



NVCA's policy team is at the table with legislators and administration officials in Washington to advocate on behalf of the VC industry and high-growth startups. Our responsibility is to notify you—our members—of issues you should be aware of that may impact the management of your funds, portfolio companies, or potential investments. **To that end, if you have (or are considering) foreign LPs in your fund, are planning to co-invest with foreign investors, or if companies in your portfolio may be considering follow-on funding from foreign investors, the information we unpack below is important for you to know.**

## **Background**

A defining characteristic of the Trump-era has been a focus on China, especially pertaining to the country's trade, investment, and intellectual property practices. In the past few months, the focus on China from President Trump and Congress has increasingly impacted the venture capital industry and high-growth startups. Foreign LPs are more frequently in U.S. venture funds, and it has become common for foreign investors to co-invest alongside U.S. VCs.

## **What's happening on foreign investment?**

In November 2017, bipartisan legislation called the *Foreign Investment Risk Review Modernization Act* (FIRRMA) was [introduced](#) to expand the mandate of the Committee on Foreign Investment in the U.S. (CFIUS). CFIUS is the government

body that recently rejected the Broadcom (Singapore) hostile takeover attempt of Qualcomm (U.S.) on national security grounds, and is charged with reviewing the national security implications of transactions whereby a foreign entity gains control of a U.S. entity. *FIRRMA* stems from [concerns](#) by the Defense Department and others that the Chinese government is using minority investments in "foundational" technology companies to gain access to sensitive information, such as IP or source code. The bill aims to give CFIUS authority to review ***even minority investments*** by foreign entities into U.S. entities. **We are taking *FIRRMA* very seriously because it has the support of the White House, has an impressive list of sponsors in Congress, and is just the type of populist legislation that can pass in an election year. CFIUS is a costly and opaque process that would be a tremendous burden to our industry.**

More recently, last Thursday President Trump released the [results](#) of the so-called "Sec. 301 investigation" on China's practices related to tech transfer, IP, and innovation. The report noted China systematically invests in "cutting-edge technologies [to] generate large-scale technology transfer in industries" important to the Chinese government. The president has directed Treasury Secretary Mnuchin to propose executive branch action to "address concerns about investment in the United States directed or facilitated by China in industries or technologies."

### **What do *FIRRMA* and the China order do?**

*FIRRMA* expands CFIUS jurisdiction to include minority-position investments, certain joint ventures, and real estate transactions near military bases. Specifically, ***FIRRMA* gives CFIUS the authority to review an investment by a foreign entity in any U.S. "critical technology company" or "critical infrastructure company," unless it is a passive investment** (more on that below).

The president's 301 investigation begins a 60-day process under which the Treasury Department will consider measures that may be taken to address China investment concerns. Given the Trump Administration is highly supportive of *FIRRMA*, it is possible the administration will enact some of the reforms in *FIRRMA* by administrative action, though some reforms will require an act of Congress.

### **How might *FIRRMA* and the China order impact VC?**

We are concerned that as drafted, *FIRRMA* might expose foreign LPs and venture funds that have foreign LPs to needless and costly review by CFIUS. The bill would also put under a microscope direct investments by foreign entities, such as foreign strategic investors that are co-investors in a round with a U.S. VC. This would have the effect of slowing rounds, or causing startups to find capital elsewhere if a transaction isn't approved.

### **What is NVCA doing?**

NVCA has devoted significant resources to lobbying this issue in 2018. Our chair, Scott Kupor of Andreessen Horowitz [testified on \*FIRRMA\*](#) before the Senate Banking Committee in January. We meet regularly with the bill's authors and committees of jurisdiction to explain our concerns. We have a package of changes to *FIRRMA* that we are asking the authors to include, and we will be meeting this week to discuss those changes. **What are we asking for?**

- Clarify that foreign LPs that invest in U.S. venture funds are "passive investments" under *FIRRMA* and therefore are not subject to CFIUS review. The aim of *FIRRMA* is to scrutinize direct investment from foreign entities, and we need assurance that foreign LPs and venture funds are not caught up by the bill.

- Expand the existing "passive investment" definition to reflect true passivity. As drafted, it's a very narrow exemption and a venture fund or foreign strategic investor might be tripped up even when there are no national security concerns.
- Enhance the number of countries that are exempted from the legislation. *FIRRMA* exempts countries from the bill if they have "a mutual defense treaty or a similar agreement pertaining to substantial cooperation in areas of national security." **This reflects an NVCA-requested change to broaden the scope of countries that are *not* impacted by the legislation.** While China will never be exempted, we will continue to argue that *FIRRMA* should exempt countries that don't raise national security implications. Many of these countries, such as those in Europe, the Middle East, and Asia, have foreign LPs in U.S. VC funds.
- Provide specificity on what is "critical technology." Currently, *FIRRMA* largely leaves the definition of critical technology up to CFIUS to write rules. The definition here will be imperative, because if it's overly broad it will bring broad swaths of the economy under *FIRRMA*. It's important CFIUS understand that we are rapidly approaching a time when technologies like artificial intelligence are in every product. It would be impractical to subject every company that makes a product with AI included simply because the company took foreign capital.

## How can you help?

Your continued support as an NVCA member is what makes our advocacy possible, so thank you. Beyond that, many NVCA members know Members of Congress and administration officials. Reach out to those individuals and make sure they understand that as changes are made to foreign investment law that policymakers are sensitive to how changes can impact the venture industry and the startups you all support. Ask them to support NVCA's changes to *FIRRMA*

going forward.

Please reach out to Jeff at [jfarrah@nvca.org](mailto:jfarrah@nvca.org) if you have questions. Thank you.

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