

# KIRKLAND ALERT

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## Revised Hart-Scott-Rodino Act and Clayton Act Section 8 Thresholds

The Federal Trade Commission (“FTC”) recently announced revisions to the Hart-Scott-Rodino (“HSR”) Act filing thresholds. The HSR Act requires annual adjustment of the jurisdictional thresholds based on the change in the U.S. gross national product. The thresholds will increase for 2011, unlike last year, when for the first time since the annual adjustments to the thresholds have been in effect, the thresholds decreased from the prior year.

Effective February 24, 2011, subject to certain exemptions, an HSR Notification and Report Form must be filed when, as a result of an acquisition, the buyer will hold assets, voting securities, and/or non-corporate interests valued in excess of \$66.0 million, and the transaction involves parties with annual net sales or total assets valued at \$13.2 million or more and \$131.9 million or more, respectively. If the value of the assets, voting securities, and/or non-corporate assets exceeds \$263.8 million, then — again, subject to certain exemptions — the size of the parties is irrelevant and an HSR Notification and Report Form must be submitted. The revised thresholds will apply to all transactions that close on or after the February 24, 2011, effective date.

The chart below summarizes the original thresholds set forth in the HSR Act and regulations, as well as last year’s and the new thresholds.

	<b>Original Thresholds</b>	<b>2010 Thresholds</b>	<b>New Thresholds</b>
Size-of-Transaction	\$50 million \$200 million	\$63.4 million \$253.7 million	\$66.0 million \$263.8 million
Size-of-Person	\$10 million \$100 million	\$12.7 million \$126.9 million	\$13.2 million \$131.9 million

Filing fees have not changed and apply to the new thresholds as follows:

<b>Transaction Value</b>	<b>Filing Fee</b>
Greater than \$66.0 million but less than \$131.9 million	\$45,000
Greater than or equal to \$131.9 million but less than \$659.5 million	\$125,000
\$659.5 million or more	\$280,000

The FTC also announced revisions to the thresholds contained in Section 8 of the Clayton Act. Section 8 prohibits, under certain circumstances, a person from serving as an officer or director of two competing corporations. Under the revised thresholds, Section 8 will apply if each of the competing corporations has capital, surplus, and undivided profits aggregating more than \$26,867,000, unless the competitive sales of either corporation are less than \$2,686,700. The Section 8 thresholds are adjusted annually, based on the change in the U.S. gross national product and are effective as of January 25, 2011.

Application of the HSR thresholds to a transaction involves detailed knowledge of the HSR Act and its implementing regulations. If you have questions regarding the HSR Act or its revised thresholds, please contact the following individuals or your regular Kirkland contact.

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