

CFIUS Imposes \$1 Million Civil Monetary Penalty for Breach of Mitigation Agreement

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The Committee on Foreign Investment in the United States (“**CFIUS**” or the “**Committee**”) recently [publicly announced](#) that it had imposed a \$1 million civil monetary penalty against an undisclosed entity for repeated violations of its 2016 mitigation agreement with CFIUS, including failure to establish requisite security policies and to provide adequate reports to the Committee.

Companies subject to mitigation agreements with CFIUS should take note. CFIUS has always taken seriously the obligations imposed on a party under a mitigation agreement, but it has traditionally focused on behavioral remedies and outside verification rather than imposing monetary fines. Furthermore, in addition to citing to the authority to assess civil penalties under Section 721(h) of the Defense Production Act of 1950 in its announcement, CFIUS also cited to Section 721(b)(1)(D)(iii), which authorizes the Committee to unilaterally initiate the re-review of a transaction when a mitigation agreement has been materially breached. In doing so, CFIUS has reminded the public that not only does it have civil penalty authority, but that it also has authority to revisit the original deal and potentially impose new or additional mitigation conditions the second time around.

CFIUS has certainly sent a strong message to foreign investors, and we will be watching this space to see what unfolds.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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