

# KIRKLAND & ELLIS

Kirkland Alert

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

27 January 2022

The Federal Trade Commission (“FTC”) published revisions to the Hart-Scott-Rodino (“HSR”) Act filing thresholds on January 24, 2022. The new thresholds are effective for any transactions **closing** on or after February 23, 2022. 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 \$101.0 million and the transaction involves parties with annual net sales or total assets valued at \$20.2 million or more and \$202.0 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 \$403.9 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	2021 Thresholds	New 2022 Thresholds
Size-of-Transaction	\$50 million	\$92.0 million	\$101.0 million
	\$200 million	\$368.0 million	\$403.9 million
Size-of-Person	\$10 million	\$18.4 million	\$20.2 million
	\$100 million	\$184.0 million	\$202.0 million

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

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Transaction Value	Filing Fee
Greater than \$101.0 million but less than \$202.0 million	\$45,000
Greater than or equal to \$202.0 million but less than \$1.0098 billion	\$125,000
\$1.0098 billion or more	\$280,000

The FTC also has announced an increase in the maximum civil penalty amounts for HSR violations from \$43,792 per day to **\$46,517** per day, effective January 10, 2022. 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 the authors listed below or your usual Kirkland contact.

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## Related Services

### Practices

- Antitrust & Competition
- Transactional

## Suggested Reading

- 16 February 2022 - 18 February 2022 Sponsored Event Global Fund Finance Symposium
- 16 February 2022 Sponsored Event Kayo Leveraged Finance Outlook Webinar
- 11 February 2022 Sponsored Event Wharton Women in Investing Inaugural Conference

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