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## CFIUS Annual Report Shows Increasing Frequency of Investigations

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The Committee on Foreign Investment in the United States (CFIUS), the US government's interagency committee charged with reviewing foreign investments in US businesses with potential national security implications, recently released its Annual Report to Congress.<sup>1</sup> The report covers CFIUS activity during calendar year 2013.

Key highlights include:

- CFIUS reports a slight decrease in the total number of CFIUS cases filed in 2013 (97) compared with 2012 (114) and 2011 (111). We expect, however, that the number of cases filed in 2014 significantly exceeded these numbers due to increased economic certainty and growth.
- The number of cases that extended into an additional 45-day investigation period continued to increase. In 2013, 49% of cases went into investigation, compared with 39% in 2012.<sup>2</sup>
- No transactions were blocked in 2013, although eight parties withdrew their notices during either the review or the investigation stage, and only one such party re-filed.
- The number of cases requiring legally binding measures to mitigate concerns raised by CFIUS agencies increased from 7% in 2012 to 11% in 2013.

The Annual Report also noted the variety of mitigation measures required in 2013, including:

- Ensuring that only authorized persons have access to certain technology or handle certain products or services at the US business;
- Establishing a security committee or appointing a US agency-approved security officer to ensure compliance with security policies, audits, and reporting;
- Establishing guidelines for US government contracts;
- Establishing reporting requirements for foreign national visits to the US business or for any security vulnerabilities or incidents;
- Providing US agencies with the right to object to certain business decisions; and
- Requiring third-party audits and on-site compliance reviews by US agencies.

The industrial sectoral breakdown of CFIUS cases has remained relatively constant over the past several years. In 2013, the highest share of filings occurred in the following sectors: professional, scientific, and technical services (15 notices), computer and electronic products (12), utilities (12), and electric power generation, transmission, and distribution (10).

Finally, acquisitions by investors from China, Japan, and Canada accounted for the largest share of notices in 2013, with 21, 18, and 12 notices, respectively. Over the period of 2011 to 2013, the top three home countries of foreign acquirers were China (54 notices), the United Kingdom (49), and Japan (34).

WilmerHale attorneys represent clients from around the world at every stage of the CFIUS process, including providing pre-filing advice, structuring of transactions, preparing and submitting notices, and complying with post-filing requirements, such as mitigation measures.

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<sup>1</sup> Committee on Foreign Investment in the United States, *Annual Report to Congress*, February 2015, accessed at <http://www.treasury.gov/resource-center/international/foreign-investment/Documents/2014%20CFIUS%20Annual%20Report%20for%20Public%20Release.pdf>.

<sup>2</sup> CFIUS has suggested that five such investigations were required because the normal review period could not be completed due to the 2013 government shutdown.

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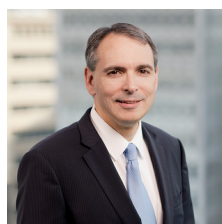
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