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

Dear Mr. Feddo:

As representatives of Canadian businesses and investors, we would like to highlight some concerns with rules put in place by the U.S. government last summer that further scrutinize foreign investment in U.S. businesses. The power of the **Committee on Foreign Investment in the United States (CFIUS) granted by the Foreign Investment Risk Review Modernization Act** (FIRRMA) was enhanced with an aim to review foreign investment for national security reasons. The inclusion of certain non-controlling investments made by foreign persons in U.S. businesses has had a significant impact on Canadian investment in the United States.

Canadian companies and investors in U.S. startups under the current rules are considered a "foreign entity" and, in many cases, are subject to CFIUS approval. The current rules are making investment in U.S. businesses overly onerous, especially at the early innovation and growth stages of a business. Given that Canada is a close U.S. ally and does not present national security challenges, we believe the U.S. government should consider adding an exemption for trusted and low risk investors. We recommend an exemption process using the Country Specification provision in FIRRMA.

The United States and Canada boast one of the largest trade relationships in the world, with bilateral investment and trade totaling $1 trillion annually. Our two countries are more than economic partners. We share a common heritage, a culture of democratic principles and a shared geography that make us allies in both business and national defense.

Proposed language for exempting low risk countries has been developed and put forward by the U.S. Chamber of Commerce, National Venture Capital Association, Biotechnology Innovation Organization, American Investment Council, Medical Device Manufacturers Association & Advanced Medical Technology Association. As representatives of similar Canadian business organizations, we would urge you to consider this language and act on implementing an exemption for Canadian businesses and investors.

Attached is the proposed language for the Implementation of the "Country Specification" provision and the Scope of Mandatory Filings Under the Final Foreign Investment Risk Review Modernization Act (FIRRMA) Regulations.

Best Regards,

Kim Furlong
Chief Executive Officer
Canadian Venture Capital and Private Equity Association (CVCA)

Brian Lewis
President and CEO
Medtech Canada

Andrew Casey
President and CEO
BIOTECanada

Jackie King
Chief Operating Officer
Canadian Chamber of Commerce

Foreign Person Definition[1]

Summary: This regulatory language would frame the criteria and application of an exception to certain jurisdictional provisions by defining "foreign person" in a more limited manner for those provisions (i.e., the real estate and "other investment" provisions), consistent with the authorities provided by Section 1703(a)(4)(E), i.e., the Country Specification provision. Parties who meet all of the identified criteria will not be foreign persons for the purposes of the identified provisions and thus transactions that would otherwise be captured by such provisions shall not be covered transactions. Transactions that could result in control of a U.S. business by the foreign person would remain within the Committee's jurisdiction, however, even where an entity meets the below criteria and is therefore deemed not to be a foreign person for the purposes of the real estate and "other investment" provisions. Parties and their counsel would be required to determine whether an exception applies in any specific case.

§ 800.xxx Foreign person

(a) For purposes of § 800.xxx [the real estate provision] and § 800.xxx [the "other investments" provision], any person that meets all the requirements of this section at the time that the transaction is completed shall not be considered a foreign person for purposes of that transaction:

(1) The foreign person is organized under the laws of a country that has a mutual defense treaty or a defense cooperation agreement with the United States, including member states of the North Atlantic Treaty Organization ("NATO"); has been designated as a major non-NATO ally pursuant to section 517 of the Foreign Assistance Act of 1961; has a bilateral treaty with the United States and is a member of the European Union or the European Free Trade Association; or other such countries as CFIUS publicly designates;

(2) All headquarters of the foreign person are located in a country that has a mutual defense treaty or a defense cooperation agreement with the United States, including member states of the North Atlantic Treaty Organization ("NATO"); has been designated as a major non-NATO ally pursuant to section 517 of the Foreign Assistance Act of 1961; has a bilateral treaty with the United States and is a member of the European Union or the European Free Trade Association; or other such countries as CFIUS publicly designates;

(3) The principal location of the management of the foreign person is in a country that has a mutual defense treaty or a defense cooperation agreement with the United States, including member states of the North Atlantic Treaty Organization ("NATO"); has been designated as a major non-NATO ally pursuant to section 517 of the Foreign Assistance Act of 1961; has a bilateral treaty with the United States and is a member of the European Union or the European Free Trade Association; or other such countries as CFIUS publicly designates;

(4) The foreign person is not otherwise under the control of any person or entity that is organized, headquartered, or managed in a country subject to a U.S. arms embargo, and no such person holds a substantial interest in the foreign person;

(5) The foreign person has never been found to be in material violation of any national security mitigation agreement entered into with any CFIUS member agency.

Scope of Mandatory Filings Under the Final Regulations

Recognizing that FIRRMA obligates CFIUS to implement a mandatory filing regime with regards to investments that result in the acquisition of a substantial interest in a U.S. business by a foreign person in which a foreign government has a substantial interest, we encourage CFIUS to limit mandatory filings to this set of transactions and to narrowly scope such transactions through its definition of what constitutes a substantial interest.

1 To be clear, this suggested process is in addition to the recommendations and feedback provided by the American Investment Council ("AIC"), the Biotechnology Innovation Organization ("BIO"), the Organization for International Investment ("OFII"), the National Venture Capital Association ("NVCA"), and the U.S. Chamber of Commerce in their November 2018 letters to Treasury regarding the "Interim Rule Regarding Temporary Provisions Pertaining to a Pilot Program to Review Certain Transactions Involving Foreign Persons and Critical Technologies", TREASDO-2018-0021. For example, as NVCA raised in its letter, it is important to get clarification regarding the application of various definitions, including particularly definitions that will likely outlast the Pilot Program, such as "material nonpublic technical information" and "foreign entity." Relatedly, as AIC raised in its letter, it is also important to both update the foreign entity definition, to recognize the unique nature of where control lies in fund structures, and provide limited exceptions to the foreign person definition as outlined below. Both can help ensure that CFIUS is properly focused on transactions likely to introduce national security risk, while limiting uncertainty and delays for transactions that do not introduce such risks.