

## New Law Governing Foreign Direct Investment in the United States Brings Significant Changes to CFIUS Review

***New law expands CFIUS' jurisdiction and brings important procedural changes to foreign direct investment review.***

### Key Points:

- The new legislation extends CFIUS' jurisdiction to cover non-controlling investments in the areas of critical infrastructure, critical technology, and sensitive personal information.
- The new law alters CFIUS review procedures, authorizes filing fees, and provides for greater resources for CFIUS that may allow for both increased flexibility regarding mitigation and for more active monitoring of transactions not filed.
- The new law requires certain foreign investments in the United States to be submitted to CFIUS for review.
- Forthcoming regulations will determine crucial details of the new law's implementation, including the regulatory specification of statutory terms such as "emerging and foundational technologies," relevant to the jurisdictional boundaries of the new law.

New legislation to reform review of foreign direct investment in the United States — the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) — has just been signed into law. FIRRMA will bring significant changes to the framework according to which the Committee on Foreign Investment in the United States (CFIUS, or the Committee) conducts foreign investment review. This *Client Alert* briefly recaps the events leading up to FIRRMA's passage and highlights several of the law's most important provisions.

### FIRRMA's Development

An appreciation of the events leading up to FIRRMA's final form is necessary to understand the scope, significance, and limits of the law.

### FIRRMA's Origins

Last November saw the simultaneous introduction of identical bills in the House and Senate, both with bipartisan sponsorship, called the Foreign Investment Risk Review Modernization Act of 2017 (FIRRMA '17). The legislation was intended to reform foreign direct investment review, and was motivated in part by a desire to address particular concerns relating to Chinese inbound investment (though not all Chinese investment<sup>1</sup>). FIRRMA '17 would have overhauled both the substantive scope of foreign direct investment

review and the processes by which CFIUS conducts such review. Among other reforms, FIRRMA '17 would have made a number of transactions beyond equity acquisitions subject to the Committee's jurisdiction; provided for variable scrutiny of transactions, according to the country of the acquirer; expanded considerably the factors CFIUS considers in making its national security determinations; and introduced a number of significant changes to how CFIUS operates procedurally.<sup>2</sup> Two things then happened to shape the final form of the new law.

### **Business Concerns**

First, the House and Senate held multiple hearings on FIRRMA '17. Although many witnesses provided substantial support for the law, certain business interests objected that FIRRMA '17 would discourage foreign investment and put US firms at a competitive disadvantage compared to their foreign competitors (especially US businesses developing new technologies, for which foreign investment is often crucial). With respect to certain provisions in FIRRMA '17 that would have limited the extent to which US firms could license intellectual property to foreign partners, critics argued that issues concerning technology exports were best addressed by changes to US export controls regulations, rather than by the rules governing review of inbound foreign investments.<sup>3</sup> Following markups of FIRRMA '17 in both chambers in May, the House and Senate committees unanimously reported bills that reflected these concerns. Their respective changes resulted in substantive differences between the chambers' bills.

### **Foreign Investment Review as Trade Policy?**

The Trump Administration then joined the policymaking arena for reforming foreign direct investment review. Although the Administration had expressed consistent support for FIRRMA '17 since the law's introduction, it appeared for a time this summer that the Administration was not going to wait for *legislative* reform.

In late March, the White House issued a Memorandum instructing the Treasury Secretary to "propose executive branch action" for new regulations governing both foreign investments and exports in order to respond to investments "directed or facilitated by China" in US "industries or technologies deemed important to the US."<sup>4</sup> That Memorandum, part of the Administration's then-burgeoning trade war, directed the Treasury Secretary to propose such new executive action by May 21.

While the Administration did not propose new executive actions in May, the White House issued a statement in late May stating the Administration would develop and implement "specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology" from US businesses.<sup>5</sup> That statement indicated that new investment restrictions and export controls would be announced by June 30 and "implemented shortly thereafter." Commentators at the time suggested that the Administration's focus on executive action could preempt or otherwise jeopardize legislative reform. Ultimately, the White House pulled back from its statements that it would reform foreign investment review and export controls unilaterally, explaining the Administration would instead allow legislative reform to run its course.<sup>6</sup>

### **The Final FIRRMA**

Legislative reform has now run its course. On June 18, the Senate passed its version of FIRRMA, attached to the must-pass National Defense Authorization Act (NDAA), reflecting Senate sponsors' desire to move their bill. On June 26, the House passed its FIRRMA as a standalone bill, requiring differences to be resolved in conference. Although Senate conferees had been instructed by their chamber to stick to the Senate bill, weeks of negotiations produced a compromise conference bill. According to reports, the Administration participated actively in those negotiations, advocating for (among other things) the removal

of a Senate provision re-imposing sanctions that the Administration had lifted on a Chinese telecommunications company. On July 26, shortly after the conference compromise had been reached, the House passed the conference bill. The Senate followed on August 1. The final bill constitutes a somewhat less sweeping though unquestionably important reform of foreign investment review, containing versions of several elements of FIRRMA '17 but with greater emphasis on the economic importance of foreign investment and on extending CFIUS' reach to new areas posing substantial threats to national security.<sup>7</sup>

## The Foreign Investment Risk Review Modernization Act of 2018

While much can be said about FIRRMA, this *Client Alert* focuses on addressing the law's most significant provisions. It highlights those that re-affirm CFIUS' national security orientation; provisions concerning critical infrastructure, critical technology, and sensitive personal information — central concepts employed throughout FIRRMA that delineate CFIUS' expanded jurisdiction; sections of the new law bringing important procedural changes to foreign direct investment review, including a new requirement mandating CFIUS filings under certain circumstances; and finally, crucial provisions concerning FIRRMA's implementation.

Latham will complement this general overview with forthcoming analyses of discrete topics.

### FIRRMA's Balanced Modernization

While FIRRMA undoubtedly constitutes genuine reform, it achieves that result by balancing two policy imperatives — the protection of national security, on the one hand, and continued attraction of foreign investment into the US, on the other. Notably, this latter imperative pervades FIRRMA, beginning with a number of congressional findings and unambiguous expressions of the sense of Congress highlighting the importance of (and quantifying the economic benefits of) foreign investment in the US. For example, FIRRMA includes an endorsement of President Eisenhower's warning against the dangers to American wellbeing when free trade is jeopardized in "the haste to meet emergencies."

Thus, FIRRMA pointedly directs, for example, that "the Committee on Foreign Investment in the United States should continue to review transactions for the purpose of protecting national security and should not consider issues of national interest absent a national security nexus." Reflecting concerns about earlier versions of the legislation and commentary arguing that CFIUS review should not become a mechanism to advance trade or industrial policy, FIRRMA makes clear that CFIUS' mission should remain squarely in the realm of national security, and that foreign direct investment review should not become a lever for pursuing other policy goals.

FIRRMA does so by more than exhortation. For example, in an important section governing analyses by the Director of National Intelligence to assist CFIUS in assessing the national security risks posed by a covered transaction, FIRRMA directs that CFIUS "shall ensure" that analyses by the Director of National Intelligence are "independent [and] objective," and that they fully reflect all "analytic tradecraft standards of the intelligence community." FIRRMA also requires that any decision by the Committee to suspend a covered transaction, to refer a transaction to the President to be blocked, or to require mitigation "shall" be grounded on "a risk-based analysis ... which shall include an assessment of the threat, vulnerability, and consequences to national security." In short, FIRRMA preserves the methodological integrity of the Committee's assessment of national security risks.

FIRRMA's central premise is that the *nature* of threats to national security has changed in the decade-plus since the last amendment to the Defense Production Act of 1950 governing CFIUS review. (Thus the "Modernization" in FIRRMA.) This premise is reflected in Congress' statement that "the national security

landscape has shifted in recent years, and so has the nature of the investments that pose the greatest potential risks to national security.” And the nature of foreign investments posing the greatest potential risks to national security include, in particular, those that implicate critical infrastructure, critical technology, personally identifiable information (PII) of US citizens, and cyber vulnerabilities. As explained below, these areas are central to FIRRMA’s framework.

## CFIUS Jurisdiction Under FIRRMA

Much of FIRRMA’s most consequential reform is contained in its definitions of central terms, especially its definitions of “transactions” subject to CFIUS’ review. Those definitions extend CFIUS’ jurisdiction beyond mergers, acquisitions, and takeovers that could result in control by a foreign person over a US business, to include four other categories of transactions. These categories include:

- ***Sensitive Real Estate.*** One such category is the “purchase or lease” of real estate in or near an airport or maritime port, or in close proximity to a US military installation or other facility sensitive for national security reasons. If a purchase or lease of such real estate could provide a foreign person with the ability to collect intelligence or subject such a property to foreign surveillance, that transaction will be within CFIUS’ jurisdiction. It is left to CFIUS to define further through regulations exactly what “close proximity” means and to exclude through regulations investments in single-housing units or in urbanized areas.
- ***Evasive Transactions.*** FIRRMA also contains a provision, reflecting current CFIUS practices though with greater emphasis, extending the Committee’s reach to any transaction, transfer, agreement, or arrangement “the structure of which is designed or intended to evade or circumvent” CFIUS review. While CFIUS already interprets (by regulation) its jurisdiction to include transactions engineered to avoid its review, FIRRMA confirms jurisdiction, by statute, over evasive transactions (very broadly defined).
- ***“Any Other Investment” Implicating Critical Infrastructure, Critical Technology, or Sensitive Personal Data.*** Another category of transaction subject to CFIUS review under FIRRMA includes “[a]ny other investment” that pertains to “critical infrastructure” or to “critical technologies” or that maintains or collects “sensitive personal data of United States citizens.” Such “other investments,” even though non-controlling, are subject to review if they afford the foreign person “access to any material non-public technical information in the possession of the United States business”; “membership or observer rights on the board of directors ... or the right to nominate an individual” to such a position”; or “any involvement, other than through voting of shares, in substantive decisionmaking” of the business in connection with critical infrastructure, critical technology, or sensitive personal data.
- ***Incremental Foreign Investments.*** FIRRMA also includes within the definition of a covered transaction any investment that changes “the rights that a foreign person has with respect to a United States business in which the foreign person has an investment” if that change could result in “foreign control” of that business, or would constitute an investment in critical infrastructure, critical technology, or a business involving sensitive personal data of US citizens.

The above category of *any* “other investments” in critical infrastructure, critical technology, and involving sensitive personal data at first glance appears expansive, and to some extent it is. FIRRMA provides that “US businesses relevant to critical infrastructure” include expansively those that own, operate, manufacture, supply, or service critical infrastructure. Similarly, with respect to critical technology, any investment in a US business that produces, designs, tests, manufactures, fabricates, or develops critical

technologies is potentially subject to CFIUS review. An investment in a US company that maintains sensitive personal data, even if that company did not collect such data in the first place, could be subject to Committee review as well. Thus CFIUS' reach beyond acquisitive transactions will extend to a variety of businesses indeed.

At the same time, however, FIRRMA circumscribes the scope of this “any-other-investments” category with important limiting definitions for relevant terms, reflecting the new law’s national security focus. That is, FIRRMA defines the term “critical infrastructure” to mean “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of [them] would have a debilitating impact on national security,” not a low bar. “Critical technology” is defined to include a number of specific technologies relating, for instance, to munitions, nuclear equipment, certain toxins, and certain “[e]merging and foundational technologies” to be further defined through an interagency process. “Critical technology” also includes any technology on the Commerce Control List and controlled “pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology,” or “for reasons relating to regional stability or surreptitious listening.” An investment in a US business that maintains or collects sensitive personal data is defined to be a covered transaction only if that data “may be exploited in a manner that threatens national security.”

Thus FIRRMA at once expands the jurisdiction of CFIUS to encompass investments that are not controlling, but then cabins that expansion to focus on national security concerns more or less as conventionally understood. Not all infrastructure is “critical” as FIRRMA expressly defines it, and neither is all technology. Personal data will no doubt continue to be important for CFIUS, but here too FIRRMA extends CFIUS’ jurisdiction not to all investments in US businesses maintaining any personal data, but rather to such data the exploitation of which “threatens national security.”

Notably, FIRRMA’s expansion of “covered transaction” to include “any other investment” in US businesses implicating critical infrastructure, critical technology, and sensitive personal data extends not just to direct but also to “indirect” investments. That is, CFIUS’ jurisdiction will extend to an indirect investment that gives a foreign person not “control” of a US business but instead access to “material nonpublic technical information,” membership or “observer rights” on a board, or a substantive decision-making role in a business connected to critical infrastructure, critical technology, or sensitive personal data.

But then FIRRMA also contains a carve-out for indirect investments made by a foreign person into an “investment fund.” In particular, an indirect investment does not constitute “any other investment” subject to CFIUS jurisdiction if the investment fund is managed exclusively by a non-foreign general partner; any advisory board membership associated with the investment does not come with an ability to control the fund’s investments or the activities of any portfolio company; and the indirect investor does not, as a result of advisory board membership, gain access to “material nonpublic technical information” — defined as “knowledge, know-how, or understanding” concerning, here once again, critical infrastructure or critical technology. Where these conditions are all satisfied, the fund investment is excluded from “any other investment” subject to CFIUS jurisdiction. In short, FIRRMA’s extension of CFIUS’ jurisdiction over minority investments reaches somewhat less far with respect to fund investments.

## **FIRRMA’s Process Reforms**

While many of FIRRMA’s pages are dedicated to delineating the types of transactions subject to CFIUS’ jurisdiction, FIRRMA also will bring significant changes to how CFIUS conducts its work.

### **Elective Declarations: Fast Track**

Importantly, FIRRMA will allow “declarations” in place of full written notices for parties who wish to submit them. These declarations will be shorter than written notices (*i.e.*, no more than five pages), and FIRRMA instructs that CFIUS should provide responses to declarations within 30 days. In response to such a declaration, FIRRMA provides that CFIUS may notify the parties they should file a complete notice, initiate a full review on its own, or clear the transaction. This elective declaration process thus could constitute a CFIUS fast track of sorts for parties seeking to secure a confirmatory determination that CFIUS will clear the transaction.

### **Mandatory Declarations: Foreign Government Influence**

For other parties, FIRRMA requires the same declarations. In particular, covered transactions that involve an investment of a “substantial interest” by a foreign person subject to significant “influence” by a foreign government must provide CFIUS with a declaration apprising the Committee of that transaction. FIRRMA further provides, however, that “less than a 10 percent voting interest” will not be considered a “substantial interest” in a US business to trigger a required declaration. If it is triggered, this new declaration process will provide more, not less, procedure for transactions between private parties involving the potential background influence of a foreign government, given that the Committee will likely respond to some mandatory declarations with a request for a full notice. Parties subject to this mandatory declaration requirement may at their election file a full notice instead.

Either way, for such parties, filing with the Committee is no longer voluntary, which marks a significant change over current procedure. Here too, FIRRMA provides an exception for investment-fund investments by parties that may be influenced by foreign governments. This exception parallels that which exempts fund investments from the category of “any other transactions” noted above — *i.e.*, that the fund is managed exclusively by a non-foreign managing partner or the equivalent, and any advisory board membership does not come with the opportunity to influence the fund’s investments or to provide the advisory board member with material nonpublic technical information.

### **Filing Fees and CFIUS Funding**

FIRRMA also authorizes filing fees, to be set by the Committee but not to exceed the lesser of 1% of the value of the transaction or US\$300,000 (filing fees will not apply to “declarations,” as opposed to notices). FIRRMA will also establish a dedicated fund for the Committee and its component agencies, which (like new filing fees) will be used to further CFIUS’ activities. These provisions respond to frequent commentary that CFIUS lacks sufficient economic and other resources given its expanded workload in recent years, and will allow for more Committee staff and other resources and, thus, the possibility of more opportunities for mitigation.

### **Timeline for Review**

FIRRMA also extends slightly the timeline for Committee review of full notices (in contrast to the declarations, which must be resolved in 30 days). The statutory clock for initial CFIUS reviews will run for 45 days instead of 30. And the time period for CFIUS investigations, which will continue to be 45 days, can be extended “in extraordinary circumstances” an extra 15 days. Thus, the current timeline for Committee reviews once a notice is accepted by the Committee will shift from 75 days to 90 or, in extraordinary circumstances, to 105 days. FIRRMA also requires the Committee to provide comments on a notice it receives, or else to accept the notice to commence the investigation period, within 10 days from the time a notice or draft notice is submitted. Thus, transacting parties will be more likely to receive quick reactions from CFIUS upon submitting a notice, even while the Committee will have a slightly longer period to review accepted notices.

## Non-Notified Transactions

One of FIRRMA's notable procedural changes concerns transactions for which the parties have not engaged with CFIUS at all. That is, FIRRMA requires CFIUS itself to establish its own internal process for identifying transactions for which the parties file neither a notice nor a declaration. To the extent that information about such transactions is "reasonably available," FIRRMA requires the Committee to identify them. This provision, especially taken together with those providing more economic and other resources to the Committee, suggests that CFIUS may become more active in monitoring, and perhaps requesting notices or declarations for, jurisdictional transactions for parties who choose not to file.

## FIRRMA's Implementation — What Is Next?

### CFIUS Regulations

While FIRRMA contains a number of provisions that will alter foreign investment review, the new law may be consequential more for the number of important details it delegates to CFIUS to be developed through implementing regulations. Indeed, the significance of the Committee's forthcoming regulations may be difficult to overstate; all of FIRRMA's central provisions identified above will be subject to further specification by Committee regulations.

FIRRMA directs the Committee to develop regulations concerning, for example, the precise scope of "other transactions" short of controlling investments triggering CFIUS jurisdiction; the boundaries of sensitive real estate transactions subject to CFIUS review; the full meaning of "material nonpublic technical information" governing the relevance of advisory committee membership in connection with a fund investment; and the specification of "substantial interest" in a US firm for the purpose of transactions subject to foreign government influence. Similarly, FIRRMA delegates to the Committee the task of defining, through implementing regulations, the core concepts of "threat," "vulnerability," and "consequences to national security." Forthcoming regulations will ultimately shape FIRRMA's implementation.

### Effective Date

Many of FIRRMA's provisions are not effective immediately, as they require CFIUS to issue implementing regulations first. These include, most importantly, FIRRMA's definitional sections concerning what will constitute a "covered transaction." FIRRMA's provisions regarding declarations likewise are not effective immediately; nor are its provisions requiring the Committee to respond to or accept a notice within 10 days. Instead, FIRRMA provides that such provisions will become effective 30 days after all necessary regulations are in place, with a maximum time for CFIUS to complete those regulations set at 18 months from enactment of the law. On the other hand, a number of FIRRMA's provisions, particularly those that are administrable without regulation, will become effective immediately upon FIRRMA's passage. These include, for example, the new timeline for Committee reviews (*i.e.*, 45-days as opposed to 30 days) and investigations (*i.e.*, an additional 15 days in "extraordinary circumstances" beyond the 45-days investigation), the requirement that CFIUS establish a process for identifying non-noticed transactions, and enhanced funding for CFIUS (though new filing fees will require Committee regulation to determine the amount of such fees).

### Expanded Reports to Congress

FIRRMA also demonstrates Congress' clear intent to remain active with respect to foreign investment review. For example, FIRRMA requires much more extensive reporting to Congress by the Committee, concerning the parties to transactions evaluated by the Committee, the nature of their businesses, and the outcomes of Committee reviews and investigations. FIRRMA also requires continued analyses and

reports to Congress concerning the adequacy of CFIUS' economic and institutional resources, as well as the continuing need for additional Committee resources. And notably, reflecting some early sponsors' focus on China, FIRRMA requires CFIUS to provide very detailed reports to Congress every other year concerning Chinese investments. These reports will need to include an analysis of all Chinese investments by size, business categories, sector, and government investments, as well as "patterns in the investments."

### Information Sharing

FIRRMA gives CFIUS the authority to share information and national security analyses with a domestic governmental entity or foreign governmental entity of a US ally or partner to the extent necessary "for national security purposes and subject to appropriate confidentiality and classification requirements," highlighting a trend in recent transactions toward international consultation regarding perceived threats to address common concerns. FIRRMA also instructs CFIUS to set up a formal process for the "exchange of information" between the United States and its allies and partners.

### FIRRMA's Export Controls Nexus

Finally, and not least of all, the Title of the NDAA to which FIRRMA is attached also contains a substantial Subtitle B, "Export Control Reform." This sibling subtitle reforming export controls underscores the connection between foreign investment review and export controls — a connection reflected, as noted above, both in provisions of FIRRMA '17 that prompted objection and in the Trump Administration's repeated indications that it would take executive action to reform both investment reviews and export controls at once. And indeed, FIRRMA itself takes as a central assumption that the forms of foreign investment that most threaten US national security are investments facilitating the movement of sensitive US technologies. That is, whereas in an earlier era CFIUS focused especially on controlling investments in hard physical assets that could jeopardize, for example, US energy supplies, FIRRMA contemplates an era of sensitive technologies that are entirely portable.

The NDAA's export controls reform is a substantial topic in its own right, and warrants separate treatment. But one link between FIRRMA's reforms and those effectuated by its sibling subtitle deserves emphasis here. As explained above, FIRRMA defines "critical technology," one category of non-controlling investments over which CFIUS will have jurisdiction, to include defense articles, items controlled for nonproliferation, nuclear equipment, toxins, items controlled for regional stability, and so on. That is, critical technology includes technology raising national security concerns as conventionally understood, but also "[e]merging and foundational technologies."

But emerging and foundational technologies are not specified by FIRRMA at all. This subcategory of "critical technology" will be determined, instead, pursuant to provisions of the new export control reform of Subtitle B, which FIRRMA incorporates by cross reference. Those provisions require the establishment of an interagency process for identifying "emerging and foundational technologies." Specifically, Subtitle B directs the President to establish, in coordination with the Secretaries of Commerce, Defense, Energy, and State, and other agency heads "as appropriate," and to lead "a regular, ongoing interagency process to identify emerging and foundational technologies" that are not "critical technologies" as listed in FIRRMA and yet are "essential" to national security.

This is noteworthy. A new interagency group will define the outer parameters of CFIUS' jurisdiction, in particular its jurisdiction over non-controlling investments in US business in the area of emerging and foundational technologies. And in contrast to defense articles and other controlled items, emergent technologies might very well consist of a much broader set of technologies indeed, including artificial intelligence, advanced semiconductors, advanced robotics, and so on. Although Subtitle B states that



such technologies must be “essential” to national security, considerable leeway likely remains in determining which technologies so qualify. That said, the relevant provisions prescribe a process for identifying emergent and foundational technologies, which requires consideration of publicly available information, classified sources, and information provided by various government advisory committees, as well as consideration of the state of “development of emerging and foundational technologies in foreign countries” and the effects that controlling them would have on their development in the US. In short, the identification of emerging and foundational technologies will be left to the discretion of the interagency group, but that discretion will be limited.

## Summary

FIRRMA will bring significant changes to foreign investment review. The final form of the new law aims to modernize foreign investment review, not to change the fundamental purpose of such review beyond national security. FIRRMA reaffirms CFIUS’ jurisdiction over controlling acquisitions, and notably extends the Committee’s jurisdiction over any other investments in US businesses relevant to critical infrastructure, critical technology, and sensitive personal information if those also implicate national security. FIRRMA moves the boundary of CFIUS’ jurisdiction to non-controlling investments also in emerging and foundational technologies, again assuming a national security link, but then leaves the identification of those technologies to an interagency process that will be part of export controls reform.

FIRRMA will also change the process of CFIUS review in several important ways. CFIUS review will likely take less time for some parties, who can use an abbreviated declaration process, even while the process will likely become mandatory and potentially more time-consuming for others. FIRRMA also authorizes filing fees, and provides additional dedicated funds for the Committee, resources which may benefit transacting parties engaged with CFIUS.

Many of the important particulars of FIRRMA’s implementation are not determined by its text, however. Rather, a forthcoming rulemaking by the Committee will determine how the new law will be implemented. Thus, many (but not all) of FIRRMA’s provisions most relevant to private parties, as opposed to those concerning the operations of the Committee itself, will not become effective for a year or longer, until CFIUS has defined central terms and otherwise developed regulations that FIRRMA assigns to it.

Latham will continue to monitor related developments and will provide further updates.

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## Endnotes

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- <sup>1</sup> On the extent to which reformers have focused on China and Chinese investment, see Latham & Watkins *Client Alert*, [CFIUS and Chinese Investments in the United States—A Closed Door?](#) (June 4, 2018), *Chinese version available at* <http://www.ftchinese.com/story/001077872?archive>.
- <sup>2</sup> For more background, see Latham & Watkins *Client Alert*, [CFIUS Reconstructed: The Foreign Investment Risk Review Modernization Act of 2017](#) (Dec. 21, 2017).
- <sup>3</sup> On reactions to FIRRMA '17 and responsive statements by its sponsors, see Latham & Watkins *Client Alert*, [Status of CFIUS Reform Legislation](#) (April 25, 2018).
- <sup>4</sup> The White House, Presidential Memorandum on the Actions by the United States Related to the Section 301 Investigation, (Mar. 22, 2018).
- <sup>5</sup> The White House, Statement on Steps to Protect Domestic Technology and Intellectual Property from China's Discriminatory and Burdensome Trade Practices (May 29, 2018), *available at* <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.
- <sup>6</sup> The White House, Statement from the President Regarding Investment Restrictions (June 27, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-investment-restrictions/>.
- <sup>7</sup> National Defense Authorization Act, Title XVII, Review of Foreign Investment and Export Controls, Subtitle A, "Committee on Foreign Investment in the United States," § 1701, "Short Title: Foreign Investment Risk Review Modernization Act of 2018."