

CLIENT ALERT

Administration Moves to Complete FIRRMA Implementation by the February 13, 2020 Statutory Deadline

Sep.18.2019

Yesterday, the Department of the Treasury released the long-awaited proposed rules that would complete implementation of the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018 that expanded the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS) to review investments by foreign persons. One proposed rule will revise and restate the general CFIUS regulations, 31 C.F.R. Part 800, while the second proposed rule will provide a separate process, 31 C.F.R. Part 802, for CFIUS review of certain real estate transactions that do not involve acquisition of a U.S. business. Among the key elements of FIRRMA addressed in the proposed rules are:

- Expanded jurisdiction to review non-controlling investments in so-called “TID U.S. businesses”; *i.e.*, companies involved in certain technology, infrastructure or data.
- Extended mandatory review over acquisition of a “substantial interest” in a “TID U.S. business” by a foreign person in which a foreign government has a “substantial interest.”
- Exemption of investments by certain foreign persons from certain foreign states (to be identified separately) from CFIUS jurisdiction over “covered investments.”
- Provision of an option to initiate CFIUS review via a short-form voluntary declaration in lieu of a joint voluntary notice.

The current proposals do not yet seek to implement the statutory authority to impose a fee in connection with CFIUS reviews.

The proposed rules are scheduled to be published in the Federal Register on September 24, 2019, which will trigger a compressed 30-day time frame to submit comments (during which Treasury has suggested it may hold a teleconference with interested participants). The Interim Rule establishing the mandatory declaration under the Critical Technologies Pilot Program remains in effect and both prior comments and any new comments submitted will be addressed when Treasury publishes its final rule.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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