided profits exceed in the aggregate \$37,382,000, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$3,738,200; (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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