

# Alert

## Increased HSR Act Thresholds Announced for 2017

February 17, 2017

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), requires parties to acquisitions of voting securities, assets or non-corporate interests meeting certain thresholds to make a premerger notification to the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice, and to observe a waiting period prior to consummating such acquisitions. On Jan. 19, 2017, the FTC announced its annual adjustments to the current HSR Act thresholds. Any transaction that will be consummated on or after the Feb. 27, 2017 effective date of such adjustments may be reportable under the HSR Act if, as a result of such transaction, the acquiring person will hold voting securities, assets and/or non-corporate interests of the acquired person valued above \$80.8 million (the current adjusted minimum threshold is \$78.2 million). The new adjusted thresholds reflect changes in the gross national product for the preceding fiscal year. The size-of-person threshold looks at the total sales or assets of each party to a transaction, including its ultimate parent and certain affiliates, and is also being increased.

The updated size-of-transaction and size-of-person thresholds under the HSR Act are set forth below:

Threshold	HSR Act Original	2017 Adjusted
Size-of-transaction when size-of-person test is met	\$50 million	\$80.8 million
Size-of-person (if applicable)	\$10 million and \$100 million	\$16.2 million and \$161.5 million
Size-of-transaction above which size-of-person test does not apply	\$200 million	\$323.0 million

The filing fees applicable to premerger notifications filed under the HSR Act have not changed in over a decade and will continue as follows:

Size-of-Transaction (as adjusted)	Filing Fee
Valued at greater than \$80.8 million but less than \$161.5 million	\$45,000
Valued at \$161.5 million or greater but less than \$807.5 million	\$125,000
Valued at \$807.5 million or greater	\$280,000

When a premerger notification has been filed under the HSR Act, and the applicable waiting period has expired or been terminated, any additional acquisitions by the same acquiring person of the same issuer’s voting securities will be exempt from notification, so long as:

- The acquiring person’s holdings crossed the notification threshold with respect to which the premerger notification was made, within one year of the expiration or early termination of the HSR Act waiting period; *and*
- The subsequent acquisition is consummated within five years following the expiration or early termination of the HSR Act waiting period *unless* a higher notification level is met or exceeded. The various notification levels are set forth below:

HSR Act Original	2017 Adjusted
\$50 million	\$80.8 million
\$100 million	\$161.5 million
\$500 million	\$807.5 million
25 percent if value of voting securities to be held is greater than \$1 billion	25 percent if value of voting securities to be held is greater than \$1,615.0 million
50 percent if value of voting securities to be held is greater than \$50 million	50 percent if value of voting securities to be held is greater than \$80.8 million

Any subsequent acquisition would be subject to the adjusted thresholds in effect when such subsequent acquisition is consummated.

**Maximum Civil Penalty for HSR Act Violations Also Increased for 2017**

New for 2017, the maximum civil penalty for violations of the HSR Act will begin to be adjusted annually. This follows on last year’s substantial hike in the maximum penalty from \$16,000 to \$40,000 per day. On Jan. 12, 2017, the FTC announced the new maximum will increase to \$40,654 per day. The new maximum applies to penalties assessed after its effective date — meaning the maximum allowable penalty is based on the date that the penalty is imposed by the FTC or DOJ — and not the dates of the alleged violation.

*Authored by [Peter Jonathan Halasz](#) and [Gregory L. Kinzelman](#).*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Schulte Roth & Zabel  
New York | Washington DC | London  
www.srz.com

This information and any presentation accompanying it (the "Content") has been prepared by Schulte Roth & Zabel LLP ("SRZ") for general informational purposes only. It is not intended as and should not be regarded or relied upon as legal advice or opinion, or as a substitute for the advice of counsel. You should not rely on, take any action or fail to take any action based upon the Content. This information or your use or reliance upon the Content does not establish a lawyer-client relationship between you and SRZ. If you would like more information or specific advice on matters of interest to you please contact us directly.

As between SRZ and you, SRZ at all times owns and retains all right, title and interest in and to the Content. You may only use and copy the Content, or portions of the Content, for your personal, non-commercial use, provided that you place all copyright and any other notices applicable to such Content in a form and place that you believe complies with the requirements of the United States' Copyright and all other applicable law. Except as granted in the foregoing limited license with respect to the Content, you may not otherwise use, make available or disclose the Content, or portions of the Content, or mention SRZ in connection with the Content, or portions of the Content, in any review, report, public announcement, transmission, presentation, distribution, republication or other similar communication, whether in whole or in part, without the express prior written consent of SRZ in each instance. The contents of these materials may constitute attorney advertising under the regulations of various jurisdictions.