

## **Alert** | Export Controls & Economic Sanctions



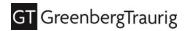
**April 2020** 

## Treasury Department Issues Interim Rule Establishing Fees for Certain CFIUS Filings

The U.S. Department of the Treasury issued an updated interim rule imposing filing fees for parties submitting full notice of a foreign investment in the United State to the Committee on Foreign Investment in the United States (CFIUS). The new filing fees are effective for transactions notified to CFIUS on or after <u>May 1, 2020</u>. The filing fee structure and amounts are unchanged from those described in the proposed regulations issued March 9, 2020, as described in our prior GT Alert, "CFIUS Regulations and FIRRMA Updates: Proposed CFIUS Filing Fees Announced."

Although the Treasury Department solicited public comments on the proposed rules outlining the fee structure earlier this year, it is again allowing public comment on the filing fee interim rule because the COVID-19 pandemic may have impaired the public's ability to submit comments in the previous round.

The interim rule implements a filing fee for parties submitting full voluntary notifications for "covered transactions" as well as "covered real estate transactions." The interim rule does **not** require a filing fee for any short form declarations, mandatory notifications, and reviews unilaterally initiated by CFIUS, although filing fees will be applied if a full voluntary notice is requested by CFIUS after a short form declaration has been filed.



## Filing Fee Schedule Based on Transaction Value

The interim rule uses a tiered filing fee approach, with fees based on the value of the transaction. The filing fees are as follows:

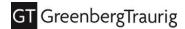
| Value of Transaction              | Proposed Filing Fee |  |
|-----------------------------------|---------------------|--|
| Up to \$499,999.99                | No fee assessed     |  |
| \$500,000 to \$4,999,999.99       | \$750               |  |
| \$5,000,000 to \$49,99,999.99     | \$7,500             |  |
| \$50,000,000 to \$249,999,999     | \$75,000            |  |
| \$250,000,000 to \$749,999,999.99 | \$150,000           |  |
| \$750,000,000 ormore              | \$300,000           |  |

The method of calculating transaction value, for purposes of determining the filing fee, will generally be the total value of all consideration paid in the context of the transaction. For consideration that fluctuates in value, such as securities or other non-cash assets, the interim rule calculates value based on the closing price for the security on the previous trading day before the voluntary notice was filed with CFIUS, subject to certain exceptions. For transactions where consideration has not yet been determined, the parties are instructed to calculate value based on a good-faith approximation of the fair market value of the obligations or assets that are the subject of the transaction on the date the parties file the notice.

The interim rule is the latest regulatory change following the passage of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which brought significant changes to the CFIUS review process, as reported in our Feb. 11, 2020 Alert and Oct. 16, 2018 Alert. Interested parties may submit comments on the interim rule to Treasury until June 1, 2020. Treasury has stated that it is especially interested in feedback on the methods of valuation for joint venture transactions. Parties interested in preparing and submitting comments may wish to consult with counsel. Importantly, although comments may be submitted through June 1, 2020, the filing fees apply to transactions notified to CFIUS on or after May 1, 2020.

**About Greenberg Traurig's Export Controls Practice:** Based in Washington, D.C., Greenberg Traurig's Export Controls team advises and represents clients on the full range of international goods, software and technology transfer issues. The attorneys have broad experience providing export controls and related regulatory counsel to both U.S. and foreign businesses. Industry-specific experience includes assisting companies in a wide range of industries such as aerospace, defense, firearms and ammunition, electronics, software and information technology, energy, food, consumer products, biotechnology, medical device, and engineering services.

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## **Authors**

This GT Alert was prepared by:

- Kara M. Bombach | +1 202.533.2334 | bombachk@gtlaw.com
- Cyril T. Brennan | +1 202.533.2342 | brennanct@gtlaw.com
- Renée A. Latour ‡ | +1 202.533.2358 | latourr@gtlaw.com
- Sonali Dohale | +1 202.533.2381 | dohales@gtlaw.com
- Axel S. Urie | +1 202.530.8539 | uriea@gtlaw.com
- ‡ Admitted in Virginia. Practice in the District of Columbia limited to matters and proceedings before Federal courts and Agencies.

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