



February 18, 2020

Via www.regulations.gov (Docket No. *TREAS-DO-2020-0003-0001*)

The Honorable Thomas Feddo
Assistant Secretary for Investment Security
U.S. Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

Re: American Investment Council Comments on “Principal Place of Business” interim rule

Dear Mr. Feddo:

The American Investment Council (“AIC”), on behalf of its members in the U.S. private equity community, appreciates your time and consideration of these comments regarding the interim rule adding a regulatory definition for “principal place of business” at 31 C.F.R. § 800.239, as related to the authorities and process of the Committee on Foreign Investment in the United States (“CFIUS” or “the Committee”). AIC is an advocacy and resource organization established to develop and provide information about the private investment industry and its contributions to the long-term growth of the U.S. economy and retirement security of American workers. Member firms of the AIC consist of the country’s leading private equity and growth capital firms united by their successful partnerships with limited partners and American businesses.

As noted in our previous comment letters related to the regulatory efforts to implement the Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”), it is critical that we preserve a regulatory environment that enables AIC members to continue to attract and manage capital from all over the world and deploy it in the United States. At the same time, AIC continues to recognize and value the important role that CFIUS plays in protecting the national security of the United States. To that end, we sincerely appreciate the Committee’s ongoing efforts to implement FIRRMA in ways that provide transaction parties with regulatory certainty, predictable timelines, and administrative efficiencies while allowing CFIUS to focus its resources on the transactions that implicate U.S. national security concerns.

AIC and its members continue to appreciate the Committee’s efforts to take the unique characteristics of the private equity investment model into consideration during FIRRMA implementation. We are grateful that Treasury and CFIUS understand that the typical U.S. private equity structure — with a general partner and investment committee controlled by U.S. persons from the United States and a diverse pool of passive U.S. and foreign limited partners — does not present any concerns for U.S. national security and, in fact, is a critical source of capital needed for the development of U.S. business.

We recognize and applaud these efforts across a number of areas in the final regulations, including the revised “substantial interest” definition, the carve-outs from mandatory filing requirements, and, first and foremost, the adoption of a definition of “principal place of business.”

As detailed in AIC's previous comment letters, the absence of a regulatory definition for this term, which is a primary element of the definition of "foreign entity" and therefore "foreign person," created ambiguity that was particularly problematic in the context of mandatory filings and which we feared could lead to an uneven application of CFIUS's authorities.

In order to clarify what we believe are the Committee's intentions with regard to the definition, however, we offer the following revised definition.

§ 800.239 Principal place of business.

(a) The term principal place of business means, subject to paragraph (b) of this section, the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's ~~activities and investments~~ activities are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

(b) If the location determined under paragraph (a) of this section is in the United States and the entity, or, in the case of an investment fund, the fund's general partner, managing member, or equivalent, has represented, applying a definition substantially similar to the one set forth under paragraph (a), to the U.S. Government or a subnational government of the United States or any foreign government, in the most recent submission or filing that contains such a representation to such government (other than a submission or filing to the Committee), in which the entity or, in the case of an investment fund, the general partner, managing member, or equivalent, has identified its principal place of business, principal office and place of business, address of principal executive offices, address of headquarters, or equivalent, that any of the foregoing is outside the United States, then the location identified in such submission or filing is deemed for purposes of this definition to be the entity's, general partner's, managing member's, or equivalent's, principal place of business unless the entity, general partner, managing member, or equivalent, can demonstrate that such location has changed to the United States since such submission or filing. [*proposed changes in blue, with deleted language struck through and added language underlined*]

We generally believe the primary definition CFIUS has adopted for "principal place of business" under (a) is reasonable, appropriate, and consistent with the Committee's historic interpretation and applications of the term. That said, we do propose one change to paragraph (a) for the sake of clarity and certainty. We recommend, in the case of investment funds, changing "activities and investments" to "investment activities." The unmodified reference to "activities" in the proposed rule is somewhat ambiguous and redundant of the term "investments," as the latter constitute the essential purpose of any investment fund.

We also offer some discrete clarifying changes to paragraph (b). We suggest first carrying over from (a) the differentiation between direct investors and fund structures, where a general partner or equivalent holds exclusive control of investment decisions. This will make clear that, in the context of investment funds, the requirements of (b) do not apply to fund vehicles, but rather to the general partner, managing member, or equivalent -- i.e., the ultimate entity actually directing, controlling, and coordinating the fund's activities and investments.

Further, because not all submissions to governmental entities will contain representations about principal place of business or similar terms, we suggest that the rule clarify that the point of comparison for purposes of the definition will be the most recent such submission that contains such a representation.

Finally, we understand that paragraph (b) is intended to prevent an investor from making inconsistent statements about their principal place of business, as defined in paragraph (a), to other U.S. or foreign governmental authorities. Accordingly, we propose making it clear that for paragraph (b) to apply, a representation to another U.S. or foreign governmental authority must be truly contrary to the definition of principal place of business set forth in paragraph (a).

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With these modest changes, AIC and its members believe CFIUS will have a clear definition of "principal place of business" that can be efficiently applied by foreign investors, the U.S. private equity community, and the important U.S. businesses for which they both provide critical capital in assessing the potential jurisdiction of CFIUS over their transactions.

We again thank Treasury and the Committee for recognizing the unique attributes and contributions of the U.S. private equity community, as well as its base of passive U.S. and foreign limited partners, during the FIRRMA statutory and regulatory development processes. We hope you find our feedback helpful and constructive and appreciate your time and consideration of our perspective and recommendations.

Respectfully submitted,



Jason Mulvihill
Chief Operating Officer & General Counsel