

# CFIUS Mandatory Filings and Civil Penalties Take Effect

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November 9, 2018

On October 10, 2018, the U.S. Department of Treasury published the Pilot Program regulations as a first step in implementing the recently enacted Foreign Investment Risk Review Modernization Act (FIRRMA). Whereas the Committee on Foreign Investment in the United States (CFIUS) was previously a voluntary process with authority to review only transactions that could result in foreign control of a U.S. business, the new Pilot Program requires reviews of even certain non-controlling critical technology investments.

Under the Pilot Program, any amount of foreign investment in a U.S. business involving critical technology in a pre-identified critical technology industry is subject to CFIUS review, if the investment affords the foreign investor access to specified information or governance rights. Failure to file either a new short-form "Declaration" or a full CFIUS notice 45 days before closure of a deal could result in civil monetary penalties up to the value of the transaction.

These Pilot Program regulations do not apply to transactions for which the completion date is prior to the Pilot Program effective date (*i.e.*, November 10, 2018) or transactions in which one of the following has occurred prior to October 11, 2018:

- The parties have executed a binding written agreement or other document establishing the material terms of the transaction;
- A party has made a public offer to shareholders to buy shares of a Pilot Program U.S. business; or

## Authors

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Nova J. Daly  
Senior Public Policy Advisor  
202.719.3282  
ndaly@wiley.law

## Practice Areas

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Committee on Foreign Investment in the United States (CFIUS)  
International Trade  
National Security

- A shareholder has solicited proxies in connection with an election of the board of directors of a Pilot Program U.S. business or has requested the conversion of convertible voting securities.

Our summary of the Pilot Program regulations is available [here](#).

Wiley Rein has an unparalleled CFIUS and national security practice that draws on senior government-level experience with CFIUS member agencies and numerous representations of domestic and international companies in complex transactions involving nearly every industry sector subject to CFIUS review. To receive a copy of the slide deck and playback of the Wiley Rein webinar, "Significant Expansion of CFIUS – Mandatory Reporting and Civil Penalties," or should you have any questions regarding the immediate impact of this new CFIUS Pilot Program, please do not hesitate to contact one of the members of our CFIUS and national security practice listed on this alert.