

The Committee on Foreign Investment in the United States (CFIUS)



Our CFIUS Team Offers Unique Legal and Policy Capabilities

Transaction review by CFIUS is like no other US regulatory regime or practice, presenting complex legal, political and communications challenges across various US Government agencies complicated by federal, state and local political pressures.

Sophisticated investors and sellers appreciate the deal-critical nature of CFIUS and seek to anticipate the potential impact on investment returns and the M&A timetable, often viewing it as the greatest transaction risk and the long-pole to getting the deal done. As such, perceived CFIUS risks can prejudice both buyers and sellers, raising costs for certain buyers or limiting the market options available to sellers with sensitive US businesses.

The CFIUS Team at Squire Patton Boggs stands apart in the legal market for its ability to offer a comprehensive legal, policy and communications solution, combining market-leading CFIUS experience with unique best-in-class policy capabilities from partners that have held senior government positions from both political parties working in national security policy areas in the White House, the Office of the US Trade Representative and the Departments of Defense, State, Commerce, Energy, Treasury, Transportation and Homeland Security. We offer clients a comprehensive integrated solution to addressing complex CFIUS matters.

Obtaining CFIUS Clearance in an Increasingly Complex and Politicized Environment

Several factors contribute to the complexity and challenges of the CFIUS practice and indicate the need for integrated legal and policy team.

- CFIUS is an interagency committee chaired by the US Department of Treasury, but national security determinations are reached with the input of other Committee members, including from the Departments of Defense, State, Commerce, Energy, Transportation and Homeland Security.
- CFIUS has the authority to review any transaction resulting in or changing foreign control of a US business, but importantly has authority to review certain non-controlling, direct or indirect, investments in US business and certain real estate transactions by foreign controlled entities.
- Filing with CFIUS is mandatory for certain transactions, and parties unlawfully closing without a filing are subject to penalties, in addition to other actions that CFIUS might take to safeguard US national security interests.
- CFIUS clearance is critical to buyers and investors that want a safe harbor for their transaction. Without CFIUS clearance for a transaction, CFIUS authority over a covered transaction remains into the future, when the facts may be materially less favorable to investing parties (e.g., after substantial growth in the US business it may be more important to critical US sectors). Parties choose to voluntarily file in order to mitigate the risk that CFIUS acts before or after closing, either jeopardizing the deal's closing or the value of the investment to the buyer post-closing.

Because of this latter risk, it is often viewed as an investor protection.

- CFIUS has both significantly increased its scrutiny of covered transactions and expanded its focus into non-traditional national security concerns: emerging technology, sensitive data, critical infrastructure, critical supply chains and economic security industries.
- CFIUS has exponentially ramped up resources to manage increased caseloads, mitigation compliance monitoring and investigations into covered transactions that were not voluntarily filed (i.e., the so-called “non-notified” cases).
- CFIUS has substantially increased both the number of requirements in mitigation agreements over the years and the enforcement penalties. In October 2022, CFIUS issued its first enforcement and penalty guidelines, which laid out how the Committee assesses violations of the law, regulations and mitigation agreements. In a recently announced enforcement action, T-Mobile received a US\$60 million penalty notice for failure to comply with CFIUS mitigation imposed as a condition to clearance of an earlier acquisition.
- The increased prevalence and scrutiny from CFIUS has placed higher burdens on companies to conduct robust CFIUS due diligence as part of their ordinary M&A activities, not just to identify mandatory filing obligations, but also to identify potential national security interests that CFIUS could have in a transaction that could suggest a risk of CFIUS taking action to review the transaction in the absence of a filing, which information would inform a voluntary filing decision.
- Under both recent Republican and Democratic Administrations, we have seen national and local political concerns seep into the CFIUS review process to an unprecedented degree. Such policy opposition could also be antagonized by disgruntled competitors, or customers seeking to frustrate transactions by anonymously reporting allegations to CFIUS.
- The heightened risks of CFIUS review, combined with deal opponents playing an increasingly sophisticated public affairs and policy chess game in Washington, DC, and at the state and local levels, means that some parties contemplating a transaction will need to develop a multifaceted strategy, preferably before announcing an acquisition.





Why Choose Us

Our CFIUS Team Offers a Market-leading Solution

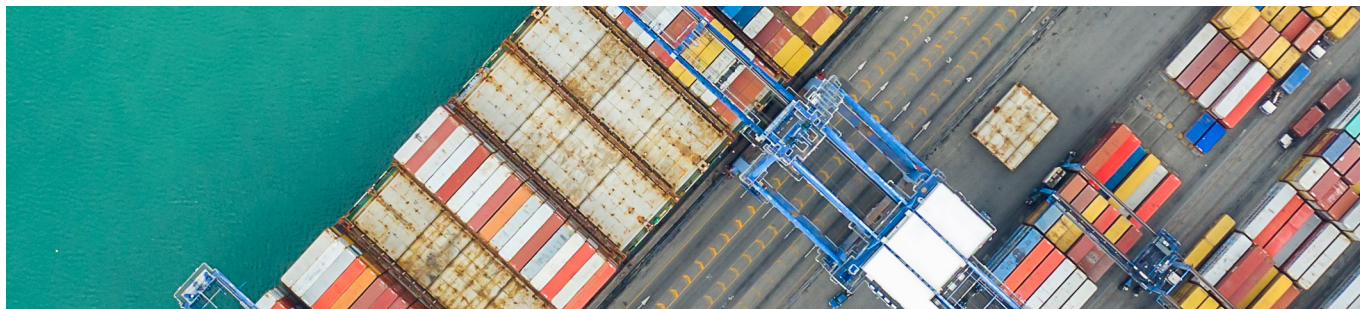
We are uniquely able to partner both with companies contemplating transactions involving CFIUS review, and with major law firms that wish to augment their CFIUS capabilities, as well as policy and public affairs acumen.

- Our CFIUS team includes partners who were members of the Committee – they know how it functions and looks at issues.
- Our partners include former senior government officials involved in advising on national security policy from both political parties and who held top positions in the White House, the Office of the US Trade Representative, and the Departments of Defense, State, Commerce, Energy, Treasury, Transportation and Homeland Security.
- We have decades of experience clearing and mitigating complex transactions from around the world, having filed the earliest notice in the 1990s, the inception of the notice filing and 100s of CFIUS filings since then.
- Our partners have also managed CFIUS deals in-house at publicly-traded companies, so they understand the challenges that the boards and C-suites confront on a daily basis during the CFIUS review from a variety of fronts and the need to close the deal in alignment with the deal terms.
- We have subject matter experts in all areas implicated by CFIUS reviews, including export controls, sanctions, government contracts, foreign ownership, control or influence (FOCI) mitigation and data privacy
- We partner with strategic communications firms that understand Washington and Wall Street, as well as local political dynamics, to coordinate a public affairs strategy and with experts across a range of fields – from cybersecurity to labor to intelligence – to proactively address known substantive issues, as well as quickly react to issues during the fast-paced Committee review or from external actors.
- With offices in Riyadh, Abu Dhabi, Beijing, Brussels, Dubai, Hong Kong, London, Milan, Paris, Tokyo and Singapore, among many others globally, we offer companies and partner law firms global reach for foreign investment review counseling, a deep knowledge of how CFIUS reviews are considered in Washington and a comprehensive understanding of local business and government concerns in deal-origination cities

We use our experience to identify any real or perceived effects of the transaction on US national security as early as possible and advise our clients on steps that can be taken to overcome these concerns or to structure the transaction differently, possibly even to avoid CFIUS's review authority. As necessary, we meet with potential supporters and opponents in Congress and the Executive Branch agencies to maximize political support and minimize opposition. At the same time, we work closely with CFIUS to address any concerns that may arise. Finally, we have substantial experience advising our clients on the negotiation of mitigation agreements when the national security considerations in the transaction are particularly sensitive.

CFIUS Partners

Shannon Reaves	George Grammas
Peter Alfano	Chris Griner
Bridget McGovern	



Case Summaries of Note

US automotive parts manufacturer's recent sale to a Chinese company as part of ensuring the viability of the US business operation – Represented a global Japanese automotive parts manufacturer in the sale to a Chinese investor of a business line with over US\$600 million in sales and production assets across the US, Europe and Asia, triggering foreign investment reviews in four jurisdictions, including a CFIUS review. The sale was critical for the continuity of the business in the US market, and involved team members from our Tokyo, Los Angeles, Washington, DC, Brussels and Frankfurt offices. In collaboration and coordination with our colleagues managing non-US foreign investment reviews, we represented the client before CFIUS and ultimately obtain clearance without mitigation.

European industrial group's acquisition of a critical equipment supplier in the face of CFIUS opposition and using mitigation to better ensure future CFIUS clearances – Represented an EU-based industrial group in its acquisition of a major US manufacturer of equipment for the semiconductor industry globally and within the US. The equipment was critical for semiconductor production, but also had proliferation applications. Based mostly on public information about the investor, CFIUS had concerns that the transaction presented an unacceptable risk of the equipment making its way to countries of concern, and was prepared to obtain a presidential order to block the transaction. At that point, the Squire Patton Boggs CFIUS Team negotiated a one-month temporary withdrawal from the CFIUS process, in agreement with CFIUS, to conduct an independent third-party export control compliance process audit of the EU investor's higher risk operations. Squire Patton Boggs export control specialists were on the ground in Germany and the UK to work with the third-party auditor on site. While the audit was pending, our Washington, DC policy specialists engaged with local stakeholders to manage political concerns and foster political support. When the audit was completed, our Washington, DC national security specialists refiled with CFIUS and included a mitigation plan to address compliance gaps and institute compliance enhancements to prevent diversion risks. The proposed mitigation plan provided a path forward to obtaining clearance, becoming part of a negotiated national security agreement (NSA) with CFIUS. The Squire Patton Boggs national security specialists then worked with the EU investor post-closing to implement the NSA and use the NSA as a channel to maintain engagement with relevant CFIUS stakeholders, resulting in the fostering of a trusted relationship with CFIUS that has facilitated multiple CFIUS clearances without mitigation in subsequent filings.

Japanese manufacturing company's acquisition of US advanced composite business supporting sensitive US defense projects – Represented a Japanese advanced manufacturing company in its approx. US\$1 billion acquisition of a large European-based advanced composites company with US operations having a facility security clearance (with the Defense Counterintelligence Security Agency (DCSA)) and registration under the International Traffic in Arms Regulations (ITAR). Representation involved colleagues in Brussels, Tokyo and Washington. With our team from Brussels, Tokyo and Washington, DC, we represented the client before numerous regulatory authorities. Our Washington, DC team led the representation before CFIUS, obtaining clearance and negotiating a practical national security agreement for the business. Our Washington, DC national security specialists also represented the client before the Directorate of Defense Trade Controls (DDTC) of the US State Department to ensure compliance with and continuity of business under the ITAR, as well as with DCSA to maintain the US business's facility security clearance with appropriate mitigations for FOCI.

Middle East sovereign wealth fund's acquisition of US aluminum business – In collaboration with our colleagues from offices in the UAE and New York, we represented a Middle East sovereign wealth fund in its acquisition of a specialized manufacturer in the automotive supply chain, bringing necessary capital to the US business and expanding the footprint of complimentary non-US portfolio companies into the US. We represented the client before CFIUS and negotiated acceptable information production requirements, given the information restrictions associated with the high-ranking government official involvement in the sovereign wealth fund investor, so that CFIUS would accept the filing and ultimately obtained CFIUS clearance.

Investment management organization's repeated US investments in sensitive US industries – We regularly represent our client, one of the largest investment groups in the world, before CFIUS and pre-screen their deals for CFIUS transactions. Their transactions span a wide variety of industries, including oil and gas processing, renewable energy, biotechnology, engineering and manufacturing services, mobile satellite services and telecom services, among others. The values of these deals range from hundred million to multi-billion-dollar transactions. These transactions typically involve consortium investments by multiple foreign parties and coordination among outside counsel teams for each. Other than CFIUS, related filings may include antitrust filings and submissions to the Federal Communications Commission (FCC), US Departments of State and Defense, depending upon the relevant target and its customers. At times these transactions have involved negotiating mitigation agreements among the consortium members and CFIUS, Department of Defense (DOD), and/or the FCC.

Multinational chemical company's acquisition of US defense contractor – We represented a major international chemical company, before CFIUS for their US\$6 billion acquisition of a US defense contractor. Unlike some firms, our representation continued after the sale due to our national security lifecycle support functions. We helped address the implementation of supplemental policies and procedures required by the National Industrial Security Program, including the Electronic Communications Plan, Technology Control Plan, Affiliated Operations Plan (AOP) and Facility Location Plan. We also negotiated a complex FOCI mitigation plan that enables the US company to maintain its security clearances, including a unique interim Commitment Letter and Special Security Agreement (SSA). We supported the client to develop intercompany agreements for affiliated operations and provide guidance on ongoing compliance matters.

Bitcoin mining company's negotiated divestiture, pursuant to Presidential Order, of sensitive property – Advising client, a bitcoin mining company, respecting the resolution of CFIUS concerns related to the acquisition of real estate near sensitive USG facilities. Our team was consulted after the transaction closed and CFIUS communicated its intent to recommend a presidential order, and client felt existing CFIUS counsel did not have the necessary experience. The presidential order gave our client strict instructions and hard deadlines for the removal of any equipment and improvements made to the property, as well as total divestment of the real estate. Working closely with the CFIUS mitigation team, we were able to successfully execute all aspects of the presidential order within the given time frames while negotiating various favorable interpretations of the order. Only a handful of CFIUS teams have experience with presidential orders and navigating the complex discussions that occur between the CFIUS monitoring agencies and parties.



Sampling of Representative Matters

We have provided CFIUS representation to businesses across multiple industries and regions, including private equity investors, sovereign wealth funds, state-owned entities and major US and foreign businesses.

A sampling of recent representative CFIUS experience includes the following work, performed on behalf of both foreign investors and US businesses:

- **Middle East investors** – Represented multiple funds and portfolio companies, ultimately owned by Middle East sovereign wealth funds, in obtaining CFIUS clearances for acquisitions in US manufacturing and technology companies.
- **Japanese industrial group** – Represented a Japan-based investor in investments in US-based advanced technology companies.
- **US-based defense contractor** – Represented in its acquisition by a large European-based international defense and aerospace company, including ITAR and DCSA national security clearance work.
- **US-based Electric Vehicle (EV) technology company** – Advised on a political strategy to reduce concerns about national security related to its investment by a Chinese entity.
- **US advanced manufacturing business** – Advised this client, which produces material used in semiconductor and electronic component manufacturing, on CFIUS implications of its potential sale to an Asian-based business.
- **US oil and gas industry** – Advised and managed CFIUS process and approval for this client, which produces equipment used in gas production and distribution, on its sale to a foreign person.
- **European-based global manufacturing businesses** – Represented multiple companies in obtaining CFIUS clearance for acquisitions in the US, involving a global software company, government contractors and advanced manufacturing businesses.
- **Asian metals producer** – Advised this raw material producer for the steel industry on its sale of facility to a foreign entity.
- **One of the largest investment groups in the world** – Advised on a large number of CFIUS transactions, spanning a wide variety of industries, including oil and gas processing, mobile satellite services and telecom services, among others. The values of these deals range from the hundreds of millions into the billions of US dollars.
- **Multinational chemical company** – Represented before CFIUS and with respect to FOCI mitigation relating to a US\$75 billion business combination with another entity.
- **Multinational pharmaceutical company** – Represented before CFIUS with respect to a US\$62 billion acquisition.
- **US human capital management (HCM) and employee experience solutions corporation** – Represented before CFIUS on a US\$11 billion transaction involving a consortium of acquirers.
- **Major Australian communications network** – Obtained CFIUS clearance for this client regarding acquisition of a US digital infrastructure company focused on fiber-optic network solutions.
- **Provider of diffusion and thermal sprayed coatings for aerospace components** – Counseled in its sale to an Italian industrial coating equipment company.

Representative Clients

- AAC Clyde Space
- Accenture
- Astroscale
- Atlas Copco AB
- Atlas Space Operations
- Boldyn Networks
- Canada Pension Plan Investment Board
- Cordelio Power
- Eutelsat North America
- FDH Infrastructure Services
- Flight Research
- GKN Advanced Defense Systems
- Hexagon AB
- IAI North America
- Leonardo
- LexisNexis Special Services
- Lind
- Lutron Electronics
- Macquarie Group
- MBDA
- Meggitt
- Messer Group
- Mitsui & Co.
- Octasic
- Omega Air Refueling
- Pattern Energy
- Procentrix
- Reaction Engines
- QinetiQ
- IAI North America
- Senior Operations
- Serco
- Solvay
- Toray Industries Inc.
- TOPPAN Holdings Inc.

- **One of the world's largest private renewable energy companies** – Provided CFIUS guidance for this client in the acquisition of a clean energy company.
- **Global leader in engineering and manufacturing** – Represented before CFIUS and the DDTC in its sale of a subsidiary to a Japanese manufacturer of electric motors.
- **Major South Korean financial investment and banking company** – Represented this client, providing CFIUS counsel for US investments.
- **UK-based investment holding company** – Represented in a CFIUS acquisition of a multidisciplinary engineering, investigation and construction company.
- **Major renewable power producer** – Guided in the acquisitions of several renewable energy projects in the US.
- **World's largest supplier of commercial airplane assemblies and components** – Provided advice and counsel on national security issues related to a US\$1.65 billion initial public offering and subsequent transactions.
- **Global leader in defense, security and infrastructure technology** – Represented in the acquisition of a data analytics and cyber services provider to the US intelligence community.
- **German multinational corporation** – Represented before CFIUS and the DDTC in connection with the corporation's US\$5 billion acquisition by a Chinese corporation, the largest acquisition of a German company by a Chinese investor and the first Chinese corporate acquisition of a publicly-traded German company.
- **Creditors** – Represented foreign creditors to US defense contractors going through bankruptcy, including required filings and negotiation of risk mitigation controls.
- **Major UK electronics firm** – Represented before CFIUS in its acquisition of several US defense businesses.
- **Italian multinational electric power transmission and telecom cable manufacturer** – Represented in a US\$1.5 billion transaction before CFIUS and continue to counsel on a variety of matters involving export controls, general security, industrial security, US sanctions and FOCI compliance.
- **Major Italian industrial group** – Represented this client operating globally in the aerospace, defense and security sectors, providing advice and counsel concerning CFIUS and US national security regulatory approvals for acquisitions.
- **Major British defense company** – Represented in numerous acquisitions of US national security contractors, including a US\$1.8 billion acquisition.
- **Major Italian industrial group** – Represented in the US\$5.2 billion acquisition of a major US defense contractor requiring CFIUS approval.
- **Major UK defense contractor** – Provided CFIUS counsel for its purchase of a naval systems business.
- **One of the world's most prominent national pension plans** – Represented this client, involving dozens of CFIUS and US national security regulatory approvals for a variety of acquisitions.
- **Multinational information and analytics company** – Represented in connection with national security matters.
- **One of the world's leading aerospace and defense electronics companies** – Represented this client, providing advice and counsel in CFIUS and national security issues related to strategic foreign direct investment (FDI) acquisitions in the US.



Team Bios



Shannon Reaves

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Shannon Reaves serves as a partner in the Government Investigations & White Collar Practice Group. He is nationally ranked for navigating reviews of cross-border transactions before CFIUS, managing matters related to industrial security, such as FOCI mitigation before the US Department of Defense and Department of Energy, as well as export control compliance.

Shannon's clients rely upon him in transactions where foreign investors obtain interest in US businesses. He provides a full suite of services, including analysis of transactions in advance of potential CFIUS filings, due diligence to identify potential national security concerns, guidance through the CFIUS review and investigation processes and negotiation of deal terms with government entities. Additionally, he provides counsel on FOCI mitigation and compliance matters. Shannon has more than a decade of experience negotiating FOCI mitigation agreements, including special security agreements, proxy agreements, security control agreements and FOCI board resolutions.



George N. Grammas

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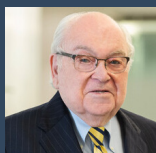
George Grammas chairs the firm's International Trade Practice. George is among the most experienced practitioners before CFIUS, having practiced before CFIUS since 1990, the inception of notice filings of transactions before CFIUS, representing investors, buyers and sellers in hundreds of transactions before CFIUS and assessing possible national security concerns. He is engaged frequently as special counsel by transaction parties, or deal counsel on transactions to manage the CFIUS, export controls and security clearance notices, as well as policy considerations to a timely conclusion with predictable results, minimizing deal risk. In addition to the notice process, George leads the firm (i) to provide CFIUS and related risk assessments, drawing on the firm's depth of experience and resources on policy matters and (ii) to provide global FDI assessments for multijurisdictional businesses, assessing the filing requirements in all relevant countries, utilizing our global platform.



Peter C. Alfano III

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Peter Alfano, partner in the International Trade Practice Group, advises a broad set of global clients on how to navigate the complex requirements of doing business with the US government, with a particular focus on regulatory issues related to foreign investment in the US and national security reviews before CFIUS. Peter concentrates his practice on representing and advising transacting parties, both US businesses and non-US investors, before CFIUS, including assessing CFIUS risks and obligations, counseling on risk shifting deal provisions and transaction structures and negotiating national security agreements (NSAs) with CFIUS, as well as counseling clients on ongoing NSA compliance requirements, reporting obligations and modification requests.



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Chris Griner is a renowned partner in the Government Investigations & White Collar Practice Group, specializing in assisting both foreign and domestic companies in navigating the complex realm of government regulations associated with the acquisition or investment in entities deemed as US national security assets. Chris is widely acknowledged as an expert in national security and matters relating to CFIUS, playing a pivotal role in shaping the FOCI mitigation arrangements currently used by the US government.

Chris' clients rely on him for guidance throughout the entire CFIUS process, from evaluating potential national security concerns to preparing necessary filings and collaborating with government agencies to secure favorable outcomes. His extensive experience encompasses matters ranging from millions to billions of US dollars, involving CFIUS and other national security challenges, and he has a notable track record of crafting effective mitigation strategies.

**Bridget McGovern**

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Bridget McGovern, partner in the Public Policy Practice, is a former senior US government official, as well as a C-suite executive adviser and lawyer with 20 years of experience in high-stakes regulatory, policy, business and strategic communications matters.

Most recently, Bridget was the Assistant Secretary for Trade and Economic Security at the Department of Homeland Security, where she managed a team of over 40 employees focused on a wide range of national security issues, including foreign investment, outbound investment, trade, supply chains, emerging technology, sensitive data, export controls, US technology transfer and combatting forced labor.

Bridget served as DHS' representative to CFIUS and Team Telecom, where she reviewed hundreds of matters and played an instrumental role in the two committees' decisions. Bridget also played a key role in protecting US supply chains by leading the implementation of the Uyghur Forced Labor Prevention Act (UFLPA) corporate entity listing process and the establishment of DHS' Supply Chain Resilience Center.

As assistant secretary, Bridget also served as a principal for interagency meetings led by the National Security Council and National Economic Council on economic competition and national security priorities. In these meetings, Bridget shaped interagency decision-making and represented the views of DHS on policy, regulatory development and execution. She also served as a trusted counselor to the DHS secretary, deputy secretary and undersecretary for policy, supporting them in the highest-level discussions on a range of national and economic security issues.

**Erin Bruce Iacobucci**

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Erin Bruce Iacobucci's practice focuses on industrial security regulations and cybersecurity matters across diverse sectors, from defense and aerospace to security and cyber, as well as the transport and energy markets. Drawing from her extensive experience, including serving as a FOCl action officer at the Department of Defense's DCSA (formerly known as the Defense Security Services (DSS)), Erin provides strategic guidance to clients engaged in US government contracts and those aspiring to enter such contracts. Erin also supports filings with the CFIUS and the Department of State DDTC in cases involving foreign acquisitions of US businesses.

