FRESHFIELDS

March 18, 2026

Ms. Meena R. Sharma
Director
Office of Investment Security Policy and International Relations
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Request for Information on CFIUS Known Investor Program and Streamlining the Foreign Investment Review Process

Dear Ms. Sharma:

Thank you for soliciting feedback on the CFIUS Known Investor Program and Treasury's effort to streamline CFIUS reviews. We respectfully offer the below comments based on our collective experience having served in senior CFIUS roles at the U.S. Department of the Treasury and Office of the Director of National Intelligence and, in combination, over 35 years of private practice experience with Freshfields' global CFIUS practice.

Our proposals below would improve the efficiency of the CFIUS processes, free up CFIUS bandwidth to focus on sensitive foreign investments, and enhance the investment environment of the United States, all without compromising the Committee's core responsibility to protect U.S. national security.

Known Investor Program (KIP):

1. **Make each Known Investor a § 800.219 Excepted investor.**

   To make the Known Investor Program attractive to investors and reduce the workload burden on CFIUS, it will need to generate consistent time, labor, and cost savings for transaction parties and CFIUS across multiple transactions.

   One approach to achieving this goal would be to expand the existing §§ 800.218 and 800.219 Excepted Foreign State and Excepted Investor framework. CFIUS could create a two-tier excepted investor system, retaining the status quo approach to excepted investors from Canada, the United Kingdom, Australia, and New Zealand ("Tier 1 Excepted Investors" and "Tier 1 Excepted Foreign States," respectively), while establishing a new tier of excepted investors that CFIUS has approved by pursuant to the Known Investor Program. This new tier would be open to investors from an expanded list of foreign states that include NATO members, treaty allies, major Non-NATO allies, or other strategic partners ("Tier 2 Excepted Investors" and "Tier 2 Excepted Foreign States" respectively).

   Tier 2 Excepted Investors could also include investors from Tier 1 Excepted Foreign States that do not currently meet the highly restrictive excepted investor criteria but have been approved by CFIUS pursuant to the Known Investor Program.

   Implementing this approach could save Committee time and resources, reduce current regulatory burden imposed on U.S. businesses, encourage use of the Known Investor Program, and materially improve the regulatory risk-adjusted commercial incentives to invest in the United States.

2. **Waive or reduce filing fees for transactions involving Known Investors.**

   To encourage meaningful participation in the Known Investor Program and ensure it produces measurable efficiencies, Treasury should consider waiving or reducing CFIUS filing fees for transactions in which the foreign acquirer is a Known Investor in good standing (e.g., with a current, certified profile) and the parties determine that the nature of the target or commercial considerations warrant submission of a notice rather than a declaration. The filing fee is intended, at least in part, to offset the government's costs of administering the review process. If the Program functions as intended by frontloading and standardizing a portion of investor-related diligence, the Committee's marginal workload in those matters should be reduced relative to otherwise comparable transactions. A fee reduction would, therefore, both incentivize participation and align the fee structure with the Program's efficiency rationale, while preserving the Committee's ability to focus resources on transaction-specific national security issues rather than recurring baseline diligence. Further, the fee reduction would help offset the cost of initially preparing and subsequently updating the information required to participate in the Known Investor Program.

Streamlining Foreign Investment Review:

3. **Exempt internal restructurings from mandatory filings where the ultimate ownership or control of the U.S. business stays the same.**

   Although CFIUS jurisdiction can extend to internal restructurings as a technical matter, these transactions rarely present substantive national security concerns. Exempting purely administrative changes from the mandatory regime would save U.S. businesses and investors significant time, cost, and regulatory burden. We note that the mandatory filing analysis for internal restructurings can be particularly challenging for global companies that have dozens of global subsidiaries that may have operations in the United States and where a full TID US business analysis of all such operations is highly burdensome.

   An exemption for internal restructurings would also benefit CFIUS, enabling the Committee to focus finite resources on transactions that genuinely introduce new foreign influence or control over sensitive U.S. assets. The proposed approach would streamline administrative processes while remaining aligned with the Committee's risk-based mandate to prioritize transactions with a clear national security nexus.

   Further, this change would not eliminate CFIUS's jurisdiction to review an internal restructuring in the extremely unlikely event that it introduces substantive national security concerns. To the extent that the Committee believes it is necessary to prevent an internal restructuring from introducing a foreign person of concern into the ownership chain of a U.S. business, CFIUS could carve out an exception to this exemption by reference to country lists in other provisions of law or regulation (e.g., the list of designated "foreign adversaries" at 15 C.F.R. § 791.4).

4. **Eliminate submission of an ENC classification request as a requirement for eligibility for the mandatory filing exception for encryption items.**

   The critical technology mandatory filing rules have the reasonable objective of requiring that acquisitions of companies that hold sensitive technologies be notified to CFIUS before completing the transaction, given that it is difficult to reverse a technology transfer. However, through the course of the FIRRMA Pilot Program, it became clear that (1) a significant number of companies use encryption in their products for information security, even though the underlying product has no national security sensitivity, and (2) because encryption items qualify as critical technology, transactions with no national security sensitivity were being captured by the mandatory filing rule. In response, CFIUS sought to mitigate this anomaly by creating an exception at § 800.401(e)(6)(ii)) to the filing requirement for encryption items that are eligible for License Exception ENC.

   Unfortunately, the exception did not adequately resolve the challenge. While executable code often does not require any filing with BIS to establish eligibility for License Exception ENC, eligibility of the related source code and technology for License Exception ENC generally does require submission of an encryption classification request. In practice, this results in a substantial burden to assess all software products to confirm whether they have encryption, whether the software is classifiable under ECCN 5D002, and whether a classification request has previously been submitted with respect to the source code and technology (which companies generally would not do in the ordinary course of business).

   Given that, in the CFIUS context, License Exception ENC is typically applied to civilian products of lower sensitivity that the U.S. government has already deemed suitable for export to most destinations without a specific license, we view this exercise as a low-return-on-investment allocation of limited CFIUS (and BIS) time and resources.

   We recommend that Note 1 to § 800.401(e)(6) of the CFIUS regulations be amended to specify that eligibility for License Exception ENC, for purposes of § 800.401(e)(6) shall not be deemed to require submission of a classification request to BIS for items covered by EAR § 740.17(b)(2)(i)(B) (for encryption source code) or EAR § 740.17(b)(2)(iv) (encryption technology). This would not, of course, exempt the U.S. business from having to submit any classification requests required under the EAR if the U.S. business in the future seeks to actually export the source code or technology to any foreign destination.

5. **Adopt a rebuttable presumption in favor of jurisdiction in cases where control is facially obvious and the parties have stipulated control.**

   Parties routinely receive multiple rounds of questions from CFIUS regarding jurisdiction even when the parties stipulate to jurisdiction. Treasury should adopt an internal, rebuttable presumption that CFIUS has jurisdiction in straightforward control transactions where the parties have expressly stipulated that a foreign person will obtain control and nothing in the notice contradicts that stipulation, thereby avoiding the need for multi-question jurisdictional requests for information (RFIs) that effectively require parties to prove what they have already conceded. The

objective of the policy change is to conserve time and resources by reserving jurisdictional RFIs for the situations where they are actually needed, namely: (i) genuinely ambiguous control analyses, (ii) covered investment/TID cases where rights, access, or governance are unclear, or (iii) cases where a stipulation of control appears strategic and inconsistent with the record. In cases where control is both stipulated by the parties and clear on the factual record, Treasury's control analysis would simply read: "The parties have stipulated that this is a covered control transaction, and the information in the notice supports and does not contradict that stipulation." The anticipated benefit is a reduction in jurisdictional RFIs in clear control deals, faster acceptance and pre-review processing, and greater Committee bandwidth directed toward substantive national security diligence or situations where the parties have not stipulated to jurisdiction.

6. **Maintain a template National Security Agreement (NSA) and commonly used mitigation terms on the Treasury website**.

   CFIUS has improved transparency in its annual report by summarizing the national security risks that it identified in transactions reviewed in the subject year and a by providing a general description of mitigation terms used to address identified risks. However, transaction parties would greatly benefit from reviewing commonly used mitigation terms while they are structuring and negotiating their transactions.

   Further, such transparency would improve the mitigation negotiation process with CFIUS by allowing parties to factor the most likely mitigation terms into their deals and reduce the need for parties to withdraw and refile their transactions to afford additional time to negotiate mitigation with CFIUS. Publishing a template NSA and commonly used terms would not limit CFIUS's ability to use bespoke or tailored mitigation when appropriate.

If you would like to discuss any of the above proposals, please do not hesitate to contact us.

Sincerely,
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