

The background of the entire page is a close-up, high-contrast photograph of an ornate clock mechanism. The image shows intricate metalwork, including gears, a large Roman numeral 'X' on the left, and various decorative engravings like floral patterns and scrollwork. The lighting is dramatic, with bright highlights and deep shadows, emphasizing the metallic texture and complex design of the clock's interior.

CFIUS CLEARANCE REPORT

According to a study conducted by Foreign Investment Watch, 178.6 days transpire between the time a company discloses a CFIUS filing, and the time that CFIUS clears the transaction.

a quick-read primer published by
FOREIGN INVESTMENT WATCH

Exclusive report: 178.6 days from disclosure to clearance

According to a study conducted by Foreign Investment Watch, 178.6 days transpire between the time that a company discloses a CFIUS filing, and the time that CFIUS clears the transaction.

That's significantly longer than the allowable time of 135 days as stipulated under The Foreign Investment Risk Review Modernization Act of 2018.

The data and analysis come from Foreign Investment Watch's regularly updated spreadsheet, which tracks companies that have publicly disclosed in SEC filings their interactions with CFIUS.

DATA AND CAVEATS

As readers of Foreign Investment Watch likely know, CFIUS deliberations are not public, so

our calculations track the timing from the moment a company disclosed that they filed with CFIUS — or were required to do so — to the moment they disclosed that CFIUS clearance had been received. In most cases, those dates are not guaranteed to be the dates that CFIUS began or concluded their review; they are simply the dates of disclosure.

For example, on June 29, 2018, Oregon-based telecommunications company Radisys announced it had agreed to be acquired by Reliance Industries of India. The merger agreement filed with the SEC noted that CFIUS approval would be required. One hundred and fifty-four days later, Radisys disclosed that CFIUS had completed its review of the planned acquisition. "CFIUS clearance was the final governmental approval condition to closing the merger," the company noted.

In this example, our tracking dates map to the disclosure dates, even though CFIUS may have begun or concluded its review on different dates.

Many companies never disclose their initial

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filings with CFIUS, which forces our editors to extrapolate based on historical assumptions. For example, on Dec. 6, 2018, Speedcast International of Sydney, Australia, disclosed it has received CFIUS approval for its acquisition of New York-based Globecom Systems. No disclosure of a CFIUS filing was ever made. In situations like this, our editors used the original date of the merger announcement as the CFIUS filing date: Aug. 28, 2018. In this example, the date to CFIUS clearance was 100 days.

As a result, it's important not to draw too many conclusions from the data, especially since many of the transactions pre-date the final rule.

"The statistics most certainly include transactions reviewed by CFIUS prior to February 13, 2020, the effective date of the FIRRMA implementing regulations," notes Nicole Lamb-Hale, Managing Director and head of the CFIUS and National Security practice at Kroll, a division of Duff & Phelps. "The statistics also likely include instances when the transaction parties agreed to withdraw and refile to give CFIUS additional time to review transactions in the hope that CFIUS could clear them," she adds.

Reid Whitten, Managing Partner of Sheppard Mullin's London Office and the head of the firm's CFIUS team, agrees, adding that increased scrutiny of foreign direct investment has required more time for CFIUS to analyze transactions.

"With the additional resources appropriated by Congress ... I believe that the statistics on the timing of CFIUS review and investigation of transactions will improve."



NICOLE LAMB-HALE
Managing Director and Head
of the CFIUS and National
Security practice at Kroll.

"The Committee has seen a two and three-fold increase in submissions, plus the huge jump that came with FIRRMA's mandatory filing requirements."

MEETING THE STANDARD?

The average 178.6 days to a CFIUS decision is significantly longer than the standard outlined in FIRRMA. As we covered back in January, CFIUS reviews and investigations are supposed to be completed in 135 days. That time frame breaks down as follows:

1. *Declaration or Written Notice* — 30 days to review a declaration or written notification to determine if the transaction involves a

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- foreign person in which a foreign government has a substantial interest;
2. *National Security Review* — 45 days for national security review, including an expanded time limit for analysis by the Director of National Intelligence (the original proposal provided approx. 20-30 days);
 3. *National Security Investigation* — 45 days for national security investigation, with an option for a 15 day extension for “extraordinary circumstances.”
 4. *Presidential Determination* — If necessary, the president would have 15 days for his or her Presidential Determination.

And since most decisions don’t require a Presidential Determination, most CFIUS decisions should be completed in 120 days.

The CFIUS average of 178.6 days is 24.4% longer than the 135 days noted in FIRRMA, ostensibly adding more than one month to the wait for a decision. According to Foreign Investment Watch data, the median number of days to CFIUS clearance is 154 days.

According to Lamb-Hale at Kroll, those numbers will likely improve over time. “With the additional resources appropriated by Congress for Treasury and other CFIUS agencies under FIRRMA, including filing fees to be determined under a separate rule making shortly, I believe that the statistics on the timing of CFIUS review and investigation of transactions will improve.”

CFIUS is “staffing up to meet the demand, but there will be some lag time as all sides get accustomed to this new normal of broader and deeper FDI review.”



REID WHITTEN

Managing Partner of Sheppard Mullin’s London Office and the head of the firm’s CFIUS team.

Whitten of Sheppard Mullin agrees, adding, “We understand the Office of Investment Security and the rest of the agencies are staffing up to meet the demand, but there will be some lag time as all sides get accustomed to this new normal of broader and deeper FDI review.”

Doreen Edelman, Partner and Chair of the Global Trade and Policy practice at Lowenstein Sandler, also notes that CFIUS filing timelines have improved. “The mandatory filing declaration process is the shortest with a 30 day cap.”

Edelman also says steps can be taken to quicken the process. “In my experience, the voluntary filing process is an improvement to

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receive a safe harbor,” she notes. “Of course, companies can facilitate a timely review by ensuring they take the following steps:”

1. “Respond to the questions broadly but with exacting detail;”
2. “Don’t make CFIUS have to work hard to understand the ownership structures of the parties and the uses and technical descriptions for the products of the target company;”
3. “Provide a prefiling to CFIUS for a voluntary filing. This allows the Committee to point out what is missing before you file; and”
4. “Make sure you are making the correct filing! Don’t file a Declaration if there is a chance you need to make a full voluntary filing. If you file a Declaration as a short cut, you may find that you still have to make a voluntary filing in order for you to receive a safe harbor. This may delay your closing.”

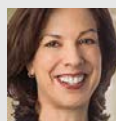
MORE INFORMATION

Our regularly updated spreadsheet that tracks CFIUS disclosures can be downloaded at foreigninvestmentwatch.com. We’ll continue to track disclosures on a daily basis, and will provide regular updates to subscribers.

Nicole Lamb-Hale, quoted in this article, can be reached at nicole.lamb-hale@kroll.com.

Doreen Edelman, also quoted above, can be reached at dedelman@lowenstein.com.

“Don’t make CFIUS have to work hard to understand the ownership structures of the parties and the uses and technical descriptions for the products of the target company.”



DOREEN EDELMAN

Partner and Chair of the Global Trade and Policy practice at Lowenstein Sandler.

Reid Whitten of Sheppard Mullin can be reached at rwhitten@sheppardmullin.com. Whitten is lead author of The CFIUS Book, which was excerpted in Foreign Investment Watch.

We asked the U.S. Treasury Department to review our data and provide feedback or a quote, but they did not respond by our deadline. Deputy Assistant Secretary for Public Affairs Rebecca Miller said she would “pass it along for consideration” to Assistant Secretary of the Treasury for Investment Security Thomas Feddo, but we did not receive input. Becky’s email is rebecca.miller@treasury.gov.

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