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Hart-Scott-Rodino Thresholds to Rise Again Based Upon Annual Indexing

Revised thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. §18a) (HSR) were published in the Federal Register on January 29, 2008. The new thresholds will become effective on **February 28, 2008** for transactions that close on or after that date. The threshold adjustments are mandated by the major HSR amendments in 2000, which substantially increased the HSR thresholds. The 2000 HSR amendments require annual indexing of the thresholds based upon changes in gross national product for each fiscal year beginning after September 30, 2004. Accordingly, the HSR thresholds now are adjusted annually.

Size-of-Transaction Test

(Original: \$50 million; Current: \$59.8 million; New: \$63.1 million)

The 2000 HSR amendments raised the size-of-transaction test to **\$50 million**. This figure is currently **\$59.8 million** based upon last year's annual adjustment, and shortly will increase to **\$63.1 million**. Accordingly, under the current size-of-transaction test, no HSR filing is required unless the acquisition results in an acquiring person holding an aggregate total amount of voting securities, non-corporate interests, and/or assets of the acquired person in excess of **\$59.8 million** (to increase to **\$63.1 million**).

Increase in Size-of-Transaction Test	
• \$50 million	as of February 1, 2001
• \$53.1 million	as of March 2, 2005
• \$56.7 million	as of February 17, 2006
• \$59.8 million	as of February 21, 2007
• \$63.1 million	as of February 28, 2008

Size-of-Parties Test

(Original: \$10 million/\$100 million; Current: \$12 million/\$119.6 million; New: \$12.6 million/\$126.2 million)

Under the current thresholds, acquisitions valued above \$239.2 million are reportable regardless of the size of the parties, and acquisitions valued at greater than \$59.8 million (to become \$63.1 million) but less than or equal to \$239.2 million are reportable only if the size-of-parties test is met. The **\$239.2 million** threshold will adjust to **\$252.3 million**.

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The current size-of-parties test typically is met if the acquiring or acquired person has annual net sales or total assets of \$119.6 million or more and the other person has annual net sales or total assets of \$12 million or more. The current **\$12 million/\$119.6 million** test will adjust to **\$12.6 million/\$126.2 million**.

Notification Thresholds

An acquiring person in a reportable acquisition of voting securities files for the highest applicable among five notification thresholds.

The notification threshold may determine, for example, whether a subsequent acquisition of additional voting securities from the same acquired issuer will require another HSR filing. The new notification thresholds that will become effective with the forthcoming adjustments are:

- An aggregate total amount of voting securities of the acquired person valued at greater than **\$63.1 million** but less than **\$126.2 million**
- An aggregate total amount of voting securities of the acquired person valued at **\$126.2 million** or greater but less than **\$630.8 million**
- An aggregate total amount of voting securities of the acquired person valued at **\$630.8 million** or greater
- Twenty-five percent of the outstanding voting securities of an issuer if valued at greater than **\$1,261.5 million**
- Fifty percent of the outstanding voting securities of an issuer if valued at greater than **\$63.1 million**

Filing Fee Thresholds

The filing fee amounts are not changing, but the thresholds for application of the fees are increasing.

- The filing fee currently is \$45,000 if the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition is more than **\$59.8 million** (to become **\$63.1 million**) but is less than **\$119.6 million** (to become **\$126.2 million**)
- The filing fee currently is \$125,000 if the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition is from **\$119.6 million** (to become **\$126.2 million**) to less than **\$597.9 million** (to become **\$630.8 million**)
- The filing fee currently is \$280,000 if the aggregate amount of assets, non-corporate interests, and voting securities to be held as a result of the acquisition is **\$597.9 million** (to become **\$630.8 million**) or more

Most, although not all, of the dollar amounts in the HSR rules will be adjusted based upon the threshold indexing discussed above. It is important that parties continue to be very careful in determining if a threshold is met given that the process can be very complex, the rules are highly technical and failure to comply with HSR can result in significant civil penalties. In analyzing a potential past failure to file under HSR, it is necessary to look at the thresholds in place at the time of closing.