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THE IMPACTS OF FOREIGN INVESTMENT REGULATION ON VENTURE CAPITAL

New regulations implementing FIRRMA significantly expand CFIUS's jurisdiction to review transactions of particular interest to the venture capital industry. The authors describe key issues in FIRRMA for the industry, notably evaluating technology for export controls, emerging and foundational technologies, application to sensitive personal data, the definition of principal place of business, and the rules on excepted investors.

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On January 13, 2020, the Committee on Foreign Investment in the United States issued regulations implementing the Foreign Investment Risk Review Modernization Act 2018, which will go into effect on February 13, 2020. FIRRMA significantly expands the scope of regulation impacting foreign investment in U.S. businesses. The regulations are likely to have a dramatic effect for firms investing in emerging companies that are developing new and evolving technologies. In this article, we explore some of the key issues for the venture capital industry presented by the regulations and strategies to address those issues.

LEGAL LANDSCAPE OF FOREIGN INVESTMENT

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

CFIUS is the Committee on Foreign Investment in the United States. It is a Committee of nine U.S. agencies that historically has been authorized to review any transaction that may result in foreign control of a U.S.

company.¹ Typically, CFIUS reviews transactions resulting in foreign control of U.S. businesses that may impact U.S. national security.² The Committee is led by the U.S. Department of Treasury's Office of Investment Security and includes the offices of the U.S. Attorney General, Homeland Security, Commerce, Defense, State, Energy, Science and Technology Policy, and the Trade Representative. Certain other offices may also be brought in on reviews related to their area of expertise.

Foreign Investment Risk Review Modernization Act ("FIRRMA")

FIRRMA signed into law on August 13, 2018, expanded the scope of CFIUS's jurisdiction beyond transactions in which a foreign company takes control of a U.S. business. FIRRMA added to CFIUS's authority

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¹ CFIUS was established and operates pursuant to Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

² 31 C.F.R. § 800.101 (2017).

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