Fines for HSR Violations Increase; Basic HSR Threshold Raised

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The Federal Trade Commission (FTC) has increased thresholds and penalties pertaining to the Hart-Scott-Rodino (HSR) pre-merger notification regime. The Commission also increased the thresholds for Section 8 of the Clayton Act.

Penalties for HSR Violations

The maximum penalty for violations of the HSR Act--e.g., failures to notify reportable transactions or to produce 4(c) documents--will increase to $16,000 per day from its current $11,000 per day. This change will be effective February 9, 2009.

As background, the FTC examines every four years whether, based on change in the Consumer Price Index, a penalty increase is warranted. The adjustment is made under the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA). The relevant part of the FCPIAA requires that any increase be rounded to the nearest multiple of $5,000.

HSR Thresholds and Section 8 Thresholds

Effective February 12, 2009, the HSR reporting threshold will undergo its annual adjustment for change in the gross national product, raising the basic threshold (also known as the "$50 million threshold") to $65.2 million for 2009. At the same time, all of the notification and exemption dollar thresholds in the HSR statute, regulations, and reporting instructions that are subject to annual adjustments will also be adjusted. The new HSR dollar thresholds will be as follows:

Original Threshold	Adjusted Threshold
$10 million	$13.0 million
$50 million	$65.2 million
$100 million	$130.3 million
$110 million	$143.4 million

The two dollar thresholds for Section 8 of the Clayton Act have also been adjusted to account for changes in the gross national product. Section 8,

$200 million	$260.7 million
$500 million	$651.7 million
$1 billion	$1.3034 billion

in many circumstances, forbids a person from serving as an officer or director of two competing corporations if two thresholds are met. Under the revised thresholds, effective January 12, 2009, Section 8 may apply when each of the competing corporations has capital, surplus, and undivided profits aggregating more than $26,161,000, and each corporation's competitive sales are at least $2,616,100.

Notably, if the gross national product decreases in the fiscal year ending September 30, 2009, as some economists predict, the thresholds will also adjust downward in February 2010.