October 3, 2019

CFIUS Issues Proposed Regulations for Implementation of the Foreign Investment Risk Review Modernization Act of 2018 – Expanded Jurisdiction and New Mandatory Filings

On September 17, 2019, the Treasury Department released two sets of proposed regulations designed to implement the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA") (which became law on August 13, 2018),[1] along with a press release, a fact sheet, and a set of frequently asked questions ("FAQs").[2] The Treasury Department set a 30-day public comment period, ending on October 17, 2019. FIRRMA requires that a final set of implementing regulations goes into effect no later than February 13, 2020.

Prior to the enactment of FIRRMA, the jurisdiction of the interagency Committee on Foreign Investment in the United States ("CFIUS") — and the related ability of the President to block or unwind a transaction — was limited to acquisitions, investments, and joint ventures that could result in foreign control over any U.S. business, direct or indirect (referred to as "covered control transactions" in the new proposed regulations). Subject to implementing regulations, FIRRMA expanded the range of transactions subject to CFIUS jurisdiction to include certain non-controlling, non-passive investments by foreign persons in U.S. businesses that involve critical technology, critical infrastructure, or the maintenance or collection of sensitive personal data of U.S. citizens (referred to as "TID U.S. businesses" in the new proposed regulations). The proposed regulations implement this new authority under FIRRMA by expanding existing Treasury Department regulations at part 800 of title 31 of the Code of Federal Regulations ("CFR") – which currently cover just acquisitions, investments, and joint ventures that could result in foreign control over any U.S. business – so that these regulations would also cover certain non-controlling, non-passive investments in TID U.S. businesses (referred to as "covered investments" in the new proposed regulations). These proposed regulations also implement the requirement in FIRRMA that a mandatory filing requirement be imposed for covered control transactions and covered investments that result in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which a foreign government has a substantial interest.

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1 Our prior memorandum on the adoption of FIRRMA can be found here: https://www.paulweiss.com/practices/transactional/mergers-acquisitions/publications/president-trump-signs-cfius-reform-legislation?id=26899.

2 These Treasury Department materials can be found here: https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.

Again subject to implementing regulations, FIRRMA also expanded CFIUS jurisdiction to cover the purchase or lease by a foreign person of real estate located either (i) at an airport or maritime port or (ii) in close proximity to a U.S. military base or other U.S. government facility that is sensitive from a national security perspective. Prior to the adoption of FIRRMA, CFIUS could only review an acquisition of real estate if it was part of a transaction that could result in control by a foreign person of a U.S. business. Rather than add this new authority to the existing CFIUS regulations, the Treasury Department has added a new part 802 to title 31 of the CFR, explaining that the Department "determined that the technical and procedural aspects of CFIUS's review of transactions involving real estate are sufficiently distinct from those related to control transactions and covered investments to warrant separate rulemaking."

Together, the proposed regulations are over 300 pages in length. Despite this length, the Treasury Department (and CFIUS more broadly) deferred decisions in two important areas. The first area is what to do with the CFIUS pilot program regulations, which went into effect on November 10, 2018 (and can be found at 31 CFR part 801). Under the pilot program, CFIUS chose to use its new authority under FIRRMA, on a trial basis, (i) to exercise jurisdiction over certain non-controlling, non-passive foreign investments in U.S. businesses that involve critical technology, but only in certain industry sectors; and (ii) to introduce a mandatory CFIUS filing requirement with respect to foreign acquisitions of control over, as well as certain non-controlling, non-passive foreign investments in, U.S. businesses that involve critical technology in certain industry sectors.[3] The Treasury Department has deferred a decision concerning what to do with the pilot program regulations, and has requested further public input on this question. The second important area in which CFIUS deferred decisions is whether to use the authority under FIRRMA to impose filing fees for the first time, with the Treasury Department indicating that it would publish separate proposed regulations regarding fees at a later date.

Leaving aside the introduction of a mandatory filing requirement for covered control transactions where there is the acquisition of a substantial interest in a TID U.S. business by a foreign person in which a foreign government has a substantial interest, the proposed regulations generally leave intact CFIUS's existing approach to covered control transactions. However, the proposed regulations do include a change in the existing definition of "control" that, depending on how it is interpreted by CFIUS, could have an impact on when investment funds are considered to be under foreign control, and consequently expand the scope of CFIUS jurisdiction over acquisitions of U.S. businesses by investment funds (or their portfolio companies). The existing definition of "control" refers to the ability "to determine, direct, or decide important matters affecting an entity," and then provides examples of such matters. An example in the existing definition that refers to "the appointment or dismissal of officers or senior managers" has been changed in the proposed regulations to refer to "the appointment or dismissal of officers or senior managers or[,] in the case of a

[3] Our prior memorandum on the adoption of the CFIUS pilot program regulations can be found here: https://www.paulweiss.com/practices/transactional/mergers-acquisitions/publications/cfius-adopts-pilot-program-that-imposes-mandatory-filing-requirement?id=27722.

partnership, the general partner." CFIUS considers the power "to determine, direct, or decide important matters" to include the ability to block such action. Consequently, where a foreign limited partner has sufficient voting power to block the removal of a general partner for cause, it is possible that the partnership — whether formed inside or outside the United States — might be considered, under the proposed regulations, to be under the control of this limited partner (despite the limited partner being passive in all other respects).

I. Expansion of CFIUS Jurisdiction to Cover Certain Non-Passive, Non-Controlling Investments by Foreign Persons in TID Businesses

Under the proposed regulations, CFIUS jurisdiction is extended to any "covered investment," which is defined as a non-controlling investment by a foreign person, direct or indirect, in an unaffiliated TID U.S. business that (i) is proposed or pending after the date on which the new regulations go into effect and (ii) affords the foreign person one of the following:

1. access to any material nonpublic information[4] in the possession of the TID U.S. business; or

2. membership or observer rights on the board of directors or equivalent governing body of the TID U.S. business or the right to nominate an individual to such a position; or

3. any involvement, other than through voting of shares, in substantive decision-making of the TID U.S. business regarding (a) the use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business, (b) the use, development, acquisition, or release of critical technologies, or (c) the management, operation, manufacture, or supply of covered investment critical infrastructure.

Despite meeting these qualifications, the following two transactions are not covered investments, and therefore are not subject to CFIUS jurisdiction: (i) investment involving an air carrier; and (ii) investment by an "excepted investor" (discussed below).

Based on the guidance provided in FIRRMA, the proposed regulations identify three types of TID U.S. businesses:

[4] The proposed regulations define "material nonpublic information" as information that is not available in the public domain and that (i) provides knowledge, know-how, or understanding of the design, location, or operation of critical infrastructure, including vulnerability information such as that related to physical security or cybersecurity; or (ii) is necessary to design, fabricate, develop, test, produce, or manufacture a critical technology, including processes, techniques, or methods.

A. Critical Technology Businesses

The first type of business that constitutes a TID U.S. business under the proposed regulations is a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies. Critical technologies are defined in a manner similar to the pilot program regulations – namely, (i) items that fall on the U.S. Munitions List, (ii) items that are controlled under the Export Administration Regulations pursuant to multilateral export control regimes or for reasons related to regional stability or surreptitious listening, (iii) nuclear-related items controlled by the Department of Energy or the Nuclear Regulatory Commission, (iv) select agents and toxins regulated under 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73, or (v) emerging or foundational technologies to be controlled under the Export Administration Regulations.

An interagency group led by the Commerce Department is currently working to identify and control emerging and foundational technologies, pursuant to the Export Control Reform Act of 2018. A proposed set of regulations identifying and controlling emerging technologies is expected to be released by the end of 2019. This regulatory process, together with the subsequent regulatory process to identify and control foundational technologies, has the potential to substantially expand the range of businesses that will constitute TID businesses under the proposed regulations.

It should also be noted that the range of critical technology businesses that will trigger CFIUS jurisdiction under the proposed regulations is broader than the range of critical technology businesses that will trigger a mandatory filing under the pilot program regulations. Under the pilot program regulations, as suggested above, only U.S. businesses that are using critical technologies in connection with certain identified U.S. industries will trigger a mandatory CFIUS filing in the event that a foreign person engages in a covered control transaction or a covered investment with respect to such a business.

B. Critical Infrastructure Businesses

The proposed regulations effectively adopt two definitions of a critical infrastructure business, one to be used in connection with covered control transactions and one to be used in connection with covered investments. For the former purpose, the proposed regulations set forth a definition that is nearly identical to the current CFIUS definition of "critical infrastructure" – namely, "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security." The approach to critical infrastructure for purposes of a covered investment under the proposed regulations is much narrower and more specific. The proposed re-write of 31 CFR Part 800 contains an appendix listing 28 industry sectors that are identified as "covered investment critical infrastructure" in such areas as telecommunications, utilities, energy, transportation, and financial services, and then specifies one or more functional relationships that a U.S. business must have to such critical infrastructure in order to qualify as a TID U.S. business. For example, any internet exchange point that supports public peering is considered to be covered investment critical infrastructure,

but a U.S. business must own or operate such an internet exchange point in order to qualify as a TID U.S. business.

C. Sensitive Personal Data Businesses

Under the proposed regulations, a U.S. business that maintains or collects personal data of U.S. citizens would qualify as a TID U.S. business if the data is genetic information, or if all of the following apply:

1. the data collected or maintained by the U.S. business is identifiable data – i.e., data that can be used to distinguish or trace an individual's identity;

2. the U.S. business (a) targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel or contractors thereof, (b) has maintained or collected such data on greater than one million individuals at any point over the preceding 12 months, or (c) has a demonstrated business objective to maintain or collect such data on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services; and

3. the data falls into one of a number of categories specified in the proposed regulations, which include (a) data that can be used to analyze or determine an individual's financial distress or hardship, (b) data relating to the physical, mental, or psychological health condition of an individual, (c) geolocation data, (d) biometric enrollment data, and (e) data concerning U.S. government personnel security clearances.

However, the following types of data will not qualify as sensitive personal data for these purposes: (i) data collected or maintained by a U.S. business concerning its own employees unless the data relates to employees of U.S. government contractors who hold U.S. government personnel security clearances; or (ii) data that is a matter of public record, such as court records or other government records that are generally available to the public.

II. New Mandatory Filing Requirement for Certain Foreign Government-Linked Acquisitions and Investments

Subject to implementing regulations, FIRRMA imposed a mandatory filing requirement with respect to any investment that results in the acquisition, directly or indirectly, of a substantial interest in what CFIUS now calls a TID U.S. Business by a foreign person in which a foreign government has, directly or indirectly, a substantial interest. The proposed regulations implement these FIRRMA provisions by requiring transaction parties to make a mandatory CFIUS filing – either a short-form declaration or a traditional notice, at the discretion of the parties – whenever a covered control transaction or covered investment results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which a foreign government has a substantial interest. The proposed regulations define "substantial interest" to

mean "a voting interest, direct or indirect, of 25 percent or more by a foreign person in a U.S. business and a voting interest, direct or indirect, of 49 percent or more by a foreign government in a foreign person." Failure to comply with this mandatory filing requirement could lead to a civil penalty against both the buyer and the seller up to $250,000 or the value of the transaction, whichever is greater.

Where the foreign person making the investment in the U.S. business is a limited partnership, the proposed regulations set forth a puzzling description of what constitutes a substantial interest on the part of a foreign government. Specifically, the draft regulations provide that a foreign government will be considered to have a substantial interest in such a limited partnership if the foreign government (i) holds 49 percent or more of the voting interest in the general partner or (ii) is a limited partner that holds 49 percent or more of the voting interest of the limited partner. Neither the proposed regulations nor the guidance materials released by the Treasury Department indicate whether any type of voting interest on the part of a limited partner is sufficient to meet this test – for example, 49 percent of the total voting power of the limited partners to remove a general partner for cause.

In yet another odd approach to investment funds – although in this case driven by the language of FIRRMA itself – the proposed regulations provide an exception to the mandatory filing requirement for investments by investment funds where the 25 percent and 49 percent thresholds are exceeded. Specifically, the proposed regulations provide that the mandatory filing requirement will not apply to an investment fund that meets each of the following criteria:

1. the fund is managed exclusively by a general partner, a managing member, or an equivalent;

2. the general partner, managing member, or equivalent is not a foreign person;

3. the foreign government does not have the ability to (a) approve, disapprove, or otherwise control investment decisions of the investment fund, (b) approve, disapprove, or otherwise control decisions by the general partner, managing member, or equivalent related to entities in which the investment fund is invested, or (c) unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing partner, or equivalent; and

4. where the foreign government serves as a limited partner on an advisory board or committee of the investment fund, the advisory board or committee does not have the ability to approve, disapprove, or otherwise control (a) investment decisions of the investment fund or (b) decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested.

III. Expansion of CFIUS Jurisdiction to Cover Certain Real Estate Transactions

FIRRMA extended CFIUS jurisdiction to cover the purchase or lease by, or a concession to, a foreign person of private or public real estate that is located in the United States and (i) is, is located within, or will function as a part of, an airport or maritime port or (ii) is in close proximity to a U.S. military installation or another facility or property of the U.S. government that is sensitive for national security reasons. FIRRMA also provided CFIUS with broad discretion in determining how best to implement this expansion of its jurisdiction. CFIUS has exercised this discretion by expanding its jurisdiction in different ways depending on the location of the real estate in question, but with no mandatory filing requirement.

The proposed regulations addressing real estate transactions (the "proposed real estate regulations') cover only "pure" real estate transactions. In other words, if a real estate interest is conveyed as part of an acquisition of control over, or a non-passive, non-controlling investment in, a U.S. business by a foreign person, the proposed regulations addressing covered control transactions and covered investments apply. It should be noted, however, that indirect acquisitions of real estate that are covered by the proposed real estate regulations ("covered real estate") can occur by means of M&A activity; for example, if one non-U.S. company proposes to acquire another non-U.S. company and the target company has no U.S. business but does have covered real estate in the United States, this acquisition will fall under the proposed real estate regulations.

With certain exceptions (described below), the proposed real estate regulations extend CFIUS jurisdiction to any purchase or lease by, or concession to, a foreign person of covered real estate that affords a foreign person at least three of the following property rights: (i) to physically access the real estate; (ii) to exclude others from physical access to the real estate; (iii) to improve or develop the real estate; or (iv) to attach fixed or immovable structures or objects to the real estate (CFIUS refers to such a transaction as a "covered real estate transaction").

The proposed real estate regulations define "covered real estate" to mean real estate that meets any of the following criteria:

1. is, is located, or will function as part of an airport[5] or maritime port[6];

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[5] An "airport" is defined as either (i) any "large hub airport" (i.e., a commercial service airport that accounts for at least one percent of annual passenger boardings by revenue in the United States) or any airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds, in each case based on the most recent data reported by the Federal Aviation Administration from the Air Carrier Activity Information System; or (ii) any "joint use airport" (i.e., an airport owned by the Department of Defense where military and civilian aircraft both make use of the airfield).

[6] A "maritime port" is defined as (i) any strategic seaport within the National Port Readiness Network, as identified by the Department of Transportation's Maritime Administration; or (ii) any top 25 tonnage, container, or dry bulk port according to

2. is located within one mile of approximately 130 military installations or other U.S. government properties identified in part 1 of the appendix to the proposed real estate regulations (such as the Biometric Technology Center in in Clarksburg, West Virginia or the Cheyenne Mountain Air Force Station in Colorado Springs, Colorado);

3. is located within 100 miles of approximately 30 military installations identified in part 2 of the appendix to the proposed real estate regulations (such as the Aberdeen Proving Ground in Aberdeen, Maryland or Vandenberg Air Force Base in Lompoc, California), but no more than 12 nautical miles seaward of the U.S. coastline;

4. is located within one of the approximately 25 counties or other geographic areas associated with missile fields and identified in part 3 of the appendix to the proposed real estate regulations (such as Goshen County, Wyoming or Cascade County, Montana); or

5. is part of approximately 25 geographic areas associated with offshore ranges and identified in a fourth annex to the proposed regulations, but only within 12 nautical miles seaward of the U.S. coastline (such as Gulf of Mexico Range Complex located offshore of Mississippi, Alabama, and Florida or the Southern California Range Complex located offshore of California).

However, the proposed regulations also exclude certain types of real estate transactions from CFIUS jurisdiction. These exceptions are as follows:

(i) a purchase or lease by, or concession to, an excepted real estate investor of covered real estate (discussed below);

(ii) a purchase, lease, or concession of covered real estate that is within an urbanized area or urban cluster,[7] except where the real estate (i) is, is located in, or will function as part of an airport or maritime port (or (ii) is located within one mile of military installations or other U.S. government properties set forth in part 1 or part 2 of the appendix to the proposed real estate regulations;

(iii) a purchase, lease, or concession of covered real estate that is a single housing unit, including fixtures and adjacent land as long as the land is incidental to the use of the real estate as a single housing unit;

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the most recent annual report submitted to Congress by the Department of Transportation's Bureau of Transportation Statistics.

7 A statistical geographic area identified in the most recent U.S. Census as consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory will qualify as either an "urban cluster" or an "urbanized area' if it has a minimum population of 2,500 individuals.

(iv) the lease by or concession to a foreign person of covered real estate that is located within an airport or maritime port and that, according to the terms of the lease or concession, may be used only as a retail trade, accommodation, or food service sector establishment;

(v) the purchase or lease by, or concession to, a foreign person of commercial office space within a multi-unit commercial office building if, upon completion of the transaction, (a) the foreign person and its affiliates do not, in the aggregate, hold, lease, or have a concession with respect to commercial office space in the building that exceeds 10 percent of the total square footage of the commercial office space of the building, and (b) the foreign person and its affiliates (counted separately) do not represent more than 10 percent of the total number of tenants in the building; and

(vi) the purchase, lease, or concession of land either (a) owned by an Alaska Native group, Native group, or Native Corporation (as those terms are defined in the Alaska Native Claims Settlement Act), or (b) held in trust by the United States for American Indians, Indian tribes, Alaska Natives, or any of the entities listed in clause (a).

Since all filings with respect to covered real estate transactions are voluntary, it remains to be seen how many filings CFIUS will receive in this area. In the supplementary information related to the proposed real estate regulations, the Treasury Department estimates that it will receive on an annual basis 350 filings related to covered real estate transactions (consisting of 150 traditional notices and 200 short-form declarations). Regardless of how many filings the final version of the real estate regulations generate in practice, these regulations are likely to have value in assessing covered control transactions that raise proximity issues, as CFIUS has for the first time provided a list of military and other U.S. government facilities where it views proximity as raising potential national security concerns, and has even provided a sense as to how it ranks those facilities from a national security perspective.

IV. The Exception for Excepted Investors

FIRRMA provides that, for what CFIUS now calls covered investments and covered real estate transactions, CFIUS "shall specify criteria to limit [its expansion of jurisdiction] to certain categories of foreign persons, . . . [taking] into consideration how a foreign person is connected to a foreign country or foreign government, and whether the connection may affect the national security of the United States." As the Treasury Department acknowledges in its supplementary material, the "proposed rule sets forth a narrow definition of [excepted investor] [excepted real estate investor] in the interest of protecting national security, in light of increasingly complex ownership structures, and to prevent foreign persons from circumventing CFIUS's jurisdiction." The requirements set forth in the proposed regulations for qualifying as an "excepted investor" or an "excepted real estate investor" — and thereby falling outside CFIUS jurisdiction for covered investments and covered real estate transactions, respectively (but not for covered control transactions) — are so onerous that it is hard to envision many foreign persons being able to take advantage of these provisions. Moreover, if a foreign person qualifies as an excepted investor or excepted

real estate investor at the time a transaction takes place but within three years after the transaction closes ceases to qualify as an excepted investor, then CFIUS can retroactively assert jurisdiction over what is now a covered investment or a covered real estate transaction.

In order to qualify as an excepted investor or excepted real estate investor, a foreign person must, among other things, be able to meet a number of criteria demonstrating substantial connections to a country that CFIUS has identified as an "excepted foreign state" (for covered investments) or an "excepted real estate foreign state" (for covered real estate transactions) Treasury Department officials have indicated that they intend to publish these two lists of approved countries in early 2020, when final FIRRMA implementing regulations are issued, and that the two lists will not necessarily be identical. Under the proposed real estate regulations, a country's status as an excepted foreign state will cease if, within two years after the implementing regulations go into effect, CFIUS has not issued a determination that "the foreign state has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters related to investment security." The proposed regulations addressing covered real estate transactions contain similar language, except that the foreign state need only have made "significant progress toward establishing and effectively utilizing" such a robust process.

Given how difficult it is for foreign persons to qualify as excepted investors and excepted real estate investors, there is some room for skepticism concerning the degree to which these provisions will motivate other countries as intended. That said, it may be the case that some countries see a political benefit in being named to, and remaining part of, these two "white lists."

V. Declarations Versus Notices

Currently, short-form declarations can be filed only for transactions that fall under the pilot program regulations. The proposed regulations will implement the provision in FIRRMA that transaction parties be able to choose between short-form declarations and traditional notices for any transaction subject to CFIUS jurisdiction. The advantages of filing a declaration are that (i) declarations are shorter and less labor-intensive filings than the traditional notices and (ii) once the declaration has been accepted as complete by the Treasury Department, CFIUS has only 30 days in which to respond.

Unfortunately, the potential advantages of filing a declaration are undercut by the broad discretion that CFIUS has in determining how it responds to the filing. At the end of the 30 days, while CFIUS is empowered under FIRRMA and the proposed regulations to clear the transaction, it is also empowered to (i) ask the parties to file a traditional notice (at which point significant time has been lost that could have been committed up front to drafting and submitting a notice); or (ii) not make a decision with respect to the transaction (at which point the parties have to decide for themselves whether to file a notice in order to obtain a decision and thereby obtain protection against potential future action by CFIUS). Under the CFIUS pilot program, only a relatively small percentage of declarations have reportedly been resulting in decisions

by CFIUS. Based on the broad discretion that CFIUS has and the manner in which CFIUS has been exercising its discretion to date, it seems likely that most transaction parties will choose to file declarations only where they are confident that a transaction will be easy to clear, and they are filing only because (i) a filing is mandatory for the transaction or (ii) the buyer is quite conservative and wants the protection of a decision by CFIUS.

VI. Conclusions

The proposed regulations represent a substantial undertaking on the part of the Treasury Department and other CFIUS agencies. Not surprisingly, these regulations have some technical issues as well as some important ambiguities, and the public comment period is a short one. With only four months between the end of the public comment period and the FIRRMA deadline for having final implementing regulations in effect, it is likely that the final regulations will look quite similar to the proposed regulations. However, whether CFIUS will decide to keep, modify, or eliminate the pilot program regulations remains an important open question.

Even if CFIUS decides to let the pilot program regulations lapse in February 2020, the Treasury Department has estimated a substantial increase in filings with CFIUS as a result of the proposed regulations. In the supplementary information related to the new proposed regulations, the Treasury Department estimates that it will receive 350 notices per year and 750 declarations per year going forward. In the aggregate, this is over four times the number of annual filings that CFIUS was receiving prior to the adoption of FIRRMA. Even with the increases in funding and personnel under FIRRMA, and even with a strong push within CFIUS to close out "easier" notice-based cases at the end of the initial 45-day review period, such an increase in cases is likely to pose significant challenges for CFIUS. If the pilot program regulations (with their mandatory filing requirement) are made permanent, those challenges will be even greater. To what extent these significant demands on resources will constrain CFIUS's recently enhanced ability to monitor and, as necessary, take action in response to transactions that are not notified to CFIUS (whether by short-form declaration or traditional notice) remains to be seen.

We will continue to monitor developments related to implementation of FIRRMA, and we will provide further updates as appropriate.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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