

CLIENT ALERT

DSS Initiative to Adopt a More Holistic Evaluation of FOCI Boards

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On August 31, 2018, the Defense Security Service (DSS) issued a [white paper](#) suggesting an initiative to expand the considerations it evaluates in reviewing nominations *and* performance of Outside Directors or Proxy Holders (OD/PHs) serving on Boards of Directors of FOCI-mitigated entities. Specifically, DSS intends to evaluate nominees for OD/PH positions not just on their personal backgrounds but also in the context of the entire Board, suggesting that it considers OD/PH Board members to be able to contribute experience beyond a national security background. While many companies already consider such factors when identifying nominees for OD/PH positions, the new initiative suggests DSS will be seeking such justifications in the review process and hints that it may require specific OD/PH training and on-going internal or external reviews of FOCI Boards and OD/PH performance. One bit of good news is a suggestion that the strict prohibition on an OD/PH having any prior relationship with the FOCI-mitigated entity may be relaxed.

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

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