

National Forum on

CFIUS

Meeting New National Security Review Requirements for Foreign Investments

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Exclusive Interactive Workshop

Friday June 5, 2009

The Fundamentals of Filing
a Transaction with CFIUS
and Preparing for Mitigation

▶ Get Government Perspectives on the CFIUS Review Process

Nova Daly

Former Deputy Assistant Secretary
US Department of Treasury

Stewart Baker

Former Assistant Secretary for Policy
US Department of Homeland Security

Scott Morris

Senior Professional Staff Member
House Financial Services Committee

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▶ Get Legal and Practical Guidance on

- The broadening scope of “national security”, “control” and “critical infrastructure”: what transactions raise national security concerns
- Deciding whether to voluntarily file a transaction with CFIUS, or not
- Meeting expanded mandatory disclosure requirements for CFIUS filings
- Negotiating and complying with a mitigation agreement when national security issues are identified
- Managing the political process and developing a communications plan for investors, customers and employees
- Handling CFIUS review of sovereign wealth fund investments
- Expediting the CFIUS review process in parallel with NISPOM, ITAR and FOCI timetables

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▶ Do You Know How to Ensure the Success of Your CFIUS Review Process?

The Committee on Foreign Investment in the United States (“CFIUS”) is charged with reviewing proposed acquisitions of US companies by foreign investors when national security concerns are at stake. The Treasury Department has recently released final CFIUS regulations that offer the Committee more flexibility and discretion in reviewing transactions that present real or perceived security threats.

It is widely expected that foreign investments in and acquisitions of US corporations will attract higher levels of CFIUS scrutiny and that the review process will be much more rigorous. The new regulations significantly expand the information that must be submitted when filing a transaction for approval.

All parties making investments in the United States must plan appropriately for the CFIUS review process. Such international M&A transactions have in the past been denied or even unwound after the fact due to national security concerns. While filing with CFIUS is voluntary, it has to be considered a part to doing a large number of deals. What are the final procedural and substantive results of the regulations? How can it be determined if a proposed transaction with a foreign investor presents national security concerns? When should a filing be made with CFIUS?

Knowing how to approach these issues can be crucial in ensuring that a deal goes forward successfully and on plan. For this **National Forum on CFIUS**, the **American Conference Institute** has assembled a leading faculty of top business, government and legal officials. This advanced forum will provide attendees with an update on the CFIUS regulations as well as practical insights into the filing process. The program will include the latest information on:

- Anticipating how rigorous the review process will be with increased disclosure expectations
- What constitutes an acquisition of “control” by foreign investors
- What is at risk by not voluntarily filing with CFIUS
- How to manage communications regarding a proposed transaction both internally and publicly
- Understanding how CFIUS members come to consensus and how various Departments exert influence on the review
- What to expect from mitigation negotiations and preparing to comply with the terms
- Structuring sovereign wealth fund investments

Every company should understand in advance how to evaluate transactions with foreign entities and the national security issues which can surface. Sign up now to ensure your place at what is sure to be a sold-out event. Register by calling **1-888-224-2480**, by faxing your registration form to **1-877-927-1563**, or by going online to register at **www.AmericanConference.com/CFIUS**.

Conference Chair

Theodore Kassinger
O'Melveny & Myers LLP

Speakers:

Stewart Baker

Former Assistant Secretary for Policy
US Department of Homeland Security

Thomas Crocker

Alston & Bird LLP

Nova Daly

Former Deputy Assistant Secretary
US Department of Treasury

Joseph F. Dennin

McKenna Long & Aldridge LLP

Victoria Esser

Managing Director
Glover Park Group

George Kleinfeld

Clifford Chance LLP

Peter Lichtenbaum

Vice President – Regulatory Compliance
& International Policy
BAE Systems, Inc.

Todd Malan

Vice President – International Public Policy
Goldman Sachs

David Marchick

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Scott Morris

Senior Professional Staff Member
House Financial Services Committee

Mark Plotkin

Covington & Burling LLP

Stephen Preston

WilmerHale LLP

James A. (Del) Renigar

Counsel – International Policy
& Trade Regulation
General Electric

John B. Reynolds, III

Wiley Rein LLP

Ivan Schlager

Skadden, Arps, Slate, Meagher & Flom LLP

Heather Sears

Vice President – Trade Compliance
DRS Technologies, Inc.

Dale Turza

Cadwalader, Wickersham & Taft LLP

► Thursday June 4, 2009 – Main Conference

- 8:00 Registration and Coffee
- 8:30 Opening Remarks from the Conference Chair
- 8:45 The CFIUS Mandate and New Regulatory Framework:
Preparing for Rigorous Review of Foreign Investment Transactions
- 9:45 Executing a Successful CFIUS Filing
- 10:45 Networking Coffee Break
- 11:00 Managing Your Transaction in the Public Arena
- 12:00 Voluntary Filing: Evaluating the Need to File, or Not
- 12:45 Networking Luncheon for Attendees and Speakers
- 2:00 Mitigation Agreements: What to Do When National Security Issues are Identified
- 3:15 Homeland Security and Critical Infrastructure: What Deals Will Be Reviewed and How
- 4:00 Refreshment Break
- 4:15 Sovereign Wealth Funds and the Special Considerations They Raise
- 5:15 Conference Ends

► Friday June 5, 2009 – Post-Conference Workshop

- 9:00 The Fundamentals of Filing a Transaction with CFIUS and Preparing for Mitigation

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ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

▶ Thursday, June 4, 2009

8:00 **Registration and Coffee**

8:30 **Opening Remarks from the Conference Chair**

Theodore Kassinger

O'Melveny & Myers LLP

8:45 **The CFIUS Mandate and New Regulatory Framework: Preparing for Rigorous Review of Foreign Investment Transactions**

Nova Daly

Former Deputy Assistant Secretary, US Department of Treasury

Mark Plotkin

Covington & Burling LLP

- Assessing “national security” – how new rules broaden the scope of potentially sensitive transactions
- What constitutes “control” by a foreign investor and how to differentiate from “influence”
- How the Committee balances economic and national security interests
- How CFIUS assesses the foreign investor
- How new rules will affect review of previously completed transactions
- Extra-territorial implications: how CFIUS can apply to foreign transactions
- How CFIUS handles unilateral filings and un-notified transactions
- The role of Deputies, and how CFIUS reaches consensus

9:45 **Executing a Successful CFIUS Filing**

Heather Sears

Vice President – Trade Compliance
DRS Technologies, Inc.

Dale Turza

Cadwalader, Wickersham & Taft LLP

- Anticipating review – when to get CFIUS counsel involved on a deal
- Rigorous documentation demands under the new rules – what documents to prepare for filing
- Managing multiple and conflicting timetables to resolve CFIUS, NISPOM, ITAR, FOCI issues
- Advantages of a pre-notice consultation with CFIUS
- Mandatory disclosures of personal information regarding officers and directors – who must disclose and the potential for privacy concerns
- Maintaining deal confidentiality during the filing process
- When does a review commence and what to expect
- When does CFIUS initiate a 45 day investigation and what to expect
- Engaging with CFIUS effectively
- When should you withdraw and re-file?
- Public company disclosures – when to file and what to say

10:45 **Networking Coffee Break**

11:00 **Managing Your Transaction in the Public Arena**

Thomas Crocker

Alston & Bird LLP

Todd Malan

Vice President - International Public Policy
Goldman Sachs

Victoria Esser

Managing Director
Glover Park Group

James A. (Del) Renigar

Counsel – International Policy & Trade Regulation
General Electric

- Lessons from Dubai Ports World – understanding congressional oversight
- Speaking with Congress – gauging the political sensitivity and Congress' interest in your transaction
- Identifying the key members in Congress you need to discuss your deal with
- When to involve the acquirer's government
- The role of lobbyists and public affairs professionals in the CFIUS process
- Benefits to communicating the intention to file for CFIUS review with investors, customers and employees
- Developing a communication plan and the importance of message discipline

12:00 **Voluntary Filing: Evaluating the Need to File, or Not**

John B. Reynolds, III

Wiley Rein LLP

- Deciding what transactions should be filed with CFIUS, and when to file
- Which industries are most highly scrutinized for national security concerns and why: what if CFIUS requests a filing
- Weighing the benefits of a voluntary filing versus costs and burdens involved
- How voluntary filing can set the tone of the investigation and foster cooperation
- Potential risks and pitfalls of voluntarily filing
- How safe is “safe harbor” – circumstances that might re-open a CFIUS investigation
- Weighing the urgency of the deal versus the heightened level of documentation expected under the new rules

12:45 **Networking Luncheon for Attendees and Speakers**

2:00 **Mitigation Agreements: What to Do When National Security Issues are Identified**

Peter Lichtenbaum

Vice President – Regulatory Compliance & International Policy
BAE Systems, Inc.

George Kleinfeld

Clifford Chance LLP

- Preparing for negotiations when CFIUS identifies national security issues
- Undertakings requested in national security agreements – how strict will CFIUS requests be?
- What CFIUS will expect when security issues are addressed by the ITAR, EAR or NISPOM
- What to do when mitigation may derail the transaction's benefits
- Re-negotiating terms and pricing impacts
- Anticipating costs of complying with mitigation agreements
- Preparing to comply with mitigation terms – developing a compliance plan and the costs of not doing so
- Penalty clauses – the risks of violating the mitigation agreement
- What to do when CFIUS proposes divestiture as the only option

3:15 **Homeland Security and Critical Infrastructure:
What Deals Will Be Reviewed and How**

Stewart Baker

Former Assistant Secretary for Policy
US Department of Homeland Security

Joseph F. Dennin

McKenna Long & Aldridge LLP

- Defining “critical infrastructure” – reaching beyond physical assets
- The national security interest in critical infrastructure and how it affects CFIUS review
- How CFIUS critical infrastructure concerns compare to other critical infrastructure regulatory initiatives
- Pinpointing when to file transactions involving “non-critical” infrastructure
- How the Department of Homeland Security looks at transactions and how review differs with other member agencies within CFIUS
- Practical issues triggering Homeland Security concerns about transactions and how to mitigate against those concerns

4:00 **Refreshment Break**

4:15 **Sovereign Wealth Funds and the Special
Considerations They Raise**

David Marchick

Managing Director
The Carlyle Group

Scott Morris

Senior Professional Staff Member
House Financial Services Committee

Theodore Kassinger

O’Melveny & Myers LLP

- Assessing the level of political concern sovereign wealth fund investments raise after Dubai Ports World
- Sovereign wealth investments and whether they are necessarily foreign government acquisitions
- Structuring transactions to avoid “control”
- Minority investments and club deals – sovereign wealth funds as minority investors and determining whether to file
- Assessing the country of origin’s track record on national security issues in determining the risk of CFIUS review
- CFIUS and protectionism – the risk of sovereign wealth funds being incentivized to invest elsewhere

5:15 **Conference Ends**

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Wendy Tyler

Group Leader & Business Development Executive
American Conference Institute

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w.tyler@AmericanConference.com

Post-Conference Workshop
Friday, June 5, 2009

9:00 to 12:30

**The Fundamentals of Filing a Transaction with
CFIUS and Preparing for Mitigation**

Ivan Schlager

Skadden, Arps, Slate, Meagher & Flom LLP

Stephen Preston

WilmerHale LLP

Do you need an in-depth examination of how the CFIUS filing process works from beginning to end? Would you like to get a more practical look on what might be asked in a mitigation agreement? This post-conference workshop is designed as a case study to provide you with an overview of how to prepare for a CFIUS filing, manage the process and understand key national security concerns that would require mitigation. Negotiating the mitigation agreement and understanding the costs and consequences to the original deal structure will be discussed.

During this interactive and practical working session, Ivan Schlager and Stephen Preston will share their experience and expertise to discuss core issues dealt with by leading CFIUS practitioners, including:

- Making the decision to voluntarily file or not with CFIUS
- What to expect from Congress when discussing a deal
- Approaching CFIUS for a pre-notice consultation
- Best practices in preparing documentation for a filing
- Withdrawing and re-filing during a 30 day review
- Addressing national security concerns to your deal:
 - Negotiating the mitigation agreement
 - Anticipating costs to mitigation
 - Renegotiating terms of the original deal
- Developing a plan to comply with the mitigation agreement

This workshop will be invaluable to maximize your benefit from the advanced discussions of the main conference and to put the information in a practical context.



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CFIUS

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Exclusive Interactive Workshop

Friday June 5, 2009

The Fundamentals of Filing
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and Preparing for Mitigation

Registration Fee

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