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6th National Conference on CFIUS

 **Virtual Conference** | July 15–16, 2020 EDT

Ensuring Deal Success Amidst Expanded Scrutiny of Foreign Investments in Technology, Infrastructure, Data and Real Estate

Government Speakers:

Thomas Feddo
Assistant Secretary for
Investment Security
U.S. Department of the Treasury

John Demers
Assistant Attorney General,
National Security Division
U.S. Department of Justice

David Jividen
Associate Director, CFIUS,
Monitoring and Compliance
U.S. Department of Defense

Matthew S. Borman
Deputy Assistant Secretary of
Commerce for Export Administration
U.S. Department of Commerce

Eric Johnson
Deputy Chief, Compliance &
Enforcement, National Security Division,
Foreign Investment Review Section
U.S. Department of Justice

Meena Sharma
Deputy Director, Office of Policy
& International Relations
Office of Investment Security (CFIUS)
U.S. Department of the Treasury

David Stapleton
Acting Deputy Assistant Secretary
of Defense for Industrial Policy
U.S. Department of Defense

Scott Glabe
Assistant Secretary, Trade
and Economic Security
U.S. Department of Homeland
Security

Kathleen Collins
Assistant Bureau Chief,
International Bureau
U.S. Federal Communications
Commission

J. Philip Ludvigson
Director of Monitoring & Enforcement,
Office of Investment Security (CFIUS)
U.S. Department of the Treasury

Laura Black
Director of Policy and International
Relations, Office of Investment
Security (CFIUS)
U.S. Department of the Treasury

Marty Robinson
Minister-Counsellor (Economic),
Senior Treasury Representative
The Australian Embassy

David Plotinsky
Principal Deputy Chief,
National Security Division,
Foreign Investment Review Section
U.S. Department of Justice

Gain Critical Insights on:

- » The **New CFIUS Environment** Post-FIRRMA Implementation
- » Increased Scrutiny of **Critical Technology** and the Impact of New Export Control Rules
- » Guidance for Deals Involving **Critical Infrastructure** and **Sensitive Personal Data**
- » What it Means to Be an **Excepted Investor** Under the New CFIUS Regulations
- » Overcoming the Pressure Points of the New CFIUS **Filing & Declaration Processes**
- » Implementing **Mitigation Steps** Early in a Transaction's Life Cycle Before CFIUS Does
- » Managing Increased Efforts in **Post-Agreement Monitoring, Compliance & Enforcement**
- » FIRRMA's Impact on **Private Equity, Venture Capital and Investment Deal Structuring**
- » CFIUS's New Reach Over **Real Estate Transactions**
- » Managing **Cross-Border Coordination** Amidst the Latest Developments Around the Globe
- » **COVID-19 Implications** for CFIUS and Global Governmental Foreign Investment Screenings

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With FIRRMA Implementation Now Upon Us, Gain the Necessary Tools to Ensure Deal Success Under Growing CFIUS Scrutiny

Dear Colleague,

Given the upcoming FIRRMA implementation deadline, this is a very exciting and challenging time for dealmakers and their counsel. Not only are significantly more inbound foreign investments subject to CFIUS scrutiny than ever before, but the new CFIUS regulations are creating an environment of assessment, review, execution and post-closing supervision that is far more complex than we have seen in CFIUS's 30 year history. As such, it is now critically important for global businesses to have access to the knowledge needed to make crucial decisions.

ACI's CFIUS conference features an impressive lineup of leaders from government, industry and private practice who provide the insight and analysis needed by dealmakers to navigate increasingly complicated rules and to get deals done in today's challenging environment.

In this critical time of transition for dealmakers and foreign investment, we invite you to join your peers at American Conference Institute's **6th National Forum on CFIUS**. Widely regarded as the premier event for the CFIUS bar, this conference will provide invaluable insights on repositioning your transaction planning amidst this rapidly evolving landscape.

This conference will sell out. We encourage you to register today to secure your spot at this must-attend event. We look forward to seeing you there!

Sincerely,

Anne Salladin



Anne Salladin
Partner
Hogan Lovells US LLP

Richard Sofield



Richard (Rick) Sofield
Partner
Wiley Rein LLP

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American Conference Institute (ACI) will apply for Continuing Professional Education credits for all conference attendees who request credit. There are no pre-requisites and advance preparation is not required to attend this conference.

Course objective: Obtain insights on the latest developments related to CFIUS and national security reviews. Prerequisite: None. Level of knowledge: Beginner/Intermediate. Teaching Method: Group-Live. Advanced Preparation: None. Delivery method: Group Live and livestream.

Please refer to the information in this brochure for outline, course content and objectives. Final approval of a course for CPE credits belongs with each states' regulatory board. Recommended CPE Credit: 13.0 hours for the main conference and an additional 3.50 hours for the workshop.

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Anne Salladin
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Vice President for
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(Former Deputy Secretary,
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Partner
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Kent Bressie
Partner
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Partner
Sullivan & Cromwell LLP

Theodore W. Kassinger
Partner
O'Melveny & Myers LLP

Dr. Barbara M. Key
NSA/CSS Representative
DoD Chief Information
Officer Cybersecurity
Risk Management and
Operational Integration
Chief CFIUS and
Team Telecom

John Lash
Principal
Control Risks

**The Honorable
Nicole Y. Lamb-Hale**
Managing Director
Kroll, a division of
Duff & Phelps
Former Assistant
Secretary of Commerce,
International Trade
Administration

Mario Mancuso
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Alicia Novak
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Dechert LLP

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July 14, 2020 EDT

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DAY 1

Wednesday | July 15, 2020 EDT

8:00

Opening Remarks from the Co-Chairs

Anne Salladin
Partner
Hogan Lovells US LLP

Richard Sofield
Partner
Wiley Rein LLP

8:10

Keynote Address

Thomas Feddo
Assistant Secretary for Investment Security
U.S. Department of the Treasury

8:40 **CFIUS 2.0 – A NEW REALITY FOR DEALMAKERS**

Examining the New CFIUS Environment Post-FIRRMA Implementation

Bruce Andrews
Vice President for
Global Public Policy
SoftBank Group
(Former Deputy Secretary,
U.S. Department of Commerce)

Scott Boylan
Partner
StoneTurn

Ambassador Miriam Sapiro
Vice Chair, SVC Public Affairs
Former Acting and Deputy U.S. Trade
Representative
Sard Verbinen & Co.

Laura Black
Director of Policy and International
Relations, Office of Investment
Security (CFIUS)
U.S. Department of the Treasury

Faryar Shirzad
Managing Director
Goldman Sachs

- Understanding the full scope of the final regulations implementing FIRRMA: clarification on new jurisdiction, new vocabulary, new concepts and new requirements
- How is CFIUS 2.0 a different animal than its predecessor, and how is the new CFIUS environment impacting dealmakers and deal flows?
- Identifying and overcoming the ambiguities and controversial provisions of the new rules
- Addressing the biggest implementation challenges of the new regulations
- How are U.S. businesses and foreign investors managing the new challenges created by the new recent CFIUS reform?
- How is CFIUS managing the increased volume of filings they are receiving?

9:40 | Break



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SPOTLIGHT ON “TID” BUSINESSES

10:10 **CRITICAL TECHNOLOGY & EXPORT CONTROLS**

Addressing the Implications of CFIUS’s Expanded Jurisdiction Over Critical Technology and the Interplay with Current Export Control Reform

Matthew S. Borman
Deputy Assistant Secretary of
Commerce for Export Administration
U.S. Department of Commerce

Waqas Shahid
Senior Managing Director
Ankura

Nancy A. Fischer
Partner
Pillsbury Winthrop Shaw
Pittman LLP

Kevin J. Wolf
Partner
Akin Gump Strauss Hauer
& Feld LLP

- Assessing the impact of CFIUS’s expanded jurisdiction over covered investments in critical technology
- Examining the current status of the Department of Commerce BIS export control regulations defining “emerging and foundational technologies” – and how these definitions are broadening the scope of U.S. companies subject to new CFIUS requirements
- Understanding whether you qualify as being within the critical tech space and what it now means going forward
- Implications for companies involving Artificial Intelligence, 5G, computer vision and other technologies of concern
- How are the new BIS definitions impacting deal activity, technology licenses abroad and the CFIUS process?
- Examining the Department of Commerce’s proposed process to evaluate transactions involving information and communications technology and services for national security concerns
- Covid-19 Impact: To what extent is CFIUS increasing their national security focus on biotech and healthcare-related deals?

11:10 **INFRASTRUCTURE & DATA**

Assessing the Impact of FIRRMA on Deals Involving Critical Infrastructure and Companies that Collect Sensitive Personal Data

John P. Carlin
Partner
Morrison & Foerster LLP

Theodore W. Kassinger
Partner
O’Melveny & Myers LLP

Vince Jesaitis
Director of Government Affairs
Arm Limited

Samuel P. Jacobs
Associate Managing Director
Kroll, a division of Duff & Phelps

- How are the new FIRRMA regulations impacting deals involving covered investment critical infrastructure? – Understanding whether you are subject to CFIUS scrutiny and what that will mean going forward
- How has the Covid-19 pandemic impacted CFIUS’s treatment of Chinese acquisition of US companies deemed “critical infrastructure?”
- A deep dive into the FIRRMA provisions on “Sensitive Personal Data”
- Understanding whether you qualify as a company that collects or maintains “sensitive personal data” under the new FIRRMA regs
- How to determine if you are in CFIUS’s cross-hairs: Analyzing both the content of the collected data itself, the characteristics of the individuals involved and the likelihood of their link to U.S. national security
- How can the treatment of personal data under CFIUS’s regulation be expected to adjust given recent, rapid technological changes causing shifting threats and vulnerabilities?
- How is CFIUS’s expanded jurisdiction over personal data affecting deal flows and the solicitation of foreign investment?

12:10 | Lunch Break

What it Means to Be an Excepted Investor Under the New CFIUS Regulations: Understanding and Meeting the Criteria, and What this Will Mean for Multi-Jurisdiction Reviews

Anne Salladin
Partner
Hogan Lovells US LLP

Richard Sofield
Partner
Wiley Rein LLP

Meena Sharma
Deputy Director, Office of Policy & International Relations
Office of Investment Security (CFIUS)
U.S. Department of the Treasury

Marty Robinson
Minister-Counselor (Economic)
Senior Treasury Representative
The Australian Embassy

- How does an entity qualify as an excepted investor under FIRRMA and thus avoid CFIUS's expanded jurisdiction over non-controlling covered investments?
- Examining the long list of criteria that needs to be satisfied to qualify as an excepted country / excepted company
- How do you know if you are on the list or not?
- How do you obtain clarity from the Department of Treasury on whether you qualify (or are in the process of being considered to qualify) as an excepted investor? What are the timelines involved?
- Under what circumstances is CFIUS conducting retroactive reviews of an investor's status, and under what circumstances are they retroactively revoking or changing an investor's status?
- How is this impacting the investment landscape and multi-jurisdiction reviews?

The Latest Strategies for Structuring Mitigation Agreements and Negotiating Potential Mitigation Steps Early in the Transaction's Life Cycle to Help Get the Deal Through

The Honorable
Nicole Y. Lamb-Hale
Managing Director
Kroll, a division of Duff & Phelps
Former Assistant Secretary of Commerce, International Trade Administration

John Lash
Practice Leader – CFIUS Advisory,
Principal
Control Risks

Moderator:

Cheryl Palmeri
Chief Trade Counsel
IBM Corporation

John M. Beahn
Partner, CFIUS Practice
Shearman & Sterling LLP

- Examining the finer points of negotiating and drafting mitigation language
- Updating your mitigation approach to new and evolving CFIUS requirements and trends
- Assessing how the new regulations are affecting mitigation requirements and agreements
- Under what circumstances does FIRRMA give CFIUS authority to:
 - » Impose an interim mitigation agreement?
 - » Require plans for monitoring compliance with mitigation agreements?
 - » Determine that a current or older mitigation agreement is no longer warranted?
 - » Allow for the use of third-party, independent parties to monitor agreements?
- If you are a U.S. business involved in a deal that is likely to draw CFIUS scrutiny, what potential mitigation strategies can you employ early on in the transaction's life cycle before CFIUS does?

Join the Conversation

 @ACI_IntTrade #ACICFIUS |  ACI: International Trade

Managing Increased Efforts Surrounding Post-Agreement Monitoring, Compliance and Enforcement

David Jviden
Associate Director, CFIUS,
Monitoring and Compliance
U.S. Department of Defense

J. Philip Ludvigson
Director of Monitoring & Enforcement,
Office of Investment Security (CFIUS)
U.S. Department of Treasury

Eric Johnson
Deputy Chief, Compliance and Enforcement, National Security Division, Foreign Investment Review Section
U.S. Department of Justice

Randall H. Cook
Senior Managing Director
Ankura

- In what ways has CFIUS been ramping up its scrutiny of parties' compliance with the terms of mitigation agreements post-FIRRMA?
- What are we now seeing in terms of increased oversight, site visits and civil penalties for non-compliance?
- How are the CFIUS member agencies working independently as well as with CFIUS to enforce agreement terms?
- To what extent are third-party monitors now being used in the post-deal oversight process?
 - » Identifying and employing best practices for dealing with post-deal third-party monitors
 - » What is the government expecting from the third-party auditors and monitors
- Under what circumstances are dealmakers being compelled to renegotiate conditions in order for the deal to remain in place?

Examining the Impact of FIRRMA on Private Equity and Venture Capital: How is the Market Responding to the New CFIUS Regs and What Does the Future Hold in Terms of Structuring Investment Deals?

Alicia Novak
Director of Risk Compliance
FPrime Capital

Mario Mancuso
Partner
Kirkland & Ellis LLP

David Stapleton
Acting Deputy Assistant Secretary of Defense for Industrial Policy
U.S. Department of Defense

- Analyzing the new FIRRMA investment fund provisions and understanding their implications for companies working with private equity or other capital funds
- Considerations for U.S. private equity funds who are evaluating whether their fund structures could cause them to be considered a foreign person for CFIUS purposes
- Under what circumstances should U.S. funds with foreign limited partners consider insulating their foreign LPs so as to minimize the risk of CFIUS jurisdiction?
- Assessing how PE companies are dealing with the new CFIUS reality
 - » Are they changing the structuring of their funds?
 - » Are they changing their deal making practices?
 - » Are they changing their financing or fundraising practices?
- Examining the real impact of CFIUS on venture capital, particularly with regard to emerging technology start-ups – how are companies responding to the new regs in terms of structuring investment deals?
- Exploring the U.S. Department of Defense's Trusted Capital Marketplace initiative, which is aimed at connecting innovative defense technology startups with trusted sources of capital investment

DAY 2

Thursday | July 16, 2020 EDT

8:30

Opening Remarks from the Co-Chairs

Anne Salladin
Partner
Hogan Lovells US LLP

Richard Sofield
Partner
Wiley Rein LLP

8:40

Keynote Address

John Demers
Assistant Attorney General, National Security Division
U.S. Department of Justice

9:10 **CFIUS AROUND THE GLOBE**

Managing Cross-Border Coordination Amidst the Latest Developments in China, the EU and Beyond

Joseph A. Benkert
Senior Advisor, National Security
Morrison & Foerster LLP

Aimen Mir
Partner
Freshfields Bruckhaus Deringer

- CHINA: an assessment of the current trade environment with China and how it is affecting deal flows
- How multinational non-U.S. companies can best balance US and China regimes
- Examining the latest developments with the new EU rule on Foreign Direct Investment
- Comparing and contrasting the nuances of the various international FDI regimes: Japan, Australia, Germany, Canada
 - » Fleshing out how CFIUS works in parallel with reviews that are popping up in these various other jurisdictions
- Key considerations for cross-border coordination
- Impact of COVID-19 on global governmental foreign investment screening

10:00 | Break

11:00 **NEW FILING & DECLARATION PROCESSES**

Overcoming the Pressure Points of the New CFIUS Filing & Declaration Processes, and Key Takeaways from the CFIUS Pilot Program

Damara Chambers
Partner
Vinson & Elkins LLP

Karalyn Mildorf
Partner
White & Case LLP

Brian P. Curran
Partner
Hogan Lovells US LLP

- How is the new mandatory filing and short-form declaration processes working?
- What are the several different potential responses that CFIUS can provide to a declaration under FIRRMA, and how is this impacting timelines?
- What is CFIUS seeing in terms of declarations, and what are the outcomes of these declarations?
- Understanding the procedures, content and timelines associated with mandatory and voluntary declarations

- How are the new mandatory filings being enforced and managed? What penalties are being imposed for failing to file?
- What should companies be considering when deciding whether to file a short-form declaration in lieu of a full notice?
- What additional categories of information must parties now include in a notice to CFIUS under the new rules?
- Examining key takeaways from the CFIUS pilot program: what are the pressure points and how are they being addressed?

11:40 **REAL ESTATE**

CFIUS's New Reach Over Real Estate Transactions

Jeremy B. Zucker
Partner
Dechert LLP

David R. Hanke
Partner
Arent Fox LLP

- Defining which real estate transactions are subject to CFIUS review and what this will mean moving forward
- Identifying which transactions are exempted from the "covered real estate transactions" under FIRRMA
- Examining the scope and content of notices and declarations under the new real estate regs
- Assessing the current, future and potential residual impacts this will have on the real estate industry
- What problems do RE industry professionals envision going forward
- What RE dealmakers are doing to mitigate national security concerns if they are deemed under CFIUS scrutiny

12:20 **CFIUS CASE STUDY**

You've Got Yourself a Deal – Now What? A Case Study on Assuring Compliance with a CFIUS Mitigation Agreement and Lessons Learned for Future Deals

Scott Baucum
Vice President, U.S. Special
Compliance & Asset Protection
Bayer

Eric J. Kadel, Jr.
Partner
Sullivan & Cromwell LLP

Last year Bayer completed their acquisition of Monsanto Company finalizing their largest acquisition in company history. In order to secure approval for the transaction, Bayer was required to enter into a National Security Agreement imposed by CFIUS as a condition to the deal. Tune in as Bayer's VP of U.S. Special Compliance & Asset Protection and Bayer's outside counsel share insights into:

- CFIUS considerations for foreign controlled companies
- Meeting protection obligations for personal information of U.S citizens
- Operational considerations for establishing and managing cross-function initiatives for Cyber Security and Insider Threats
- Considerations for policy and process formation, and standard operating procedures for oversight, auditing and monitoring of both systems and teams
- Considerations when supporting M&A activity under the "old" CFIUS versus the "new" CFIUS (FIRRMA)

12:45

Conference Ends

POST-CONFERENCE WORKSHOP | Thursday | July 16, 2020 EDT

2:00 – 5:00

Next Steps for Team Telecom: Managing New Team Telecom Processes and Preparing for Enhanced Oversight & Scrutiny

Kathleen (Kate) Collins
Assistant Bureau Chief, International Bureau
U.S. Federal Communications Commission (FCC)

Scott Glabe
Assistant Secretary, Trade and Economic Security
U.S. Department of Homeland Security

David Plotinsky
Principal Deputy Chief, National Security Division
Foreign Investment Review Section
U.S. Department of Justice

Dr. Barbara M. Key
NSA/CSS Representative, DoD Chief Information Officer Cybersecurity,
Risk Management and Operational Integration
Chief CFIUS and Team Telecom

Kent D. Bressie
Partner
Harris, Wiltshire & Grannis LLP

- Examining President Trump's Executive Order formalizing Team Telecom and its processes and establishing the new "Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector."
 - Understanding the structure and operation of the newly modernized Committee
 - What notable changes have been made to the prior Team Telecom structure and process?
- Examining the latest reform efforts (both within Team Telecom and as led by the FCC)
 - Efforts to address transparency, timing, and fairness/competitive parity issues
 - Prospects for legislation or Executive Order
- Overview of the Federal Communications Commission/Team Telecom regulatory framework
- Assessing the impact of the FCC's pending Team Telecom Reform rulemaking proceeding on existing and future FCC-Team Telecom processes
- Developments in compliance oversight: reporting, site visits, inspections, and audits
- Examining the interplay with other agency initiatives:
 - FCC USF-related prohibitions
 - Potential FCC license revocations
 - Commerce Department designations under Executive Order 13873
- Coordinating Executive Branch reviews among different U.S. agencies
- Overlap of Team Telecom and CFIUS reviews
- How the new elements implemented within CFIUS will affect the Team Telecom process as well
- What determines when a full review is necessary versus when can something be rolled up very quickly?



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