

this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, 'Salaries and Expenses' and Department of Justice, 'Salaries and Expenses, Antitrust Division': *Provided*, That fees in excess of \$40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: *Provided further*, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.

"(b) The filing fees referred to in subsection (a) are—

"(1) \$45,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than \$100,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003);

"(2) \$125,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$100,000,000 (as so adjusted and published) but less than \$500,000,000 (as so adjusted and published); and

"(3) \$280,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published)."

### § 19. Interlocking directorates and officers

(a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than \$10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than \$1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided

profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717; Pub. L. 101-588, § 2, Nov. 16, 1990, 104 Stat. 2879; Pub. L. 103-203, § 1, Dec. 17, 1993, 107 Stat. 2368.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(1)(B), are defined in section 12 of this title.

#### AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103-203 substituted "January 31" for "October 30".

1990—Pub. L. 101-588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from \$1,000,000 in net worth to \$10,000,000 in net worth, creating three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

1935—Act Aug. 23, 1935, amended section generally.

1929—Act Mar. 2, 1929, amended second par.

1928—Act Mar. 9, 1928, amended second par.

### § 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

### § 20. Repealed. Pub. L. 101-588, § 3, Nov. 16, 1990, 104 Stat. 2880

Section, act Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734, related to a \$50,000 yearly, aggregate limitation on pur-