

U.S. DEPARTMENT OF THE TREASURY

Testimony of Assistant Secretary for Investment Security Paul Rosen Before the Banking, Housing and Urban Affairs Committee, U.S. Senate

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As Prepared for Delivery

Good morning, Chairman Brown, Ranking Member Scott, and Members of the Committee.

Thank you for the opportunity to speak with you today about this important national security issue.

At the Department of the Treasury, we understand the significant challenge China poses to the economic and national security interest of the United States. I manage the government's review of foreign investment into the United States for national security risks through the Committee on Foreign Investment in the United States (CFIUS). In this work we are focused on stopping the access and exploitation of sensitive technologies, infrastructure, data and other assets by those who have the intent and capability to harm our national security.

Recently, Secretary Yellen addressed the U.S.-China economic relationship. In her remarks, she conveyed that China and the United States can and need to find a way to live together and share in global prosperity. She also stressed the importance of our countries working together, when possible, for the benefit of us and the world.

At the same time, Secretary Yellen was crystal clear when it comes to national security: The United States will secure our national security interests and those of our allies and partners. We remain firm in our conviction to defend our values. We will not hesitate to defend our vital interests. And we will not compromise on national security concerns—even when they force trade-offs with our economic interests. She also made clear: we do not use our national security tools to gain competitive economic advantage or to stop China from growing. But we will fully and zealously exercise our economic tools to protect the national security of the United States, full stop.

CFIUS is one important tool to address national security that pursues these objectives. The Committee—comprised of the heads of several Executive Branch agencies and which I help lead in support of the Secretary of the Treasury's role as Chair—carefully reviews foreign investments in the United States for national security risks. When necessary, the Committee takes action to

address any such risks while seeking to maintain an open investment environment and the status of the United States as one of the world's top destinations for foreign direct investment.

CFIUS protects national security in the context of foreign direct investment from any country. By law, the Committee analyzes the facts and circumstances of each transaction on a case-by-case basis following a rigorous review process that leverages subject-matter expertise across the Executive Branch. Our risk analysis is focused on three factors: the threat emanating from the foreign investor, the national security vulnerabilities presented by the U.S. business, and the consequence of a transaction to national security. When we identify a risk, our mandate is to resolve it, whether by mitigating the risk through enforceable restrictions on the parties or, as a last resort, by recommending the President block or unwind a transaction.

Over the years, as national security threat environment has evolved, so has CFIUS. First established by executive order in 1975, the Committee has benefited from congressional action to codify and enhance its authorities. Most recently, Congress did so with the bipartisan Foreign Investment Risk Review Modernization Act of 2018, or FIRRMA. Among other things, FIRRMA provided the Committee with important authorities over certain investment structures that had previously fallen outside its jurisdiction and modernized our processes to better enable timely and effective reviews of covered transactions. It also provided the Committee with much needed jurisdiction over certain transactions involving real estate in close proximity to sensitive facilities.

Treasury has dedicated significant time and resources to the successful implementation of FIRRMA and the efficient processing of what is now an all-time high caseload. Prior to enactment, the Committee processed 237 filings in 2017. Four years later, our case load nearly doubled to 436 filings in 2021. We expect the number of cases to continue at this heightened level.

Since I was confirmed to my role as Assistant Secretary for Investment Security, I have been focused on making sure CFIUS operates effectively and efficiently, bringing to bear all available resources and tools to support our important national security mission. This effort includes the issuance of the first Executive Order since the Committee was established to provide formal Presidential direction on additional risks that we are to consider when reviewing a covered transaction. It also includes the issuance of our first ever enforcement and penalty guidelines to ensure that transaction parties are held accountable for failing to comply with our laws or for not upholding their obligations to mitigate national security risk. While Congress rightly put in place strict confidentiality for information filed with CFIUS, we have and will continue to take enforcement actions on specific matters to protect national security. We are also enhancing our tactics and techniques to ensure we are gathering more detailed information about foreign

acquirers and deal structures to thoroughly assess the national security risks arising in any given transaction.

When CFIUS reviews a transaction that raises national security concerns, the Committee can mitigate the risk by requiring that certain measures be undertaken, and these measures are formalized in what we call a National Security Agreement, or mitigation agreement. When we negotiate a mitigation agreement, our work does not stop after the agreement is signed.

We routinely conduct site visits, collect documents and information, and engage with third party monitors and auditors to ensure that the terms of these agreements are upheld and parties live up to their compliance obligations. While preventing violations from occurring is our primary focus, the availability of robust remediation and enforcement tools in the event of non-compliance is necessary because a breach could harm national security. Under the Defense Production Act, the Committee has its own enforcement authority—including subpoena authority—and can impose monetary penalties and seek other remedies for violations of its statute, regulations, mitigation orders, conditions, or agreements. We will not hesitate to take enforcement action when necessary to protect national security.

We also continue to enhance our ability to identify non-notified transactions and engage with international partners and allies. Indeed, the Committee actively monitors investment activity and follows up on tips from the public and other sources to identify these types of transactions that may pose national security risk. Should we identify a potentially covered transaction that may raise national security concerns, we request the parties file a notice, and initiate our formal review process. We have also established a process to assist partners and allies with foreign investment review—including the sharing of threat information—while contributing to the establishment and modernization of over 20 international foreign direct investment screening mechanisms.

Finally, as we protect national security in the context of inbound investments, we continue to contribute to interagency discussions regarding policies to restrict certain U.S. outbound investments in specific sensitive technologies with significant national security implications. Our desire is to avoid situations in which U.S. investments support and advance technologies that enhance military or intelligence capabilities in countries of concern that could undermine our national security and put Americans at risk.

While we are proud of the Committee's efforts, our work remains unfinished, and there are always ways to improve. We remain focused on being as effective as we can be in our national security mission. You have my commitment that we will use all authorities available to us to protect the national security of the United States.

In the end, as we work to counter the national security risks that emanate from China, as Secretary Yellen has said, where possible we need to find a way to work together for the benefit of the world, but in doing so we never compromise our national security. Thank you again for the opportunity to appear before you today, I look forward to answering any questions you may have.