



# Department of Defense (DoD) Role in the Committee on Foreign Investment in the United States (CFIUS)



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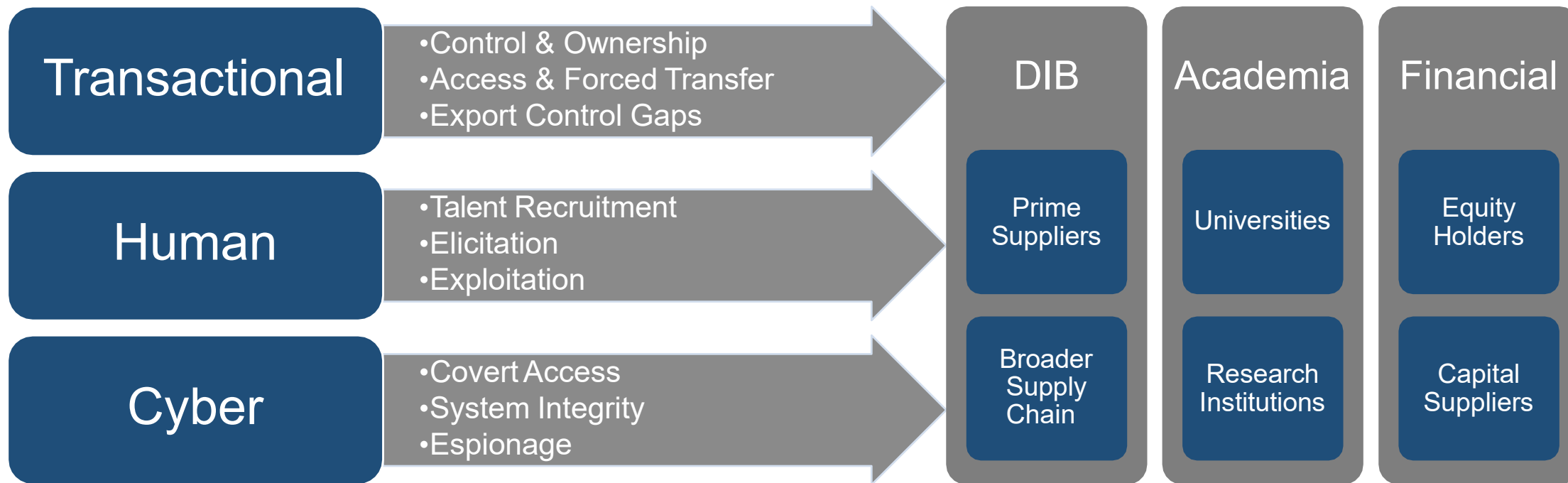
# Agenda

- Threats from Adversarial Foreign Investments
- Overview of U.S. Foreign Investment Review Mechanisms
  - CFIUS Overview
  - Foreign Investment Risk Review Modernization Act (FIRRMA)
  - CFIUS Processes
  - DoD's Role



# Protect - Threats & Risks

## Three Threat Avenues to Attack National Security and the Defense Industrial Base (DIB)



- Adversarial Capital is used to gain control over a firm’s decision making.
- Threats can use numerous vectors: investments, mergers & acquisitions (M&A), employees’ dual loyalties (talent programs), research partnerships, joint ventures, and espionage.
- Through these vectors, adversaries can leverage their position to gain access or control to force tech transfers, disrupt/infiltrate critical supply chains, or gain access to sensitive data for espionage.



# Protect – Sources of Innovation

Adversaries are raising VC and early stage funds to target innovation hubs

Figure 2: Innovation hotspot scores (24 cities)

|                | Overall | Artificial intelligence | Advanced manufacturing and robotics | Blockchain | Computer vision | AR/VR | Energy storage | Nano-technology | Advanced biosciences | Quantum computing |
|----------------|---------|-------------------------|-------------------------------------|------------|-----------------|-------|----------------|-----------------|----------------------|-------------------|
| Beijing        | 72      | 83                      | 82                                  | 60         | 69              | 7     | 66             | 0               | 57                   | 0                 |
| Tel Aviv       | 65      | 72                      | 59                                  | 59         | 72              | 55    | 17             | 35              | 46                   | 0                 |
| Toronto        | 62      | 66                      | 62                                  | 45         | 36              | 24    | 86             | 78              | 41                   | 88                |
| Los Angeles    | 62      | 65                      | 64                                  | 41         | 31              | 79    | 52             | 34              | 29                   | 0                 |
| Paris          | 59      | 66                      | 64                                  | 53         | 6               | 17    | 66             | 45              | 48                   | 0                 |
| San Diego      | 57      | 52                      | 62                                  | 45         | 52              | 23    | 10             | 68              | 64                   | 0                 |
| Singapore      | 54      | 56                      | 59                                  | 96         | 44              | 4     | 0              | 52              | 39                   | 0                 |
| Berlin         | 50      | 60                      | 59                                  | 54         | 46              | 29    | 23             | 24              | 31                   | 0                 |
| Bangalore      | 48      | 60                      | 47                                  | 0          | 53              | 53    | 61             | 0               | 21                   | 0                 |
| Seattle        | 47      | 53                      | 49                                  | 44         | 53              | 49    | 50             | 52              | 30                   | 0                 |
| Montreal       | 47      | 56                      | 55                                  | 51         | 39              | 38    | 62             | 51              | 46                   | 0                 |
| Barcelona      | 40      | 42                      | 22                                  | 31         | 45              | 18    | 0              | 50              | 44                   | 0                 |
| Stockholm      | 40      | 52                      | 34                                  | 35         | 18              | 52    | 47             | 50              | 23                   | 0                 |
| Anaheim        | 38      | 46                      | 44                                  | 23         | 4               | 48    | 65             | 48              | 28                   | 0                 |
| Chicago        | 38      | 56                      | 47                                  | 42         | 49              | 2     | 37             | 44              | 12                   | 0                 |
| Vancouver      | 36      | 45                      | 43                                  | 52         | 38              | 16    | 56             | 16              | 27                   | 74                |
| Austin         | 37      | 57                      | 8                                   | 53         | 51              | 16    | 34             | 19              | 17                   | 0                 |
| Denver         | 36      | 37                      | 42                                  | 51         | 38              | 28    | 24             | 25              | 22                   | 0                 |
| Washington, DC | 33      | 43                      | 40                                  | 34         | 0               | 27    | 33             | 0               | 17                   | 67                |
| Minneapolis    | 31      | 0                       | 21                                  | 0          | 0               | 50    | 34             | 0               | 33                   | 0                 |
| Atlanta        | 30      | 29                      | 3                                   | 47         | 44              | 30    | 0              | 51              | 11                   | 56                |
| Philadelphia   | 30      | 41                      | 35                                  | 50         | 28              | 50    | 0              | 32              | 23                   | 0                 |
| Raleigh        | 30      | 30                      | 21                                  | 0          | 57              | 22    | 0              | 10              | 25                   | 0                 |
| Newark         | 26      | 33                      | 21                                  | 52         | 17              | 50    | 24             | 38              | 14                   | 0                 |

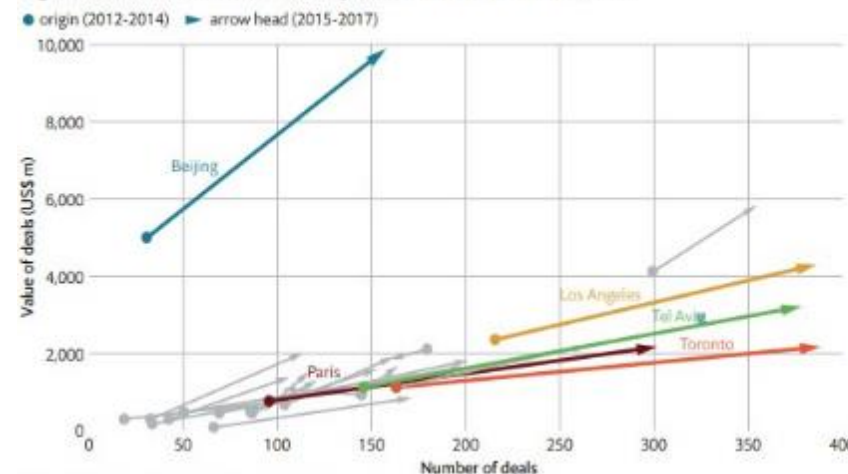
Bucket

- 0 - 19
- 20 - 39
- 40 - 59
- 60 - 79
- 80 - 100

The majority of innovation hubs are in the United States and its partner and allied countries

Adoption of strong Foreign Investment Review Screening Regimes is essential to closing down threat avenues

Figure 1: Growth in VC deal activity, 2012-14 to 2015-17, 24 cities



The chart indicates the pronounced trajectory in deal activity of the top cities. Grey arrows indicate deal activity for the remaining 19 cities.

Source: Crunchbase, The Economist Intelligence Unit

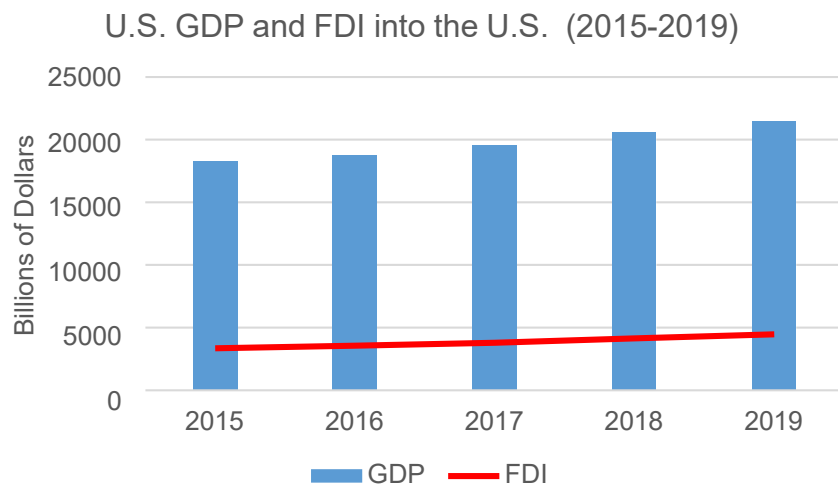




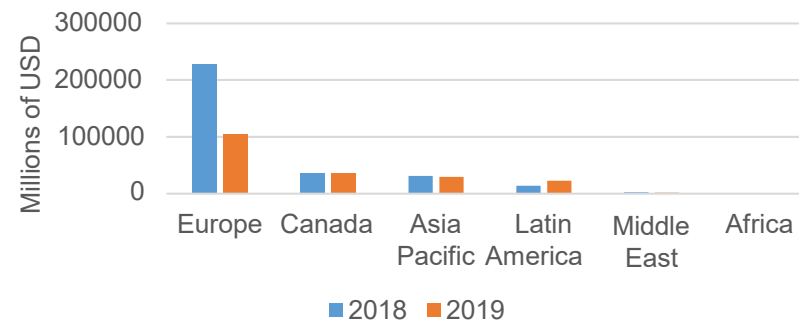
# Foreign Direct Investment (FDI)

## FDI is a positive for the United States

- Foreign Direct Investment (FDI) allows foreign investment dollars to be used to benefit the United States.
- FDI supports 7.8m jobs directly, provides \$66.9B in R&D spending, and adds \$395.3B to U.S. exports.
- FDI is consistently ~20% of US GDP.



FDI into the U.S. by Region (2018-2019)



Largest Sources of FDI in the United States (by UBO)

| Rank | Market         | 2019 Position in USD millions | Share of total |
|------|----------------|-------------------------------|----------------|
| 1    | Japan          | \$644,727                     | 14.5%          |
| 2    | Canada         | \$580,752                     | 13.0%          |
| 3    | Germany        | \$521,979                     | 11.7%          |
| 4    | United Kingdom | \$446,179                     | 10.0%          |
| 5    | Ireland        | \$343,538                     | 7.7%           |
| 6    | France         | \$310,743                     | 7.0%           |
| 7    | Netherlands    | \$290,429                     | 6.5%           |
| 8    | Switzerland    | \$224,368                     | 5.0%           |
| 9    | Australia      | \$86,537                      | 1.9%           |
| 10   | Spain          | \$84,338                      | 1.9%           |
| 11   | Bermude        | \$77,140                      | 1.7%           |
| 12   | Belgium        | \$70,073                      | 1.6%           |
| 13   | Sweden         | \$61,316                      | 1.4%           |
| 14   | South Korea    | \$61,135                      | 1.4%           |
| 15   | Singapore      | \$60,138                      | 1.3%           |

Fastest-Growing Sources of FDI in the United States (by UBO)

| Rank | Market      | 2019 Position in USD millions | CAGR 2014-2019 |
|------|-------------|-------------------------------|----------------|
| 1    | Kuwait      | \$1,820                       | 41.8%          |
| 2    | Thailand    | \$1,684                       | 26.7%          |
| 3    | Chile       | \$3,431                       | 21.7%          |
| 4    | Ireland     | \$343,538                     | 20.3%          |
| 5    | Brazil      | \$45,273                      | 19.6%          |
| 6    | Bermude     | \$77,140                      | 19.1%          |
| 7    | Netherlands | \$290,429                     | 17.1%          |
| 8    | New Zealand | \$2,619                       | 16.7%          |
| 9    | Turkey      | \$2,346                       | 16.6%          |
| 10   | Austria     | \$6,250                       | 15.3%          |
| 11   | China       | \$59,043                      | 15.2%          |
| 12   | Colombia    | \$4,080                       | 13.9%          |
| 13   | Luxembourg  | \$22,760                      | 13.5%          |
| 14   | Singapore   | \$60,138                      | 12.3%          |
| 15   | Denmark     | \$23,541                      | 12.3%          |



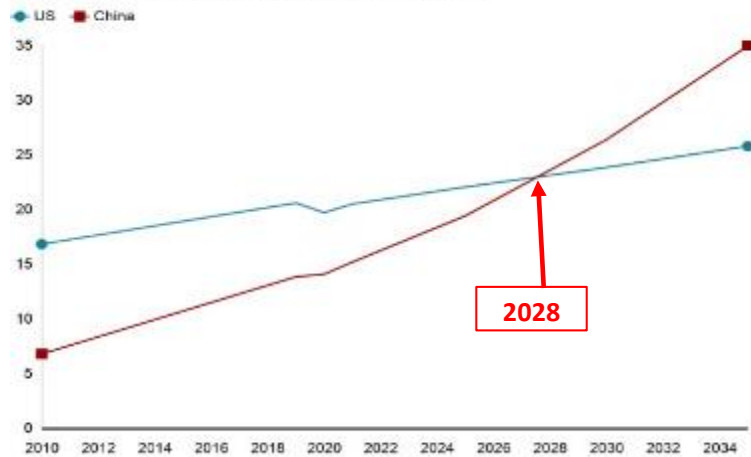


# FDI & Strategic Economic Competition

However, some countries leverage FDI to gain access to new capabilities.

- China's leaders seek to undermine the open and stable international system
  - Distorts market forces
  - U.S. companies must not sacrifice American values
  - Sustained, strategic competition across multiple areas
  - Economic, diplomatic, and technological
- United States balances economic prosperity and national security

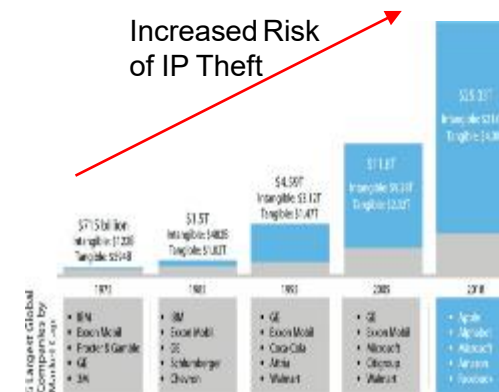
US and Chinese economies 2010-2035  
Gross domestic product in \$US trillions (constant prices)



Source: CEBR World Economic League Table 2021

- U.S. companies seek capital from China but risk losing control of intellectual property.
- The U.S. has vastly greater exposure to intangible assets (intellectual property).

Tangible vs. Intangible Assets for S&P 500 Companies, 1975-2018



The United States is the largest destination for FDI, with of \$3.3 trillion (2015) to \$4.4 trillion (2019) in position\*.

China contributes a small amount, between 0.5% to 1% of total FDI position\*, accounting for \$15 billion (2015) to \$38 billion (2019).

\*Position is the snapshot of cumulative FDI taken at year end (Department of Commerce: <https://www.selectusa.gov/>)



# Threat: Chinese Tactics

## Chinese Technology Transfers: A Unified Strategy with Multiple Tactical Battlefields



**CHINA CIRCUMVENTS U.S. INVESTMENT REGULATIONS AND EMPLOYS TACTICS AGAINST THE U.S. TO ACQUIRE U.S. ASSETS AND GAIN INSIDE ACCESS.**

Key tactics include the following:

- Leveraging partnerships and joint ventures to gain intellectual property & force tech transfers
- Combining cyber campaigns with embedded personnel to collect sensitive information from R&D and tech firms
- Using private equity firms, shell companies to obscure Chinese state involvement
- Paying premiums for U.S. acquisitions (market distortion); targeting distressed U.S. through bankruptcy procedures
- Manipulating deals to reduce the U.S. target company's market value before acquisition

Early stage tech companies are vulnerable due to desire for quick funding and guaranteed exits.



# Overview of U.S. Foreign Investment Review Mechanisms





# CFIUS – Overview

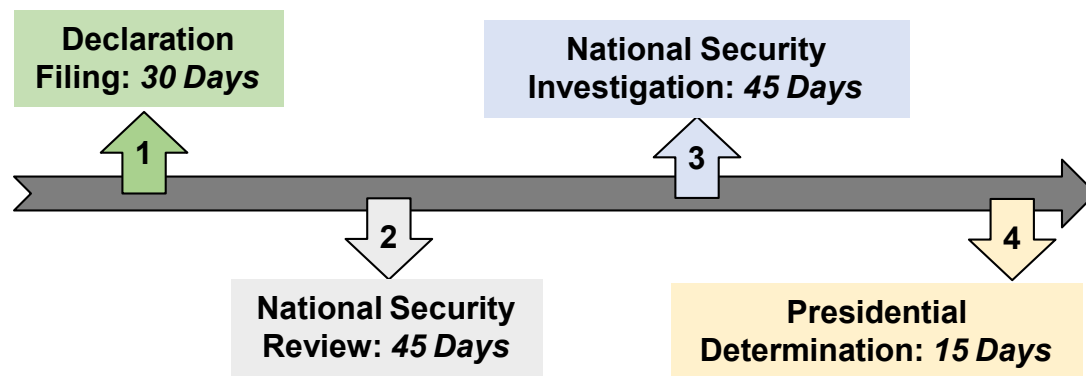
**The Committee on Foreign Investment in the U.S. (CFIUS)** is an *interagency committee* authorized by law to *review certain transactions* involving *foreign investment* in the United States and certain *real estate* transactions by foreign persons, in order to determine the effect of such transactions on the *national security of the United States*.

## CFIUS Legislative & Regulatory History

- **2018:** CFIUS jurisdiction expanded by the Foreign Investment Risk Review Modernization Act of 2018 (“**FIRREA**”)
  - Covered investments (Critical Technology, Emerging Technology, Critical Infrastructure, Sensitive Personal Data)
  - Real estate transactions



## CFIUS Timeline



## CFIUS Structure





# CFIUS & FIRRMMA Overview

## CFIUS Goals & Key Attributes

- Protect national security from the risks presented by adversarial capital
- National security risks, not other policy interests
- Transactions reviewed using a rigorous, analytical process
  - Each transaction has a unique risk profile
  - Based on threats, vulnerabilities, and consequences
- The approach is proportional in addressing national security risks.
  - CFIUS is a last resort - uses other authorities first
  - Encourage alternate methods to mitigate risks
  - Mitigation and monitoring solutions whenever possible
- Timely and efficient, with accountability and communication throughout
- Confidential

## CFIUS Jurisdiction

- Transactions that result in a foreign entity taking **control** of a U.S. business
- Any transaction which results in a foreign entity taking a non-passive investment in a U.S. business (aka TID business) that
  - Produces, designs, tests, manufactures, fabricates, or develops a critical **[t]**echnology
  - Owns, operates, manufactures, supplies, or services critical infrastructure
  - Maintains or collects sensitive personal **[d]**ata of U.S. citizens
  - Collectively referred to an “TID” businesses
- Certain real estate transactions
- Maritime and Air Ports
- Proximity to certain installations



# FIRRMA Regulations

## “Other Investments”



- “Other Investment” categories include non-controlling investments
  - Access to material information, board seat, or substantive decision making
- Controlling investments continue to fall under traditional CFIUS jurisdiction



## Real Estate Investments

- Proximity/Extended Range –
  - 1 mile radius for all installations
  - 100 mile radius for certain ranges
  - Key exclusions –
    - Urbanized areas and clusters
    - Single family homes and commercial offices

## Sensitive Personal Data



- Access to sensitive personal data
- Access to large amounts of data
- Targets or tailors to national security professionals



## Critical Infrastructure

- Communications - networks, cable, fiber
- Defense Industrial Base – including critical materials
- Energy production and distribution
- Financial services
- Transportation – sea/air-ports and rail
- Water and wastewater systems

## Critical Technology Regulations



- International Traffic in Arms Regulation (ITAR) and Export Administration Regulation (EAR) controlled items
- Emerging and foundational technology under the Export Control Reform Act (ECRA)



# CFIUS Filings & Process



## Risk Based Analyses

All acquisitions carry a risk profile, but each assessment is unique and varies based off information provided by the company and government stakeholder.



## Mitigation

- Forms:**
- Letter of Assurance
  - National Security Agreement
  - Order
  - Interim Measures

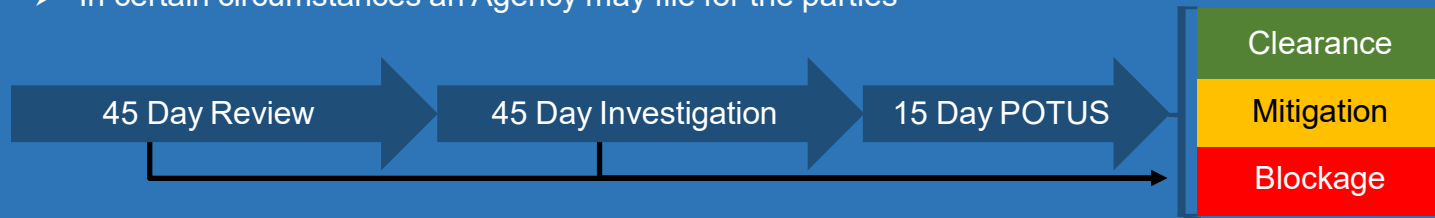
CFIUS works with parties on provisions to address risk and must be effective, enforceable, and monitorable.

## DoD Stakeholder Engagement to Assess Risks

All acquisitions carry a risk profile, but each assessment is unique and varies based off information provided by the company and government stakeholder.

### Notice Filing (Joint Voluntary Notice or JVN)

- Voluntary Filings
  - Voluntarily file to seek “safe harbor”
- Agency Filings
  - In certain circumstances an Agency may file for the parties



## Risk Identified

- **CLEAR** transaction
- Negotiate or impose **MITIGATION**
- Recommend **PROHIBITION**
- International engagement

## Mitigation

- Effective
- Monitorable
- Enforceable

## Monitoring

- Notifications
- Annual Reporting
- Site Visits
- Third Party Audits
- Third Party Monitors

### Declarations

- Voluntary Declarations
- Mandatory Declarations:
  - A foreign person, substantially backed by a foreign government, or
  - Foreign person making a covered investment that could result in foreign control of a TID U.S. business involved in critical technologies





# CFIUS Reviews & Risk Based Analyses (RBA)

## Foreign Investment Review (FIR) interfaces with CFIUS

- Provides support to DoD stakeholders

## FIR reviews transactions for Vulnerability & Consequences

- **Threat:** The Office of the Director of National Intelligence (ODNI) provides threat reporting to CFIUS in a National Security Threat Assessment (NSTA), evaluating intent and capability of the threat
- **Vulnerability:** FIR analyzes the national security nexus of the US business, looks across operations, acquisitions, and sustainment
- **Consequences:** FIR analyzes and estimates any resulting impact of exploitation of vulnerabilities

## DoD Stakeholder Engagement

- Ensure DoD equities represented on CFIUS
- Perform risk-based analyses
- Understand national security risks, threats, vulnerabilities, consequences

|  |   |
|--|---|
| <b>Example Risks Articulated in RBAs</b> | Supply Chain Assurance: reducing or halting supply                      |
|  | Tech Transfer: access denial or transfer to adversary                   |
|  | Product Integrity: malicious component or software insertion            |
|  | Colocation: on-going presence near installations                        |
|  | Sensitive Data: exploiting personal data for various types of espionage |

## $f$ (Threat, Vulnerability, Consequence) = Risk

Threat, Vulnerability, and Consequence combine to produce a Risk calculus.



### Key Questions and Concerns

#### Is this technology critical to DoD?

- Defense unique technology or provides technological advantage or promising future applications
- Required to advance other technologies or used to improve/maintain system performance
- No substitutes available or specialized knowledge and skills required to design and manufacture

#### Is this company critical to DoD?

- Single qualified or sole source
- Needed to avoid foreign dependency or Needed to avoid supply disruption (capacity or availability)
- DoD investments in this company or independent research & development investment
- High market share
- Significant reconstitution cost and schedule
- Source of innovation, e.g. provides state of the art capabilities/processes/products/facilities

#### Can we protect this technology and/or company?

- Is CFIUS providing mitigation actions to protect the technology? Example: Executable Protection Plans
- Are the mitigation actions enforceable?
- What additional protection mechanisms are in place?
  - Technology Area Protection Plans
  - Export Controls
- Leverage USG policies, programs, and authorities to balance protection and promotion



# Q&A

Questions?