Advancing National Security through Export Controls, Investment Security, and the Defense Production Act
United States Senate Committee on Banking, Housing, and Urban Affairs
Assistant Secretary Paul M. Rosen Testimony
July 25, 2024

Good morning, Chairman Brown, Ranking Member Scott, and Members of the Committee. Thank you for the opportunity to provide an update on the work of the Treasury Department's Office of Investment Security ("OIS") and the Committee on Foreign Investment in the United States, or CFIUS. I also want to thank Congress for the authorities and resources you have provided since the passage of the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), as well as for the constructive and bipartisan support to our national security mission, which has helped make possible many of the enhancements that I will discuss.

CFIUS is a critical national security tool that enables thorough reviews of foreign investments in the United States for national security risks. The Committee—comprised of the heads of several Executive Branch departments and offices and which I help lead as head of OIS 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 the world's top destination for foreign direct investment.

Last year, I spoke to this Committee about our work. Among other things, I outlined how Treasury has implemented the FIRRMA reforms that overhauled CFIUS, and President Biden's September 2022 Executive Order on Ensuring Robust Consideration of Evolving National Security by CFIUS. I spoke about how we have hired dedicated professionals to carry out this work, how we monitor compliance and enforce CFIUS requirements, and how we engage with our allies and partners. I also previewed our thinking in how we planned to address risks associated with certain "outbound" investment from U.S. persons to countries of concern, such as the People's Republic of China ("PRC").

The progress and good work of Treasury and CFIUS continues, and this year, I want to further update the Committee on the status of this work as well as additional areas of progress. Let me start with an area that does not get as much public attention but is critical to our mission—our analytical and operational capabilities. Over the past 18 months, we have vastly improved our competencies in these areas. We have built and implemented sophisticated tools, platforms, and methodologies for assessing and addressing national security risks. We have employed cutting-edge information technology platforms to securely manage and facilitate novel aspects of CFIUS's work. We have expanded and deepened our human capital, and today have a Treasury team with widely diverse backgrounds, from lawyers to science Ph.D.'s to intelligence professionals to bankers to compliance professionals and former prosecutors.

Many of the investments we are making benefit not just Treasury, but all of the Committee's member agencies. For example, through our dedicated CFIUS funding established by Congress in FIRRMA, we are working with the interagency to enhance the Committee's capabilities. This includes investments in modern information technology systems, data accesses, analytical tools, technical and industry studies, and staff training, to name just a few examples. These investments should pay national security dividends for many years to come.

Working to stay at the cutting edge in all of these areas has enabled us to be more efficient and effective even as we contend with two core challenges: transactions are becoming ever more complex in their structures and CFIUS is identifying and addressing more national security risks than in years past. Accordingly, CFIUS staff thoroughly scrutinize each notified transaction, peeling back the layers of the onion in pursuit of all the relevant facts regarding the foreign acquirers and U.S. targets all within statutory deadlines. We have paid particular attention to the role of limited partners in investment funds, as their access to, and influence and control over, sensitive businesses can vary considerably.

All while tackling these challenges, Treasury has successfully improved the efficiency of CFIUS's operations. As noted in the latest CFIUS Annual Report, in 2023, CFIUS cleared 66 percent of filed declarations or notices within the first 30 or 45 days, respectively, compared to 58 percent in 2022. Another indicator of efficiency—the rate at which parties withdraw and refile their notices, also has fallen, declining from 23 percent of notices in 2022 to 18 percent in 2023, the first such decrease in five years. These changes are not incidental but instead reflect improved efficiencies, a cornerstone of our focus.

While efficiency is important, our core mission continues to be to identify national security risks arising from covered transactions and address them through enforceable orders, entering into mitigation agreements, or leveraging the President's statutory authority to block or unwind a transaction. Our work does not stop after a mitigation agreement is signed—we work with the parties to ensure they comply with the agreement's terms, and hold them accountable when they don't.

Over the last two years, Treasury has transformed the way the Committee approaches compliance with mitigation agreements, and enforcement thereof. We have expanded and devoted significant resources to the monitoring and enforcement mission, including by nearly doubling the size of Treasury's team over the last several years. Since 2022, Treasury and other CFIUS monitoring agencies have paid particular attention to compliance, including conducting in-person and virtual site visits here in the United States and abroad to probe and test compliance, and quickly refer matters for enforcement investigations where appropriate.

While our work to ensure compliance is critical, so too is making certain that companies know that CFIUS will enforce violations of mitigation agreements where appropriate. Treasury has led the Committee's reinvigorated efforts to broaden, sharpen, and deploy CFIUS's enforcement authority. In October 2022, Treasury issued CFIUS's first-ever enforcement and penalty guidelines. The guidelines are aimed at ensuring that transaction parties understand the Committee's considerations and are held accountable for failing to comply with our laws and regulations, or for not upholding their obligations to address national security risk as part of mitigation agreements or orders, or other CFIUS regulatory requirements. In fact, in 2023, CFIUS assessed or imposed four civil monetary penalties for violations of material provisions of mitigation agreements, double the number of civil monetary penalties that CFIUS had previously issued across its nearly 50-year history. CFIUS has also, for the first time, issued subpoenas pursuant to its authorities to execute its national security mission.

While the Committee's authorities are extensive, ultimately the power to prohibit or unwind a transaction lies with the President. Earlier this year, President Biden ordered a Chinese cryptocurrency mining company, MineOne, to divest itself of a parcel of land in Wyoming that was in proximity to a military installation. This matter serves well to highlight the importance of

CFIUS's efforts to identify transactions that were not notified to the Committee voluntarily and that may pose a risk to national security. The Committee leverages multiple tools to identify and analyze such non-notified transactions. Treasury's non-notified team screens thousands of potential covered transactions, ultimately putting forward to the Committee for consideration to request a filing those that may raise national security issues. The MineOne transaction came to the Committee's attention through our non-notified process in the form of a public tip.

Treasury also has led a number of regulatory enhancements to CFIUS's authorities. Over the last year, we have significantly bolstered CFIUS's jurisdiction over real estate transactions. As you know, CFIUS has the authority to review acquisitions of real estate in or around ports, or within a certain proximity to military installations and other sensitive government facilities identified on a list maintained in the CFIUS regulations. Working with our Department of Defense counterparts, in July, OIS issued a proposed rule to amend the list to add 59 installations, building off the eight installations we added in August 2023. These additions are the first since the regulations implementing FIRRMA, and they represent a significant expansion of our jurisdiction.

In addition to these real estate enhancements, in April, to better effectuate many of the enhancements discussed above, we published a proposed rule to sharpen our investigation and enforcement tools. Among other things, the proposed rule substantially increases the maximum civil monetary penalty for certain violations and expands the types of information CFIUS can require parties to submit when engaging with them on non-notified transactions. Once finalized, the updated regulations will help us more effectively deter violations, promote compliance, and swiftly act to address risks to national security.

In many instances, our tools work best when we collaborate and act with allies and partners. For example, if CFIUS indicates that it will not approve an investment in a sensitive technology, the investor may try to "get around" CFIUS by making a similar investment in an allied country. In 2023 and 2024, CFIUS has had more than 300 engagements with allies and partners, and since 2019, approximately 30 countries have proposed, enacted, or significantly revised their foreign investment review regimes with our support. Last year, we worked with the Government of Mexico to sign a Memorandum of Intent to establish a bilateral working group on investment screening with Treasury.

Lastly, I want to turn from CFIUS to update you briefly on Treasury's efforts to address risks associated with certain outbound investments from the United States into other countries. Secretary Yellen tasked my office with implementing the President's new Outbound Investment Security Program pursuant to Executive Order ("E.O.") 14105. The E.O. directed Treasury to issue regulations on outbound U.S. investment into certain sensitive technologies and products in identified sectors within countries of concern.

Treasury issued an Advance Notice of Proposed Rulemaking in August 2023 and received 60 public comments from a variety of stakeholders implicated by the E.O. We also have encouraged our partners and allies to consider taking similar action, as a multi-lateral effort will increase the effectiveness of stemming the flow of support to sensitive technology sectors in countries of concern.

Based on the feedback on the ANPRM, Treasury issued a proposed rule last month. My office will closely review the comments and prepare a final rule for publication. The program's success ultimately will depend on the resources we receive, and, to that end, I ask Congress to fully support Treasury's request for $16.7 million in the President's FY25 budget for this program.

We are proud of Treasury and the Committee's efforts over the last two years, but our work remains unfinished. We remain focused on promoting and enforcing compliance with our regulations and agreements, improving our efficiency, and honing our authorities. I look forward to answering any questions you may have.