

KIRKLAND ALERT

30 January 2020

Revised Hart-Scott-Rodino Act Thresholds & Civil Penalty Amounts Announced

The Federal Trade Commission (“FTC”) announced revisions to the Hart-Scott-Rodino (“HSR”) Act filing thresholds on January 28, 2020. The new thresholds are effective for any transactions closing on or after February 27, 2020. The HSR Act requires annual adjustment of the thresholds based on the change in the U.S. gross national product. All thresholds will increase from the prior year.

Under the new thresholds, and subject to certain exemptions, HSR forms 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 \$94.0 million and the transaction involves parties with annual net sales or total assets valued at \$18.8 million or more and \$188.0 million or more, respectively. If the value of the assets, voting securities, and/or non-corporate interests to be held after the acquisition will exceed \$376.0 million, then — again, subject to certain exemptions — HSR forms must be submitted regardless of the size of the parties.

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.

	Original Thresholds	2019 Thresholds	New 2020 Thresholds
Size-of-Transaction	\$50 million \$200 million	\$90.0 million \$359.9 million	\$94.0 million \$376.0 million
Size-of-Person	\$10 million \$100 million	\$18.0 million \$180.0 million	\$18.8 million \$188.0 million

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

Transaction Value	Filing Fee
Greater than \$94.0 million but less than \$188.0 million	\$45,000
Greater than or equal to \$188.0 million but less than \$940.1 million	\$125,000
\$940.1 million or more	\$280,000

The FTC also has announced an increase in the maximum civil penalty amounts for HSR violations from \$42,530 per day to \$43,280 per day, effective January 14, 2020. The FTC is required by law to adjust the HSR penalty amounts and various other civil penalty amounts annually for inflation based on the percentage change in the Consumer Price Index.

Note there is *no change* in dollar values with respect to either (i) the \$500 million exemption in connection with the acquisition of reserves of oil, natural gas, shale or tar sands, or rights to reserves of oil, natural gas, shale or tar sands and associated exploration or production assets or (ii) the \$200 million exemption in connection with the acquisition of reserves of coal, or rights to reserves of coal and associated exploration or production assets.

Application of the HSR thresholds to a transaction involves detailed knowledge of the HSR Act and its implementing regulations. If you have any questions regarding the HSR Act, the new thresholds or whether a transaction is subject to HSR reporting, please contact:

Ellen M. Jakovic

ellen.jakovic@kirkland.com
+1 202 389 5915

Michael D. Thorpe

michael.thorpe@kirkland.com
+1 312 862 2194

Carla A. R. Hine

carla.hine@kirkland.com
+1 202 389 5064

Kurt J. Wunderlich

kurt.wunderlich@kirkland.com
+1 312 862 4438

This communication is distributed with the understanding that the author, publisher and distributor of this communication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, this communication may constitute Attorney Advertising.