

Statement of the Honorable Donald L. Evans  
Chief Executive Officer  
The Financial Services Forum

Testimony Before the  
Subcommittee on Domestic and International Monetary Policy, Trade, and Technology  
of the  
House Financial Services Committee

April 27, 2006

Overview

Madame Chairwoman Pryce, Vice Chairwoman Biggert, and Ranking Member Maloney, thank you for the opportunity to participate in this important hearing on the Committee on Foreign Investment in the United States (CFIUS).

I am here as Chief Executive Officer of the Financial Services Forum. The Financial Services Forum is an association comprising the chief executive officers of 20 of the largest and most diversified financial institutions doing business in the U.S. The Forum works to promote policies that enhance savings and investment in the U.S. and that ensure an open, competitive, and sound global financial services marketplace. As a group, the Forum's member institutions employ more than 1.5 million people and hold combined assets of more than \$12 trillion.

All members of the Forum share Congress' commitment to national security. Our industry is deeply aware of the serious threats faced by our nation and the need for Congress to consider all aspects of national security in its decision-making. Addressing threats to U.S. national security must be undertaken with absolute resolve and come second to no other priority. For this reason, we fully support the President's authority to suspend or prohibit any foreign acquisition, merger, or takeover of a U.S. corporation that is determined to threaten the national security of the United States.

We also believe strongly that protecting U.S. national security and advancing America's global economic leadership are compatible and reinforcing goals. We cannot achieve one without pursuing the other. In today's interconnected world, the health and future of the U.S. economy, and American jobs, rest on open markets and the free flow of capital. U.S. investments abroad support economic growth at home, access to resources and, in turn, national security. Therefore, we respectfully urge Congress to not adopt unwise and unnecessary new restraints on open markets and the free flow of capital as it considers possible reforms to the CFIUS process. Any changes should result from a thoughtful, considered, and fact-based assessment.

I'd like to raise four points that we believe should guide Congressional consideration of reforms to the CFIUS process:

- First, the vast majority of foreign acquisitions have no bearing on U.S. national security. Rather, they play a positive role and make significant – and increasing – contributions to

our economy by creating millions of jobs for American workers and enhancing our competitive position in the global marketplace. Expanding CFIUS' mandate beyond genuine national security concerns would create a major disincentive for foreign investment and have a negative impact on U.S. economic growth and job creation.

- Second, successive Administrations of both political parties have for decades worked aggressively to establish a global rules-based system founded upon the principles of open investment and free trade. This continuity in policy has enabled America to prosper, assert a leadership role in the global economy, and advance our broader foreign policy and strategic interests. We risk eroding this prosperity and leadership position by adopting new laws which discriminate against foreign investment.
- Third, the existing CFIUS process is fully capable of identifying and dealing with potential threats to our national security. Although we recognize the process has shortcomings, particularly with regard to communications with Congress, and that some reform may be warranted, existing law provides the President with sufficient authority to block any foreign acquisition or mitigate related national security concerns. Agencies represented on CFIUS have on numerous occasions affirmed their readiness to use the full authority of the law.
- Finally, it is instructive that upon establishing CFIUS Congress wisely chose to insulate it from political influence. And, by imposing strict confidentiality requirements, Congress explicitly recognized the sensitivity of the data relevant to such transactions, from a national security and commercial standpoint. The rationale supporting both decisions is as valid today as it was two decades ago.

### The Benefits to the U.S. Economy of Foreign Investment

Today, more than ever, the U.S. economy depends on foreign investment. U.S. subsidiaries of foreign-based companies employ more than 5 million Americans throughout all fifty states – roughly one out of every twenty jobs in this country – paying compensation totaling \$318 billion annually.

Foreign companies also account for roughly twenty percent of all U.S. exports, fifteen percent of private sector research and development, ten percent of private-sector capital investments, and 12 percent of corporate taxes collected.

Ninety four percent of foreign investment comes from OECD countries. Ninety eight percent is from private sector firms – only two percent of foreign assets are owned by companies controlled by foreign governments. The financial services sector is a major beneficiary of foreign direct investment, receiving approximately 15 percent of all such investment in 2004. German and British interests account for most investment in the sector, with Dutch, British, French, and Canadian investments account for over half.

Open, stable, and predictable markets are a prerequisite for attracting global capital. While the United States is currently a favored destination for foreign investment, it is prudent to be mindful

that markets in Europe and Asia are increasingly competitive. The introduction of a single currency in Europe has eliminated currency conversion costs and exchange rate risk, making Europe much more attractive. And with the Chinese and Indian economies growing at 9 and 6 percent respectively, those economies are already attracting enormous amounts of investment capital.

Global capital is sensitive to changes in the political climate. Poorly considered proposals to reform CFIUS would surely have a “chilling effect” on the inflow of foreign investment, with results that might well include higher interest rates, lower equity prices, and slower economic growth. Finally, it should be recalled that the United States is the world’s largest investor, with over \$10 trillion in assets overseas. Erecting unreasonable barriers to participation in U.S. markets would likely invite retaliation by other countries, at great cost to U.S. interests.

### The CFIUS Process

The Committee on Foreign Investment in the United States was established in 1975 with the purpose of evaluating the security impact of foreign investment. In 1988, the so-called Exon-Florio provision provided the President, following a review by CFIUS, with authority to block an acquisition of a U.S. business by a foreign person if the acquisition is determined to threaten the “national security” of the United States.

The process is initiated when parties to a proposed transaction file a voluntary written notice with CFIUS, or when a CFIUS member agency takes this action on its own. In either case, upon receiving this notification CFIUS begins a review of the transaction which lasts a maximum of 30 days. The process is terminated if CFIUS concludes at the end of this 30 day period that there are no national security issues warranting further review. In cases where a significant question of national security arises, CFIUS will undertake an investigation that may last a total of 45 days. At the end of this investigation, CFIUS provides a written recommendation to the President, who has 15 days to decide to approve or block the transaction. Therefore, a full CFIUS review cycle is 90 days. The President’s decision is not subject to judicial review.

Since the enactment of Exon-Florio in 1988, CFIUS has reviewed over 1,600 foreign acquisitions of companies for potential national security concerns. Only one transaction has ended with a forced divestment. That case, in 1989, involved the purchase by CATIC, a company controlled by the Chinese government, of MAMCO, a small aerospace parts manufacturer in the state of Washington.

However, these figures do not reflect the full impact of the CFIUS process on addressing national security concerns raised by proposed foreign acquisitions of U.S. companies. For example, there are many instances in which CFIUS has worked with individual companies to devise security measures that precluded the need for a full investigation. Moreover, there have been many cases where parties voluntarily restructured a transaction to address national security concerns, or withdrew from the transaction altogether.

It should also be pointed out that it is relatively common for parties to a transaction to meet with CFIUS agency officials well in advance of filing a notice in order to explain the proposed transaction, provide information about the parties, and solicit comments from CFIUS members

about their potential concerns. Therefore, the time necessary to consider potential national security implications of a transaction can be considerably longer than 90 days. In many cases, issues can be resolved before the notice is even filed. In others, this pre-filing consultation may lead the parties to conclude that a transaction will not pass CFIUS review, in which case they may restructure their transaction to address national security concerns or abandon it entirely.

Since September 11, 2001, CFIUS has applied greater scrutiny to foreign investments on national security grounds, imposed stricter security requirements as a condition for approving specific transactions, and toughened enforcement of security agreements negotiated through the CFIUS process. There have been more investigations and withdrawals in just the past three years than during the previous decade. CFIUS has also significantly broadened the scope of its “national security” reviews. Prior to September 11<sup>th</sup>, CFIUS focused primarily on protection of the U.S. defense industrial base and the export of controlled technologies. Since then, CFIUS has intensified its focus on the additional goal of protecting critical infrastructure.

### Proposals to Reform CFIUS

The Congress has a vital role to play in exercising its oversight authority to ensure that the CFIUS process is structured and implemented in a way that fully protects U.S. national security. Ultimately, CFIUS cannot be effective absent public confidence in its ability and willingness to do what is necessary to safeguard our security. To this end, we support more open communication between the Administration and Congress regarding the CFIUS process, so long as the confidentiality of proprietary information is protected.

We are very concerned, however, about proposals that would give Congress unprecedented new power to delay or overturn decisions by CFIUS. Legitimate national security concerns should be pursued vigorously, but introducing overt political considerations into the process would undermine investor confidence in U.S. markets and, consequently, reduce economic growth, threaten job creation, and jeopardize U.S. efforts to open foreign markets.

We are also troubled by proposals that would discourage foreign investment by requiring lengthy review periods, or proposals that, while intended to elevate national security scrutiny of foreign investments, might well prompt decision makers to disapprove meritorious investments that do not pose genuine national security threats.

In addition, the CFIUS process must retain a high degree of integrity and confidentiality. By its nature the CFIUS handles sensitive, proprietary information which relates to national security. Making this information accessible in the public domain could undermine the integrity of the CFIUS process and ultimately make it less effective in carrying out its primary mission of identifying and addressing transactions which implicate genuine national security concerns.

Of particular concern are proposals that would:

- Provide for Congressional Disapproval of President’s Decision: Proposals to grant Congress power to over-ride Presidential decisions regarding foreign investment would unnecessarily ‘politicize’ the CFIUS review process. In addition, Congress is simply not

best equipped for making sensitive, fact-based, case-by-case decisions. Congress makes law and oversees administrative procedure, but does not second-guess International Trade Commission (ITC) decisions or individual patent awards and should not do so with respect to CFIUS decisions.

- Increase Required Time Periods for Review and Investigations: Proposals to require longer review or investigation periods stem from a perception that CFIUS reviews are cursory and not substantive, when the opposite is true. The necessary confidentiality of the CFIUS process reinforces this suspicion. These proposals would in many cases create an unacceptable level of risk and uncertainty for foreign investors, thus establishing a barrier to their participation in the U.S. market. They could also drive other countries to reform their rules for foreign investment to the detriment of U.S. companies seeking to invest overseas.
- Require Unprecedented Notifications to the Congress and State Officials: Unprecedented notification and reporting requirements would increase the risk of “politicizing” transactions and allow competitors to achieve through politics what they could not in the marketplace. Such notification and reporting requirements would also create opportunities for information sent to Congress to be exploited for commercial purposes, rather than for advancing national security.
- Expand the Scope of CFIUS to Include “Economic” Security: Reforms calling for CFIUS to expand the scope of its mandate to include “economic” security would provide grounds to block any and all foreign investment in the United States, and would overload CFIUS’ review process without enhancing national security. The existing national security factors in the CFIUS process are sufficiently broad to cover threats to American security. Such changes would also divert scarce government resources away from national security, the principal focus of the CFIUS process.
- Summarily Deny Foreign Acquisitions or Ownership, Management or Operation of U.S. Critical Infrastructure: The CFIUS process should focus on legitimate national security concerns. Outright bans or significant restrictions on foreign ownership of significant sectors of the U.S. economy would have severe consequences not only for the health of the U.S. economy, but also the ability of U.S. companies, investors, and individuals to compete and invest abroad.
- Require 45-Day Investigation for Acquisitions of U.S. Companies by State-Owned Entities: Again, the CFIUS process should focus on those acquisitions that raise genuine national security concerns. Requiring 45-day investigations of acquisitions made by state-owned entities that in no way implicate national security concerns would be an unnecessary disincentive for foreign investment and use of government resources.

## Conclusion

Madame Chairwoman, as reform alternatives are further deliberated, we urge Congress to take a thoughtful and measured approach – ever mindful of the critical importance to America and to the world of thriving global trading relationships. We urge Congress to keep America’s markets open, even as it protects America’s security.

Protecting national security and promoting foreign investment and free trade are not mutually exclusive. We can and must do both.

Thank you for the opportunity to appear before the Subcommittee.