

## Q&A with Danish Hamid of DLA Piper on Recent Committee on Foreign Investment in the United States (CFIUS) Developments

Article By:

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**Danish (DAA-n'sh) Hamid** is a partner with DLA Piper's Washington DC office. For the past 20 years, he has led an international practice that focuses on the intersection of corporate, compliance, and investigations matters. More recently, Hamid finds himself spending a significant amount of his time advising US and non-US clients on the national security implications of their foreign investment deals and whether those transactions could raise concerns with the **Committee on Foreign Investment in the United States (CFIUS)**. CFIUS is an interagency committee chaired by US Treasury Secretary and is responsible for screening foreign investments in US businesses and certain real estate to determine whether such transactions can impair US national security. If CFIUS identifies material concerns, it can advise parties to restructure or withdraw from their deal or recommend that the US President block or unwind the transaction. Hamid has conducted numerous CFIUS due diligence reviews, advised clients on CFIUS risk-mitigation strategies, and has successfully represented parties with filings before CFIUS. He regularly speaks and writes on CFIUS matters with the goal of clarifying the regulatory complexities in this area for a non-lawyer audience. Hamid also brings a unique perspective with respect to CFIUS concerns given that he has led M&A deals in the past as a corporate lawyer and has now transitioned towards a more regulatory-focused practice. With this in mind, the NLR asked Hamid to provide the following insights regarding recent CFIUS developments:

**CFIUS has been empowered by the Department of the Treasury with more staff and funding to monitor transactions not voluntarily reported. What does this mean for companies who are involved or accepting foreign investment?**

The fact that CFIUS is devoting greater resources and budget towards monitoring non-notified transactions means that CFIUS may ask parties involved in those deals to explain why they did not submit a filing to CFIUS. If that explanation is not compelling, CFIUS may direct them to submit a filing and possibly apply a more rigorous review standard with respect to that filing. CFIUS may also impose a civil penalty on transaction parties (in some cases up to the value of the investment itself) if they did not file mandatory filing on their own initiative prior to closing if one was otherwise required. Relevant regulations permit CFIUS to impose that penalty on *any* transaction party that violates the mandatory filing requirement. Given these circumstances, transaction parties conduct CFIUS due

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diligence reviews to determine whether their deals will trigger a mandatory CFIUS filing or merit a voluntary submission to CFIUS.

**CFIUS had an increased jurisdiction scope under Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) in January of 2020. What impact has this had on the landscape in the intervening months?**

CFIUS's expanded jurisdiction under FIRRMA has caused more transaction parties to consider whether their deals trigger a filing. We have also observed an increase in the number of filings with CFIUS.

**CFIUS has set up a webpage to accept tips and other information from the public on transactions not reported to the agency--how does this change the landscape? Is it important for companies to be aware of this formalizing of a previously informal process?**

The fact that CFIUS is now *actively* seeking public tips on non-notified transactions is a relevant factor that transaction parties will need to evaluate when deciding whether to submit a CFIUS filing. There is a risk that CFIUS may receive public tips from a variety of sources such as disgruntled employees of US target companies or competitors to foreign investors in or acquirers of US businesses.

**On Friday, Aug. 14, 2020, the president signed an executive order (EO) demanding the unwinding of a Chinese company's acquisition of what would become TikTok--in your opinion, is this a sign of things to come? What does this indicate about the current landscape of CFIUS and transactions with companies with access to American's personal data?**

It may be early to conclude if this is a sign of things to come. However, it has certainly captured the attention of CFIUS practitioners. Of course, separate from the EO, FIRRMA and recent regulations already made it fairly clear that CFIUS is interested in foreign investments in certain US companies that maintain or access sensitive data regarding US citizens.

**Do you anticipate any major changes with CFIUS in light of the 2020 election?**

Yes, we anticipate further regulatory developments impacting CFIUS. Just recently, the Treasury Department issued new regulations that went into effect on October 15<sup>th</sup> and have the potential of expanding the circumstances that trigger mandatory CFIUS filings. Those new rules seek to better align the CFIUS regime with US export controls by requiring parties to submit a mandatory CFIUS filing with respect to certain foreign investments in or acquisitions of US businesses involved with critical technologies for which a US regulatory authorization would otherwise be required. In addition, US export controls are evolving, which will invariably impact the CFIUS regime.

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