Written Statement of Benjamin G. Joseloff

before the Subcommittee on National Security, Illicit Finance, and International Financial Institutions

of the House Committee on Financial Services

at a hearing entitled

"U.S. Policy on Investment Security"

July 16, 2025

Submitted on July 14, 2025

Chairman Davidson, Ranking Member Beatty, and distinguished Members of the Subcommittee, thank you for inviting me to testify today. It is an honor to join my fellow panel members in contributing to your work on U.S. investment security policy.

My name is Ben Joseloff. I am a partner at the law firm of Cravath, Swaine & Moore LLP ("Cravath"). Today, I am presenting my own views and not those of my firm or of any client of my firm.

Background and Perspective

The perspectives I will offer today are informed by over 10 years of experience in both the public and private sectors working on matters relating to the Committee on Foreign Investment in the United States ("CFIUS").

At Cravath, where I lead the CFIUS practice, I advise U.S. and international clients on the regulatory aspects of cross-border mergers, acquisitions, dispositions, investments, and other business transactions. Prior to re-joining Cravath, I had the privilege of serving as Senior Counsel and CFIUS Lead Counsel at the U.S. Department of the Treasury, which chairs the CFIUS process. Earlier, from 2017 to 2018, I was detailed from the U.S. Department of the Treasury to the staff of the National Security Council and the National Economic Council at the White House, where I served as Director for International Trade and Investment. In this role, I coordinated White House efforts relating to the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), the bipartisan legislation that marked the most substantial update and expansion of CFIUS in 30 years.

Prior to my service at the U.S. Department of the Treasury, I worked as a corporate lawyer in private practice in New York, served as a law clerk to Judge Janet Hall of the United States District Court for the District of Connecticut, and was a fellow at the American University of Afghanistan in Kabul, Afghanistan. I began my career as a Staff Assistant and Constituent Services Representative for U.S. Congressman Christopher Shays when he represented Connecticut's fourth congressional district.

My testimony is divided into three parts. First, drawing on my government service, I will briefly discuss the importance of the longstanding open investment policy of the United States of America and the critical role CFIUS plays within our nation's open investment framework. Second, drawing on my experience in private practice, I will describe how the CFIUS process operates from the viewpoint of an advisor to U.S. and international businesses. Third, I will offer some recommendations for consideration by Congress.

The U.S. Open Investment Policy and the Critical Role of CFIUS

The United States of America has long been known as one of the most welcoming economies for foreign direct investment.[1] This is in large part because the U.S. Government, through

[1] *See* James Jackson, *Foreign Direct Investment: Current Issues*, Congressional Research Service (February 11, 2010), at 3, *available at*

administrations of both parties, has recognized the benefits that come with foreign capital. To cite just a few statistics, in 2022, foreign investment supported over 8.3 million U.S. jobs, and contributed over $80 billion towards innovative research and development in the United States.[2]

For this reason, it has been a bipartisan tradition of each U.S. president since Jimmy Carter to reaffirm the United States' commitment to an open investment environment.[3] President Trump most recently did so in February 2025, when he issued an investment policy memorandum that stated "[o]ur Nation is committed to maintaining the strong, open investment environment that benefits our economy and our people…."[4]

But not all foreign investment is benign. Malign actors can—and do—try to take advantage of our general openness by using foreign investment to harm U.S. national and economic security. Thus, the United States has had, for fifty years, a mechanism to address harmful foreign direct investment—the Committee on Foreign Investment in the United States, or CFIUS.

CFIUS operates within, and as a part of, the U.S. open investment framework. This means that CFIUS should not be seen as an exception to the U.S. open investment policy. Rather, in my view, CFIUS is best understood as a mechanism that *enables* and *perpetuates* our commitment to an open investment environment. Without CFIUS, the United States would not have a general policy instrument to distinguish an inbound foreign investment that *would* impair national security from an investment that *would not*, and it therefore would be irresponsible of the U.S. Government to welcome foreign capital.

I believe, and hope that Subcommittee members will keep in mind, that support for a robust, well-resourced, and efficiently run CFIUS not only helps preserve U.S. national and economic security, but also enables the continuation of our nation's longstanding, bipartisan open investment policy.

CFIUS in Practice

I have described how CFIUS fits within the U.S. open investment policy from a theoretical perspective. Now, I would like to describe how CFIUS operates in practice, from the viewpoint

---

https://www.everycrsreport.com/files/20100211_RL33984_6a5aec94636ce510e367c20468976225a849e252.pdf ("CRS Report").

[2] *See* Select USA Foreign Direct Investment Fact Sheet, U.S. Department of Commerce, https://trade.gov/sites/default/files/2025-01/SUSA%20-%20United%20States%20Fact%20Sheet_2024_2.pdf.

[3] *See* CRS Report. *See*, *also*, *Statement by the President on United States Commitment to Open Investment Policy*, The White House (June 20, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/06/20/statement-president-united-states-commitment-open-investment-policy; *Statement from the President Regarding Investment Restrictions*, The White House (June 27, 2018), https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-regarding-investment-restrictions/; *Statement by President Joe Biden on the United States' Commitment to Open Investment*, The White House (June 8, 2021), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/06/08/statement-by-president-joe-biden-on-the-united-states-commitment-to-open-investment/.

[4] Policy Memorandum, *America First Investment Policy*, The White House (February 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

of my current role as an advisor to participants in cross-border transactions. I will provide details regarding the time and resources that transaction parties devote to navigating the CFIUS process, not to suggest that I believe we ask too much of transaction parties (I do not), but rather because I believe it is useful for policymakers to understand how policy choices affect American businesses and the foreign investors who invest in those businesses.

In my experience, transaction parties and their advisors often begin thinking about CFIUS considerations long before it is clear that a potential transaction will come to fruition.

At the earliest stages, this may include undertaking detailed legal and factual analyses of whether CFIUS would have jurisdiction over a contemplated transaction—a question that can be quite complex, particularly in transactions involving minority investments, joint ventures, or transactions that would not clearly result in a foreign person controlling a U.S. business.

Once it is established that CFIUS has, or may have, jurisdiction over a transaction, and discussions between the parties have reached the point at which they begin exchanging due diligence information, each side typically has CFIUS-related questions for the other. These questions, often memorialized in lengthy questionnaires or requests for information ("RFIs"), are primarily designed to help the parties assess three questions:

1. Does CFIUS have jurisdiction over the transaction?

2. If so, does the transaction trigger a mandatory CFIUS filing?

3. If CFIUS has jurisdiction over the transaction but the transaction does not trigger a mandatory CFIUS filing, does the transaction warrant a voluntary CFIUS filing?

Compiling responses to the CFIUS-related questionnaires and RFIs can be a difficult and time-consuming process, particularly in the context of non-public discussions between parties, where both sides typically have incentives to limit the number of individuals who are aware of the potential deal.

Once the information has been collected and exchanged, the parties and their respective advisors assess the results. Sometimes the outcome is evident, such as when a transaction clearly triggers a mandatory filing.

More often, however, the facts do not plainly indicate a particular course of action. In this scenario, assuming the transaction is within CFIUS's jurisdiction, the transaction parties need to decide whether they will file with CFIUS voluntarily. This often involves lengthy discussions, both internally (among the management team, the board, and outside advisors) and with the counterparty. Various factors are often considered, including the overall transaction timeline, the context of the deal (for example, is it a bilateral negotiation or a multi-party competitive auction scenario?), and, of course, the identities of the parties and the potential national security sensitivities.

Once the parties have agreed on a course of action, attention typically turns to negotiating CFIUS-related contract provisions. These provisions can range from fairly simple representations and warranties, to complex covenants detailing specific actions the parties will and will not be obligated take in order to obtain CFIUS approval. This is an important consideration because the use of CFIUS mitigation agreements[5] has increased over the years.

After the transaction documents are signed, if the parties have agreed to file with CFIUS, they will begin preparing their joint submission. This typically involves a new round of collecting information that, depending on the size of the businesses involved and other factors, can take anywhere from a few weeks to over one month.[6]

Parties almost always submit a draft of their filing to CFIUS for feedback prior to submitting the formal version. This is not required, but is strongly encouraged by CFIUS and benefits both the Government and the parties by affording CFIUS an opportunity to provide comments on the draft and ask preliminary clarifying questions.

The parties typically receive comments from CFIUS within one or two weeks of submitting a draft filing, and it can take the parties anywhere from a few days to a few weeks to address CFIUS's questions and to prepare and submit a formal filing. CFIUS will review that formal filing and, in general, will officially accept the formal filing—thereby starting CFIUS's substantive national security review—within about a week of submission.

Thus, a general rule of thumb is that, for long-form filings, it can be around eight weeks from the time the transaction is signed until a filer is "on the clock" with CFIUS, meaning when CFIUS begins its formal review: about four weeks to prepare the draft filing, about two weeks to receive CFIUS's comments on the draft, about one week to address the comments and submit the formal filing, and about one week for CFIUS to officially accept the filing.

Of course, this timeline may be shorter or longer in any given transaction, but the key takeaway is that the work prior to commencement of the substantive CFIUS review process can take several months and a significant amount of effort on the part of the transaction parties (not including the work that occurs prior to signing the deal).

Once CFIUS has accepted a formal filing, by statute CFIUS has 45 calendar days in which to undertake its initial review. If CFIUS needs additional time to complete its work, it can invoke an

[5] Mitigation agreements are contracts between the transaction parties and the U.S. Government in which the transaction parties agree to certain conditions in order to resolve a national security concern identified by CFIUS.

[6] For purposes of this testimony, I will focus on the long-form filing process, which continues to account for over two-thirds of the submissions to CFIUS. Following the passage and implementation of FIRRMA, CFIUS also has a short-form filing process. The short-form filing process has proven useful in decreasing transaction costs and timing in certain circumstances, particularly where the foreign investor is known to CFIUS and the transaction is unlikely to raise national security concerns. In other circumstances, however, the short-form filing process can simply add to the overall burden to the parties, as CFIUS may conclude the short-form filing process's 30-day assessment period by requesting that the parties submit a long-form filing (in which case the parties would have been better off submitting a long-form filing at the outset).

additional 45-day investigation period, for a total of 90 calendar days. (In extraordinary circumstances, the investigation can be extended by 15 additional days, but CFIUS rarely invokes this authority.)

When added to the approximately two months it usually takes to get "on the clock" with CFIUS, it can take approximately four to six months from a deal signing to CFIUS approval. There are, however, circumstances in which the process can take materially longer. In 2023, for example, approximately 18 percent of the long-form filings submitted to CFIUS underwent what is known in CFIUS parlance as a "withdraw and refile," which is an administrative maneuver parties can request if additional time is needed to work through issues that arose during the initial 90-day period.[7] Following a withdraw and refile, CFIUS resets the clock on its statutory timeline, meaning it has up to 90 additional days in which to complete its work. On occasion, certain transactions have required multiple withdraw and refiles, with each subsequent withdraw and refile extending the process by up to 90 additional days.

Withdraw and refiles most often occur in circumstances in which CFIUS has identified a national security concern, and CFIUS and the parties are working to determine whether—and, if so, how—the identified concern can be resolved through a mitigation agreement. If the concern can be adequately addressed through mitigation, the parties typically devote significant time and resources to negotiating the mitigation agreement.[8]

It is important to note that, throughout the time CFIUS is conducting its analysis of a transaction, it typically requests additional information from the parties. After such a request, parties generally are required to respond within three business days, although it is possible to request an extension, and reasonable requests for extension are routinely granted. Depending on the parties and the transaction, CFIUS may pose dozens of questions, often requiring businesses to gather detailed information from individuals and teams around the globe who are supporting the CFIUS process in addition to dealing with their regular job responsibilities.

In summary, the CFIUS process can result in noteworthy timing and economic friction in cross-border transactions, and this friction has real costs and consequences for the parties involved in such transactions (including the U.S. businesses).

Of course, this is not necessarily inappropriate. As I noted earlier, CFIUS plays a critical role within the broader U.S. open investment framework, and some transaction costs are unavoidable in a system that relies on a thorough, methodological, case-by-case assessment process carried out by subject matter experts across the U.S. Government.

To me, the real question, then, is the following: Can we be confident that we have reduced the transaction costs imposed by the CFIUS process to those that are necessary and appropriate to protect U.S. national security?

---

[7] *See* Annual Report to Congress, CY 2023, U.S. Department of the Treasury, at viii, https://home.treasury.gov/system/files/206/2023CFIUSAnnualReport.pdf.

[8] In addition, after CFIUS approval has been received and the transaction has closed, the parties often spend significant time and resources on implementing and complying with the mitigation agreement.

In my view, the short answer is: Not yet, but CFIUS is trying and they are making good progress.

The longer answer is that, in my 10 years of CFIUS-related experience—both in the government and in private practice—my observation is that the individuals who administer the CFIUS process are, almost without exception, doing their best to accomplish their critical national security mission as efficiently as possible. This is true both for the dedicated career civil servants who undertake the day-to-day work of CFIUS, as well as the political appointees who ultimately make the difficult decisions. These professionals are tasked with a remarkably difficult assignment, and they consistently rise to the challenge.

Recommendations for Consideration by Congress

Is our inbound investment security regime perfect? No. There is always room for improvement. To that end, I describe below some potential improvements to the CFIUS approval process before concluding with some recommendations for consideration by Congress.

As mentioned earlier, there are several specific parts of the CFIUS process that tend to place the greatest burden on transaction parties.

First, in assessing whether a transaction within CFIUS's jurisdiction triggers a mandatory filing, the target U.S. business frequently must consider whether it produces, designs, tests, manufactures, fabricates, or develops one or more "critical technologies." "Critical technologies" are defined in the CFIUS statute and regulations by cross-referencing various U.S. export control regimes, some of which have broad application. This can create difficulties for U.S. businesses that do not export the items they produce, design, test, manufacture, fabricate, or develop and therefore have not had a business reason to undertake an export control analysis of such items. Given this scenario, CFIUS may find that it could increase transaction efficiency—while still receiving the mandatory filings it desires—by narrowing the scope of "critical technologies" that trigger mandatory filings. Doing so could improve the current framework, which too often requires U.S. businesses across a broad range of industries and sectors to undertake time-consuming and expensive export control analyses that are not required in the course of their day-to-day business operations.

Second, for transactions within CFIUS's jurisdiction that *do not* trigger a mandatory filing, transaction parties may spend substantial time and energy in determining whether a given transaction warrants a voluntary filing, and how they may be able to design the transaction to proactively address potential national security concerns. CFIUS could assist transaction parties in streamlining this decision-making process by updating its formal guidance on the types of transactions likely to raise national security concerns. To be clear, CFIUS regularly communicates with the private sector on such matters through conferences, speeches, annual reports, press releases, and other media, and this communication is greatly appreciated and quite helpful. Nevertheless, CFIUS has not published formal guidance regarding the types of transactions that it has reviewed and that have presented national security considerations since 2008. Therefore, I was heartened to hear Deputy Secretary of the Treasury Michael Faulkender

acknowledge in April that "there is more that the Committee can do to provide general information about how national security risks can arise and be addressed preemptively."[9] I hope CFIUS provides such guidance in the near future.

Third, when transaction parties are "on the clock" with CFIUS, it can be disruptive to U.S. businesses and their foreign investors to have to respond—on very short timelines—to dozens of questions from CFIUS. Of course, it is imperative that CFIUS receive all the information it needs to complete its work, but there may be ways to increase the efficiency of the process. For example, CFIUS may find it appropriate to modify the required contents of filings so that CFIUS receives key information from all parties at the initial stages of the review, rather than having to request such information from parties at later stages of the process. CFIUS may also consider other procedural mechanisms to ensure the question-and-answer process is as efficient as possible, such as tracking the number of questions or question sets in each transaction and publishing the data in CFIUS's annual reports (similarly to how CFIUS tracks and publicly reports turnaround times for commenting on and accepting filings).

To conclude, I know there are various legislative proposals relating to CFIUS that Members of the Subcommittee may be asked to consider. Rather than opining on any specific legislation, I would encourage Members to ask two questions with respect to any CFIUS-related legislation that crosses your desks:

First, will the legislation help the individuals who administer the CFIUS process increase efficiency without harming U.S. national security?

Second, if the legislation will create new economic friction, is that friction truly necessary in order for CFIUS to achieve its mission?

With these questions as a guide, I believe that the Members of this Subcommittee will be well placed to ensure that we continue to have an inbound investment security regime that supports both American security **and** American prosperity, and that CFIUS will continue to be regarded as the global "gold standard" for the national security regulation of foreign investment.

* * *

Thank you again for the opportunity to participate today. I look forward to answering your questions.

[9] Statements & Remarks, *Deputy Secretary Michael Faulkender's Remarks at ACI CFIUS Conference*, U.S. Department of the Treasury (April 24, 2025), https://home.treasury.gov/news/press-releases/sb0101.