

United States Senate

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COMMITTEES:
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RULES AND ADMINISTRATION

November 14, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

I write to encourage you to implement the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) in a way that protects and facilitates friendly countries' investments in the United States. FIRRMA contains a broad statutory requirement that you exempt categories of investors from the expanded Committee on Foreign Investment in the United States (CFIUS) screening of certain minority investments. I urge you to implement this provision in a way that safeguards the United States' status as the world leader in attracting foreign investment.

As the Vice Chairman of the Senate Select Committee on Intelligence, I understand the importance of technological innovation in the United States to our national security. However, as you know, China, and a small group of other countries, have weaponized minority investments to achieve the back-door transfer of critical emerging U.S. technology. Beijing, in particular, through close connections to nominally private Chinese companies, is using this technology to speed China's military modernization, with consequences for U.S. national security. Under the principle of "military-civil fusion," China requires that technologies developed, or acquired, by the private sector be shared with the military. FIRRMA closes the gaps in CFIUS's authority to review certain minority investments, and is a strong response to one of the key ways China gains access to our most sensitive technology.

At the same time, I strongly believe that the United States must remain open to foreign investment. Foreign companies have invested \$3.7 billion in the United States, and foreign direct investment accounts for 12 million jobs in the United States. A key way that FIRRMA seeks to protect the United States' status as the country attracting the most foreign investment in the world is by incorporating my amendment requiring the Department of Treasury to exempt categories of investors from the new investment-screening requirements. I encourage you to fully use that authority to exempt investments made by investors from friendly countries.

I am encouraged that you have already developed a pilot program to begin the implementation of FIRRMA. However, it was a missed opportunity to not take advantage of the authority given to you to exclude categories of investors from the scope of that pilot. The practical implications of

that decision are instructive. I understand the pilot program rules have caused considerable anxiety among foreign investors from U.S. allies, including in European countries. As a result, the pilot rules are causing them to question and, in some cases, pass on investments in the United States until regulatory certainty is achieved. It would be an unfortunate and avoidable consequence if United States businesses lost critical investments from investors from nations that have not demonstrated a history of using CFIUS's gaps to obtain a technological and military advantage at the United States' expense.

I urge you to use your exemption authority under FIRRMA to ensure that the United States remains the most attractive destination for foreign investment. I supported this legislation to counter the unfair and aggressive policies and practices of a few U.S. trading partners—principally China—not to unduly restrict foreign investment in the United States.

Thank you for your attention to this matter, and I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Mark R. Warner". The signature is written in a cursive, flowing style.

Mark R. Warner
United States Senator