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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

February 8, 2017

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

Adam J. Szubin
Acting Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Dear Mr. Acting Secretary:

I am writing to request details concerning plans the Committee on Foreign Investment in the United States (CFIUS) has made to address potential conflicts of interest arising from the involvement of President Trump in its decision-making process.

Established in 1975, CFIUS reviews potential U.S. acquisitions by non-U.S. entities for national security risks, including risks arising from foreign government control of parties to a proposed transaction.¹ Most recently, for example, President Obama, acting on a recommendation from CFIUS, ordered the Chinese-owned Ralls Corp. to divest its acquisition of a wind farm project near restricted Naval Weapons Systems Training Facility airspace.² Foreign acquirers have also abandoned U.S. transactions in response to informal CFIUS concerns. For example, Anbang Insurance Group, a Chinese conglomerate with alleged government ties, abruptly withdrew its offer for the Starwood Hotel chain in March 2016 amid speculation that CFIUS might require the company to sell Starwood properties in sensitive areas in Washington, D.C.³

As I noted in the confirmation hearing of Secretary of the Treasury nominee Steven Mnuchin, under the CFIUS process, “[o]nly the President has the authority to suspend or prohibit a covered transaction” following a recommendation or other referral from CFIUS.⁴ Moreover, under the decision of the U.S. Court of Appeals for the D.C. Circuit in *Ralls Corp. v. Committee*

¹ U.S. Department of the Treasury, *CFIUS Reform: Guidance on National Security Considerations* (Dec. 1, 2008).

² Order of September 28, 2012, *Regarding the Acquisition of Four U.S. Wind Farm Project Companies by Ralls Corporation*, 77 Fed. Reg. 60281 (Oct. 3, 2012).

³ *Starwood Bidding War Ends Abruptly, Yielding a Merger and a Puzzle*, New York Times (March 31, 2016).

⁴ Department of the Treasury, *Office of Investment Security; Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States*, 73 Fed. Reg. 74568 (Dec. 8, 2008); see also 50 U.S.C. App. § 2170(d).

on *Foreign Investment in the United States*, this final presidential determination is not subject to judicial review.⁵

The failure of President Trump to divest his assets, however, raises the serious possibility of a conflict of interest compromising CFIUS deliberations on any transactions related to the Trump Organization or other Trump family entities. Although President Trump has pledged to halt all new foreign deals involving his businesses and place his assets in a trust controlled by his sons, he has declined to “release basic information about this plan,” share his tax returns, or provide any other information to indicate which entities are subject to these measures.⁶ As Richard Painter, former chief ethics lawyer to President George W. Bush has concluded, “We don’t know who his business partners are, we don’t know who he owes.”⁷ Walter M. Shaub Jr., director of the Office of Government Ethics, has further noted that these arrangements leave President Trump vulnerable to “suspicions of corruption.”⁸

President Trump appeared to dismiss these ethical arrangements on January 11, 2017, when he explained that although he had declined a \$2 billion deal with a United Arab Emirates real estate developer, “I didn’t have to turn it down, because as you know I have a no conflict situation because I’m president.”⁹ Despite an ethics plan that “prohibits—without exception—new foreign deals,”¹⁰ the Trump Organization has also moved forward with new investments in a Scottish golf resort, leading Mr. Painter to note that the phrase “new deal” is “subject to such wide range of interpretation that it can easily be worked around.”¹¹

Potential conflicts of interest might also arise from foreign investment involving Kushner Companies, the family-held real estate company Jared Kushner—senior adviser to President Trump and husband to Ivanka Trump—recently helmed as chief executive. On January 7, 2017, for example, the *New York Times* reported that Mr. Kushner had met with representatives from Anbang Insurance Group regarding an imminent redevelopment deal for the Kushner flagship building at 666 Fifth Avenue.¹² Although Mr. Kushner has reportedly sold his interest in 666 Fifth Avenue to a family trust, full details regarding the beneficiaries of the trust, and the extent

⁵ *Ralls Corp. v. Committee on Foreign Investment in the United States*, 758 F.3d 296 (D.C. Cir. 2014).

⁶ *Trump’s Plans on Businesses May Fall Short*, *New York Times* (Jan. 11, 2017).

⁷ *Trump Refuses to Divest Assets, Passes Control to Sons*, *Forbes* (Jan. 11, 2017).

⁸ *Trump’s Plans on Businesses May Fall Short*, *New York Times* (Jan. 11, 2017).

⁹ *Trump Says Foreign Billionaire Offered Him a \$2 Billion Business Deal This Week*, *Forbes* (Jan. 11, 2017).

¹⁰ Morgan Lewis, *Conflicts of Interest and the President* (Jan. 11, 2017).

¹¹ *Trump’s Scotland Golf Resort Proceeds With Expansion Despite Business Pledge*, *The Guardian* (Jan. 14, 2017).

¹² *Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal*, *New York Times* (Jan. 7, 2017).

of Mr. Kushner's remaining interests in Kushner Companies, have not been released.¹³ As with previous proposed Anbang investments, CFIUS will likely review any eventual Anbang-Kushner arrangement.¹⁴

Uncertainty regarding Trump Organization holdings, business partners, and dealmaking, as well as the continued financial interests of Mr. Kushner, may result in President Trump issuing a final determination on a CFIUS recommendation affecting his business interests or the interests of his immediate family. Presidential involvement in initial deliberations and investigations could also lead CFIUS to decline to even make a referral or recommendation to suspend or prohibit a transaction. In a previous instance of a conflict of interest, Secretary of the Treasury Hank Paulson recused himself from CFIUS deliberations concerning the purchase of 3Com Corp.¹⁵ Yet no clear remedy appears to exist to resolve conflicts stemming from financial interests of the President.

As Senator Grassley noted in a previous inquiry regarding Secretary Hillary Clinton and CFIUS deliberations, "[w]hen millions of dollars flow to decision makers who have substantial discretion to provide support for or against approval of controversial transactions, public confidence in the integrity of the process requires a commitment to transparency and responsiveness to oversight inquiries."¹⁶

Accordingly, I request that CFIUS explain in detail its plan to mitigate conflicts of interest in any actions concerning the Trump Organization, Kushner Companies, or any other entities connected to the Trump family. In addition, I request that CFIUS address the following specific questions:

- 1) What procedures and policies will CFIUS implement to ensure the independence of initial CFIUS deliberations and investigations involving the Trump Organization, Kushner Companies, or related entities, including any determination by CFIUS regarding whether to make a referral or recommendation for presidential action?
- 2) Has President Trump informed CFIUS about the circumstances, if any, under which he will delegate to another Executive Branch official his authority under 50 U.S.C. App. § 2170(d) to make a final determination on CFIUS referrals or recommendations?
- 3) If President Trump declines to delegate his decisionmaking authority in the circumstances described above, what ethical or legal guidance will CFIUS recommend he

¹³ *Id.*; *Kushner Divests Equity in Major NYC Property*, Reuters (Jan. 31, 2017).

¹⁴ *Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal*, New York Times (Jan. 7, 2017).

¹⁵ *Treasury Official Recused on 3Com*, Bloomberg News (Oct. 6, 2007).

¹⁶ Letter from Sen. Charles E. Grassley to Attorney General Loretta Lynch (June 30, 2015).

seek before making a final determination on transactions involving the Trump Organization, Kushner Companies, or related entities?

- 4) What procedures and policies will CFIUS implement to ensure that senior administration officials with potential conflicts of interest, such as Mr. Kushner, play no role in initial CFIUS deliberations and investigations, as well as any final determinations on CFIUS referrals or recommendations, involving the Trump Organization, Kushner Companies, or related entities?

Please provide your responses as soon as possible, but in no event later than March 1, 2017. If you have any questions related to this request, please contact Brandon Reavis of the Committee staff at Brandon_Reavis@hsgac.senate.gov or (202) 224-2627. Please send any official correspondence relating to this request to Amanda_Trosen@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman