

Testimony of Assistant Secretary for Investment Security Paul Rosen Before the Committee on Financial Services, U.S. House

September 12, 2023

As Prepared for Delivery

Good morning, Chairman McHenry, Ranking Member Waters, and Members of the Committee. Thank you for the opportunity to provide an update on the work of the Committee on Foreign Investment in the United States, or CFIUS.

CFIUS is a critical national security tool that enables thorough reviews of foreign investments in the United States for national security risks. CFIUS, or the Committee, is comprised of the heads of nine Executive Branch departments and offices—such as the Department of Defense and the Department of Commerce—with additional departments and offices playing defined roles or otherwise involved as observers. The Secretary of the Treasury is the Chair of the Committee, and I help lead and execute the Treasury Secretary's role as the Chair. When necessary, the Committee takes action to address national security risks, while maintaining an open investment environment and the status of the United States as the world's top destination for foreign direct investment.

CFIUS protects national security by reviewing covered 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 potential threat emanating from the foreign investor, the national security vulnerabilities presented by the U.S. business, and the consequence of the transaction to national security.

For example, if, during our risk analysis, we were to learn that an investor with ties to a hostile foreign actor was going to gain a controlling stake in a critical U.S. Government contractor, the Committee would almost certainly conclude that the transaction presents a risk to national security. When we identify risks to national security, our mandate is to resolve them, 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. At the same time, per our Congressional mandate, CFIUS does not implement blanket country- or sector-specific

prohibitions. Our case-by-case reviews are very effective ; they afford us insight into, and the ability to address through a variety of tools, activities of concern undertaken by foreign investors.

Over the years, as the 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—such as certain non-controlling but non-passive investments in sectors of particular importance—which had previously fallen outside its jurisdiction. FIRRMA also strengthened our processes to better enable timely and effective reviews of transactions within our jurisdiction. It also provided the Committee with much needed jurisdiction over certain transactions involving real estate in close proximity to sensitive facilities, such as military bases.

Treasury—and the Committee at large— has dedicated significant time and resources to the successful implementation of FIRRMA and the efficient processing of a caseload that is at an all-time high. Prior to enactment, the Committee processed 237 transaction filings in 2017. Five years later, our caseload has nearly doubled to 440 transaction filings in 2022.

To address this increased volume—and the increased complexity of the transactions we review—CFIUS prioritizes effective and efficient use of our available resources, consistent with our national security mission. We have dedicated professionals focused on the following:

- Reviewing cases and engaging with transaction parties, or companies, who file with CFIUS;
- Monitoring parties' compliance with agreements to mitigate national security risk;
- Pursuing enforcement actions where appropriate;
- Identifying and pursuing transactions subject to CFIUS jurisdiction that were not voluntarily notified but may raise national security considerations;
- Engaging with foreign allies and partners on best practices for investment reviews and supporting the development of similar national security-based investment screening regimes around the world;
- Ensuring our policies, practices, and regulations stay current and responsive to the risks that arise in transactions; and

- Engaging with and educating stakeholders, including the business community, as to the technology sectors and other sectors of importance to national security.

We appreciate the continued bipartisan congressional support for our mission. This support has enabled our office to continue growing across all functions, to meet the full scope of FIRRMA's mandate.

Since I was confirmed to my role as Assistant Secretary for Investment Security, I have sought to ensure that CFIUS is marshaling all available resources and tools to support our important national security mission. Among our achievements is the recent Executive Order that, for the first time since CFIUS was established, provided Presidential guidance on specific risks, such as supply chain resilience and security, aggregate investment trends, and sensitive data, which the Committee is to consider when reviewing covered transactions. Treasury has also recently issued CFIUS's first ever enforcement and penalty guidelines. The guidelines will help ensure that transaction parties understand the Committee's considerations and are held accountable for failing to comply with our laws, or for not upholding their obligations to mitigate national security risk or otherwise comply with our regulations.

When CFIUS reviews a transaction that raises national security concerns, the Committee can mitigate the risk by requiring that certain measures be taken, and these measures are typically formalized with the parties in what we call a National Security Agreement, or mitigation agreement. For instance, a mitigation agreement might require a party to obtain the Committee's approval for new vendors who would have access to company data. When we negotiate a mitigation agreement, our work does not stop after the agreement is signed—and neither does the parties'.

In monitoring compliance with mitigation measures, 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 that 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, CFIUS 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 have and will continue to take enforcement action when necessary to protect national security.

Since FIRRMA's implementation, CFIUS has also increased efforts to engage a broad range of stakeholders, thereby increasing awareness of our mission. We work closely and regularly with our international allies and partners to explain our process and to provide technical assistance as these countries develop, enhance, or modernize their own national security-based investment review mechanisms. At the same time, we also engage with industry and other stakeholders regarding our process and the national security risk factors we examine. We also held our first CFIUS conference last year, convening stakeholders from across the Committee and the private sector, and will do so again tomorrow.

Finally, as we protect national security in the context of inbound investments, Treasury is also focused on the potential national security implications of outbound U.S. investments.

Pursuant to Executive Order 14105, the Office of Investment Security will implement a new program, that, in accordance with forthcoming regulations, would require U.S. persons to notify Treasury of certain transactions or prohibit U.S. persons from undertaking certain other transactions in countries of concern in the areas of semiconductors and microelectronics, quantum information technologies, and certain artificial intelligence systems. This program will be administered separately from CFIUS. Since the rollout of the E.O. last month, we have begun to gather input from various stakeholders as part of a public notice and comment administrative rulemaking process. We believe that that E.O. can be complementary to action by Congress to build an outbound investment program and we look forward to sustaining our close engagement with this Committee, as well as others, towards that important end.

While we are proud of the Committee's effort to protect national security, our work remains unfinished, and there are always ways to improve. We remain focused on being as effective as we can be in our mission, and we look forward to continuing to work with Congress in this regard. You have my commitment that we will use every available authority to protect the national security of the United States.

Thank you again for the opportunity to appear before you today.

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