May 26, 2026

Via Electronic Submission

April J. Tabor
Secretary of the Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form

Dear Ms. Tabor:

Managed Funds Association ("MFA")[1] appreciates the opportunity to submit comments to the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice (the "DOJ") (together, the "Agencies") in response to the Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form (the "RFI").[2] MFA thanks the Agencies for seeking public comments on these important matters and appreciates the administration's commitment to reducing unnecessary regulatory barriers and engaging with industry stakeholders as it considers reforms to the premerger notification process. MFA's members include traditional hedge funds, credit funds, and crossover funds that all work to help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns over time.

MFA recognizes the importance of the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act")[3] premerger notification system, which allows the Agencies to identify and remedy or seek to enjoin mergers and acquisitions that may violate the Clayton and Sherman Antitrust Acts before they occur. We support the Agencies' goal of making the premerger review process more efficient and effective. A critical component of that effectiveness is ensuring that the Agencies' limited enforcement resources are directed toward transactions that present genuine competitive concerns, rather than consumed by low-risk filings and non-antitrust information that dilute the Agencies' capacity to identify and act on truly problematic deals. The

[1] Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] Fed. Trade Comm'n & U.S. Dep't of Justice, *Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form* (Mar. 25, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RFI.pdf.

[3] Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1383 (codified as amended at 15 U.S.C. § 18a).

recommendations proposed in this letter advance that objective while reducing unnecessary regulatory burdens on filing parties and the Agencies alike.

MFA members have substantial experience with HSR-reportable transactions that are not mergers or acquisitions in any colloquial sense, but simply happen to be reportable under the HSR Act. MFA members rarely, if ever, have horizontal or vertical relationships with the issuers whose securities they acquire. In managing their funds' investments, our members routinely monitor their investments and communicate with company management on certain business decisions, such as executive pay and other corporate governance, operational, and strategic topics. These are ordinary-course activities that support the goals of antitrust enforcement and benefit competition, consumers, and the capital markets.

Executive Summary

MFA supports targeted reforms to improve the efficiency and effectiveness of the HSR premerger notification system by focusing Agency resources on transactions that present genuine competitive concerns. Consistent with the administration's direction to reduce unnecessary regulatory burdens,[4] these recommendations eliminate low-risk and duplicative filings, streamline the process, and preserve strong investor protection and capital formation. Drawing on industry experience and empirical data, MFA offers the following recommendations.

(i) **Blanket 10% Exemption**: The Agencies should adopt a blanket 10% exemption for minority acquisitions, which would eliminate the subjectivity and uncertainty of the current investment-only exemption. Agency enforcement data confirm that no acquisition of 10% or less has ever been challenged, these filings impose disproportionate costs on smaller fund managers and their investors, and the current standard chills beneficial shareholder engagement.

(ii) **Convertible Instrument Conversions**: The Agencies should exempt acquisitions of equity upon conversion of convertible instruments where an acquisition of shares has been previously reported, and the conversion does not result in control of the issuer. Conversion changes only the form of an existing investment, not its competitive significance, and a second filing at conversion creates regulatory redundancy without antitrust benefit.

(iii) **SWF, CFIUS, and DOW Information**: The Agencies lack statutory authority to expand HSR filings beyond antitrust review into national security and foreign investment domains. Congress assigned those functions to Committee on Foreign Investment in the United States ("CFIUS") and provided the Department of War ("DOW") with separate mechanisms under the National Defense Authorization Act ("NDAA").[5] Expanding HSR data collection would exceed the Agencies' mandate, chill foreign investment, and divert enforcement resources from genuine competitive concerns.

[4] *See, e.g.,* Exec. Order No. 14,267, Reducing Anti-Competitive Regulatory Barriers, 90 Fed. Reg. 15,629 (Apr. 9, 2025).

[5] National Defense Authorization Act, Pub. L. No. 118-31, § 857, 137 Stat. 207 (Dec. 22, 2023).

(iv) **Real Estate Exemptions:** The Agencies should preserve the existing real estate exemptions, which are well-calibrated to screen out transactions unlikely to violate the antitrust laws. Removing these exemptions would impose unjustified filing burdens, create significant valuation challenges, and divert limited Agency resources without advancing either antitrust enforcement or housing affordability goals, which should be addressed through targeted housing policy tools.

I. The Agencies Should Adopt a Blanket 10% Exemption

The HSR Act currently provides an "investment-only" exemption, which exempts the acquisition of 10% or less of the issued and outstanding voting securities of an issuer if those shares are acquired "solely for the purpose of investment."[6] The relevant regulations define "solely for the purpose of investment" as having "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer."[7] Informal guidance from the FTC Premerger Notification Office, enforcement actions brought by the Agencies, and public policy statements of the federal enforcers provide additional guidance. Nevertheless, the only established bright lines are that holding and voting one's shares is permissible, while several enumerated actions are not. The considerable space between those two guideposts involves varying degrees of risk as an acquiring person approaches the line at which the exemption is no longer available, and the necessary analysis therefore remains subjective and uncertain. Rather than narrowing this already murky exemption further, the Agencies should replace it with a clear, administrable bright-line rule.

A. Agency Data Confirm Minority Acquisitions Pose Negligible Antitrust Risk

There is strong precedent for the Agencies to adopt a blanket 10% exemption. In 2020, the Agencies themselves considered excluding such transactions from HSR filing obligations entirely.[8] Since the promulgation of the HSR rules in 1978, the Agencies have not challenged a transaction involving an acquisition of 10% or less of an issuer's voting securities, and rarely engaged in even an initial review of such transactions.

The empirical record overwhelmingly confirms that HSR filings for 10% or less minority acquisitions pose virtually no antitrust risk. The 25% and 50% voting securities tiers capture transactions with far greater indicia of influence. Their very low Second Request rates set an upper bound on enforcement risk. A 10% non-controlling interest filing sits well beneath that bound. From fiscal years 2020 through 2024, not a single filing at the 25% threshold resulted in a Second Request.[9] Only approximately 3.4% of filings exceeding the 50% threshold (where acquiring parties obtain outright control) triggered Second Requests.[10] For transactions that most often involve MFA members, the data is unequivocal. Between fiscal years 2007 and 2024, funds, trusts,

[6] 15 U.S.C. § 18a(c)(9).

[7] 16 C.F.R. § 801.1(i)(1).

[8] *See* Premerger Notification; Reporting and Waiting Period Requirements, 85 Fed. Reg. 77,053, 77,055 (proposed Dec. 1, 2020).

[9] Data compiled from Annual Reports to Congress Pursuant to the Hart-Scott-Rodino Act of 1978, Fiscal Years 2020-2024, Table V, *available at* https://www.ftc.gov/policy/reports/annual-competition-reports.

[10] *Id.*

and other financial vehicles reported 913 transactions; only three—less than one-half percent—resulted in Second Requests.[11] Furthermore, from fiscal years 2017 through 2024, not one such acquisition resulted in a Second Request.[12] Considered collectively, the evidence demonstrates a multi-year enforcement pattern: minority acquisitions of this type do not present competitive concerns that would justify additional investigatory scrutiny.

B. The Current Framework Imposes Disproportionate and Compounding Compliance Burdens

A blanket exemption for acquisitions of 10% or less of voting securities would reduce the burden on both filers and the Agencies. The RFI states that the Agencies seek to "reduce the burden for non-problematic transactions" and to ensure that "the requirements of the Updated Form do not impose burdens on filers that outweigh the usefulness of the information provided to the Agencies." A blanket 10% exemption directly advances both objectives. As the FTC itself determined, such an exemption would "allow the Agencies to better focus their resources on transactions that create the potential for competition concerns."[13]

The current filing requirements place a disproportionate burden on smaller fund managers who are making routine minority investments. HSR filing fees currently range from $35,000 to over $2.4 million depending on transaction size. These fees are particularly onerous for smaller managers holding modest positions in a single issuer. When combined with legal fees for filing preparation (averaging 37 to 105 hours) the total cost of an HSR filing can be substantial relative to the investment itself. These costs fall on underlying investors, including pension plans, university endowments, charitable foundations, and other institutional investors. Their returns are diminished by regulatory obligations that serve no pro-competitive purpose. The burden is particularly acute for venture and growth equity funds investing in pre-IPO companies. In that space, minority equity stakes are a primary means of fueling innovation and growth. The ability to proceed quickly is a competitive advantage for both the investor and the company benefiting from the investment. In these cases, the cost and delay associated with an HSR filing can make an outright acquisition more attractive than a minority investment. The result is perverse, encouraging greater consolidation rather than the diversified, competitive investment landscape the HSR Act is designed to protect.

The Agencies' common response to uncertainty about the investment-only exemption is to advise parties to "just file." This is not a workable solution and in fact compounds the problem. Filing an HSR notification signals that the investor may no longer be a "passive" holder. That signal alone can trigger contractual consequences,[14] alter the issuer's perception of the investor's intentions, and chill beneficial shareholder

[11] *Id.*, Fiscal Years 2007-2024, Table X-XI.

[12] Data compiled from Annual Reports to Congress Pursuant to the Hart-Scott-Rodino Act of 1978, Fiscal Years 2017-2024, Table X-XI, *available at* https://www.ftc.gov/policy/reports/annual-competition-reports.

[13] Premerger Notification; Reporting and Waiting Period Requirements, 85 Fed. Reg. 77,053, 77,061 (proposed Dec. 1, 2020).

[14] Shareholder agreements and financing documents may include provisions that become operative if an investor ceases to be passive, such as triggering standstill obligations, limiting voting rights, or requiring disclosure of intentions.

engagement. Filing also imposes, in most instances, a mandatory 30-day waiting period during which the investor may not purchase additional shares crossing the relevant filing threshold. In fast-moving markets, this creates severe opportunity costs. The flood of unnecessary filings diverts the Agencies' limited staff time away from investigating transactions that present genuine competitive concerns. Enforcement personnel are buried under notifications that warrant no substantive review. The result is a Hobson's choice: investors must either forgo legitimate shareholder engagement to preserve the investment-only exemption, or file and bear the substantial costs, delays, and market consequences of doing so, all for transactions that pose no antitrust risk whatsoever.

The aggregation requirement further exacerbates these burdens. Under the HSR Act, an acquiring "person" is defined as the ultimate parent entity ("UPE") and including all entities it controls. The HSR Act requires aggregation of all holdings held by entities controlled by a UPE. Although a manager may serve as a UPE in private equity or venture capital contexts, the aggregation requirement arises more frequently with certain 401(k) and pension plans as well as collective investment trusts ("CITs"). In these vehicles, the fund manager typically does not hold beneficial ownership of the underlying assets and exercises only limited, fiduciary-bound investment discretion on behalf of plan participants and beneficiaries. The investment decisions in such entities are driven by plan-level mandates, target-date glide paths, and diversification requirements wholly unrelated to the manager's proprietary investment strategies. Nevertheless, a manager may be the UPE and need to aggregate holdings of all such managed entities potentially triggering a filing requirement even when no single fund holds a competitively meaningful stake in a given issuer. Aggregating these plan-asset holdings creates a distorted picture of the manager's competitive position and economic interest in any given issuer. A blanket 10% exemption would substantially mitigate the aggregation problem for minority acquisitions without having to consider a manager's subjective intent.

C. A Blanket Exemption Would Serve Broader Regulatory and Market Objectives

Foreign premerger notification regimes typically employ higher percentage thresholds (often requiring an acquisition of control) when determining whether a filing is required, and broadly view a 10% holding as insufficient to raise competitive concerns absent some other controlled overlapping interest. A bright-line 10% exemption would align U.S. practice more closely with international norms while clarifying the exemption and significantly reducing administrative burden on the Agencies and filing parties.

A blanket exemption would also eliminate the tension between antitrust filing obligations and the strong public policies favoring shareholder engagement. The current narrow and murky interpretation of the investment-only exemption chills ordinary-course shareholder engagement, preventing issuers from receiving valuable direct feedback from shareholders and threatening to deprive shareholders of a voice on corporate governance and management topics. "Shareholder engagement is a hallmark of our public capital markets."[15] The U.S. Securities and Exchange Commission ("SEC") has repeatedly recognized and encouraged such

[15] Jay Clayton, Chairman, Sec. & Exch. Comm'n, Statement Announcing SEC Staff Roundtable on the Proxy Process (July 30, 2018), https://www.sec.gov/newsroom/speeches-statements/statement-announcing-sec-staff-roundtable-proxy-process.

engagement.[16] The SEC recently shortened the minimum period for certain tender offers,[17] which also demonstrates the importance of expedited M&A timelines. A blanket 10% exemption would further support this need. A blanket 10% exemption would eliminate the tension between the Agencies' narrow application of the investment-only exemption and the strong public policies favoring management-shareholder communication.

D. Recommendation

MFA respectfully urges the Agencies to adopt a blanket exemption from HSR filing requirements for acquisitions of 10% or less of an issuer's outstanding voting securities. Agency enforcement data confirm that no such acquisition has ever been the subject of an antitrust challenge. The current investment-only exemption imposes disproportionate compliance costs on smaller fund managers and their investors, penalizes diversified fund management through overbroad aggregation requirements, chills beneficial shareholder engagement, and places the United States out of step with international norms. A blanket 10% exemption would eliminate the subjectivity of the current standard, reduce unnecessary filings, and allow the Agencies to focus their enforcement efforts on transactions presenting genuine competitive concerns.

II. The Agencies Should Exempt Non-Control Conversions of Convertible Instruments

A. Background on Convertible Instruments and the Current HSR Framework

Convertible instruments (e.g., convertible debentures, options, and warrants) give investors economic exposure to a company while delaying the acquisition of voting power until a later date. Under the current HSR rules, acquiring convertible voting securities without present voting rights is exempt under 16 C.F.R. § 802.31. However, subsequent conversion is treated as a separate "acquisition" under 16 C.F.R. § 801.32, potentially triggering a (new) filing obligation if the resulting holdings exceed the applicable size-of-transaction threshold (and, where relevant, the size-of-person criteria are met). This distinction between contingent rights and present voting securities may have conceptual appeal, but it imposes substantial and unnecessary burdens on conversions that present no incremental competitive significance, namely those that do not result in control.[18]

B. Non-Control Conversions Do Not Warrant a Separate HSR Filing

1. The Economic Transaction and Competitive Dynamics Are Established at the Time of the Initial Investment, Not at Conversion

The fundamental problem with requiring a filing at conversion is that the economic transaction has already occurred. When an investor acquires a convertible instrument, often coupled with a minority equity investment, the investor commits capital, assumes full economic exposure, and fixes the competitive dynamics

[16] *Id.*

[17] Div. of Corp. Fin., SEC, Exemptive Order for Tender Offers for Equity Securities (Apr. 16, 2026), https://www.sec.gov/files/rules/exorders/2026/exemptive-order-tender-offers-equity-securities-041626.pdf.

[18] As defined under 16 C.F.R. § 801.1(b).

of the investment. Conversion changes the form of the investment from a contingent right to present voting securities. But where the resulting stake does not confer control, it does not materially alter the acquiring person's competitive relationship with the issuer.

Filing at conversion thus requires the Agencies to review a transaction whose competitive effects have already been determined. This is precisely the kind of unnecessary filing Congress intended to eliminate when it authorized exemptions for "classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws." [19]

The antitrust concerns underlying the HSR Act's filing requirements include coordinating pricing, restricting output, foreclosing competitors, or otherwise exercising market power. These concerns typically arise from acquisitions that confer control or a sufficiently large stake to influence competitive conduct. A non-controlling stake does not present these risks. Sound antitrust analysis should focus on the aggregation of competitive assets and the potential for anticompetitive effects, not on the formality of when voting rights attach.

2. Conversion-Stage Filings Impose Disproportionate Costs and Create Regulatory Redundancy

As discussed in Section I, HSR filings impose substantial fees, legal costs, and mandatory waiting periods, all of which are ultimately borne by underlying investors. These costs are particularly unwarranted for non-control conversions, where no new competitive dynamics are at play.

When conversion is contractually triggered (for example, by an IPO, financing round, or maturity date), the filing requirement can delay conversion and disrupt financing timelines, imposing costs bearing no relationship to any competitive concern. The resulting uncertainty, compounded by the theoretical possibility of a Second Request at conversion, discourages the use of convertible instruments. This may ultimately harm competition rather than protect it, while simultaneously inhibiting capital formation.

The redundancy is especially clear where the initial acquisition already involved an HSR filing. In that case, a second filing at conversion is duplicative: the Agencies have already assessed the competitive implications, competitive overlaps have not arisen, and no new capital has been deployed.

Analogous exemptions already confirm this principle. Stock splits and dividends are exempt under 16 C.F.R. § 802.10, and certain intra-person transfers are exempt or excluded under 16 C.F.R. § 802.30. An exemption for conversions would align with the broader principle that changes in the form of securities holdings that do not alter competitive dynamics should not trigger additional filing requirements.

The proposed exemption is best understood as a logical modification of 16 C.F.R. § 802.21, which exempts acquisitions of additional voting securities not meeting or exceeding a greater notification threshold in the five years following expiration or termination of the waiting period. While Section 802.10 exempts acquisitions resulting from stock splits, dividends, and similar corporate actions, it does not adequately cover

[19] 15 U.S.C. § 18a(d)(2)(B).

funds that make equity investments alongside convertible shares across multiple financing rounds. Such a fund may face multiple filings if an accretion in share value causes it to exceed a notification threshold when its additional interests receive voting rights, even though the investment remains a passive, minority position with no competitive significance.

C. Recommendation

MFA respectfully urges the Agencies to adopt an exemption from HSR filing requirements for the acquisition of voting securities upon conversion of convertible instruments where the conversion does not result in control and an acquisition of equity of the same issuer has been previously reported. This exemption would eliminate unnecessary filings for routine conversions presenting no meaningful antitrust risk, while preserving the Agencies' authority to review conversions that could result in control. The result would be more efficient allocation of Agency resources, reduced costs for market participants, and a regulatory framework that better reflects the economic reality of convertible instrument conversions.

III. The HSR Act Does Not Authorize the Collection of Information Regarding Foreign Sovereign Wealth Funds, CFIUS Filing Information, or Department of War Contract Information

Any effort to expand HSR filings to encompass national security and foreign investment concerns, whether through foreign sovereign wealth funds ("SWFs"), CFIUS, or DOW-related data collection, exceeds the Agencies' statutory mandate and should not be pursued. Beyond the legal objections, such an expansion would divert the Agencies' limited enforcement resources away from their core mission of identifying and addressing transactions that present genuine competitive concerns. As discussed below, the text, structure, and history of the HSR Act confirms that its authority is limited to antitrust analysis. Established legal principles preclude expanding the HSR mandate, and any such expansion would raise significant policy concerns and harm U.S. markets.

A. The HSR Act's Antitrust Mandate and the Separate CFIUS Regime

The starting point is the text and purpose of the HSR Act itself. Congress enacted the HSR Act to address the difficulty of "unscrambling the eggs" after anticompetitive mergers had already been consummated, strengthening enforcement of Section 7 of the Clayton Act, 15 U.S.C. § 18.[20] The plain text authorizes information collection only to the extent necessary to determine whether a proposed transaction "may" substantially lessen competition or tend to create a monopoly.[21] CFIUS-related information (such as foreign

[20] S. Rep. No. 94-803 (1976) and H.R. Rep. No. 94-1373 (1976); *see also*, Kelly Signs, *Milestones in FTC History: HSR Act Launches Effective Premerger Review,* FED. TRADE COMM'N: COMPETITION MATTERS (Mar. 16, 2015), *available at* https://www.ftc.gov/enforcement/competition-matters/2015/03/milestones-ftc-history-hsr-act-launches-effective-premerger-review.

[21] 15 U.S.C. § 18.

government control, critical technology access, and proximity to sensitive facilities) are distinct from this competitive effects inquiry.

No nexus exists between these national security considerations and whether a transaction may substantially lessen competition – the sole question the HSR Act was designed to answer. CFIUS is tasked with evaluating national security concerns, and these topics should remain in its purview.

The legislative history reinforces this conclusion. Congressional reports accompanying the HSR Act focused overwhelmingly on the need for premerger review of potentially anticompetitive transactions, not on gathering national security, foreign policy, or sovereign wealth fund information. Congress has consistently treated antitrust enforcement and national security review as separate and parallel functions, assigning each to distinct institutions with distinct expertise and procedural safeguards.

Congress deliberately created CFIUS as the primary interagency mechanism for reviewing foreign investments implicating national security.[22] CFIUS has its own filing regime under 50 U.S.C. § 4565(b)(1)(C) and 31 C.F.R. Part 800, with its own procedural safeguards, timelines, and substantive standards.[23] This parallel statutory scheme demonstrates that Congress did not intend for HSR to serve as an alternative or supplementary channel for gathering national security or foreign investment information. Congress reinforced this architecture through the Foreign Investment Risk Review Modernization Act of 2018, which significantly expanded CFIUS's jurisdiction, resources, and information-gathering tools.[24] This further demonstrates that when Congress wants to broaden national security review of foreign investments, it acts through CFIUS, not the HSR Act. If Congress had intended for the antitrust agencies to collect CFIUS-type information through HSR filings, it would have legislated accordingly.

B. The Agencies Lack Authority to Expand HSR Beyond Its Antitrust Mandate

Fundamental principles of administrative law independently foreclose this expansion. Agencies possess only such authority as Congress has conferred, "an agency literally has no power to act . . . unless and until Congress confers power upon it."[25] The antitrust agencies cannot claim powers Congress has not granted,[26] and statutory silence or ambiguity does not constitute an open-ended license to regulate in areas assigned to other

[22] *See* Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (May 7, 1975); 50 U.S.C. § 4565(a).

[23] *See* 50 U.S.C. § 4565(b) (review and investigation procedures); 31 C.F.R. §§ 800.401-800.508.

[24] Foreign Investment Risk Review Modernization Act of 2018, Subtitle A of Title XVII of Public Law 115-232, 132 Stat. 2174 (Aug. 13, 2018).

[25] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

[26] *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (holding "an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.").

bodies.[27] Courts are increasingly constraining agency interpretive authority.[28] These principles apply with particular force, where the Agencies would claim authority to regulate over national security and foreign investment, a domain that Congress has expressly assigned to a different regulatory body.

Even assuming textual ambiguity, the major questions doctrine independently precludes this expansion.[29] Encompassing national security and foreign investment concerns within HSR constitutes a matter of "vast economic and political significance" that Congress must address directly and cannot be delegated implicitly.[30] The absence of a clear congressional statement authorizing this expansion is dispositive under the major questions framework.

The FTC's rulemaking authority under 15 U.S.C. § 18a(d) permits modifications to the filing form but that procedural authority is bound by the enabling statute's substantive scope and cannot expand the agency's jurisdiction into areas Congress never intended.[31] The Agencies may adjust the mechanics of antitrust review; they may not use procedural authority as a backdoor to regulate foreign investment or national security. Reliance on ambiguous provisions to assert transformative authority is foreclosed,[32] and the absence of any legislative history suggesting that the HSR Act was intended to encompass national security review confirms this expansion would be *ultra vires*.

C. Practical and Policy Concerns

The legal constraints above are independently dispositive, but serious practical concerns further counsel against this expansion. Parties would face overlapping disclosure requirements with inconsistent definitions, materiality standards, and procedural protections across antitrust and national security regimes. HSR confidentiality provisions are not designed for sensitive national security information. Such an expansion would also impose additional compliance obligations and costs not authorized by Congress and lack adequate cost-benefit justification. Filing parties would be forced to navigate two overlapping but inconsistent information-gathering regimes, with different definitions, different standards of materiality, and different procedural

[27] *See Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014) (agency "has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms"; agencies "exercise discretion only in the interstices created by statutory silence or ambiguity" and must "give effect to the unambiguously expressed intent of Congress.").

[28] *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

[29] *See West Virginia v. EPA*, 597 U.S. 697 (2022); *King v. Burwell*, 576 U.S. 473, 486 (2015).

[30] *See Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014); *West Virginia v. EPA*, 597 U.S. 697, 742 (2022).

[31] *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001); Memorandum Opinion and Order at 2, No. 75, *Chamber of Commerce v. FTC*, 6:25-cv-00009-JDK (E.D. Tex. Feb. 12, 2026) (vacating FTC's expanded premerger notification rule where "necessary and appropriate" in 15 U.S.C. § 18a(d)(1) requires benefits to reasonably outweigh costs, and the FTC failed to make that showing).

[32] *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024); *see also*, *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994); *Gonzales v. Oregon*, 546 U.S. 243 (2006).

protections, thereby creating confusion, increasing the risk of inadvertent noncompliance, and diverting resources from substantive antitrust analysis.

Perhaps most importantly, this expansion would chill legitimate foreign investment, deter beneficial cross-border transactions, and reduce U.S. competitiveness in attracting foreign capital. Using HSR filings to monitor sovereign wealth fund activity would signal to global markets that the United States treats routine investment transactions as occasions for national security surveillance. Such an approach is inconsistent with the open investment climate that has long been a cornerstone of U.S. economic policy. Lawful inter-agency coordination does not require, and cannot justify, expanding one agency's statutory mandate to collect information on behalf of another. Proper channels exist for interagency referrals without repurposing the HSR filing process. The Agencies already have the ability to refer matters to CFIUS when a transaction raises potential national security concerns, and CFIUS has the tools, expertise, and authority to act on such referrals. There is no gap in the existing framework that justifies expanding HSR beyond its antitrust mandate.

D. Requiring DOW Contract Information Regardless of Horizontal Overlap Is Unwarranted

The RFI states that the Agencies are considering whether to require filers to provide information regarding their contracts with, or direct and indirect sales to, the DOW "regardless of whether there is currently a horizontal competitive overlap between the merging firms." The RFI frames this proposal as a means "[t]o facilitate closer and more efficient coordination between the Agencies and DOW, and to ensure a competitive defense supply chain." MFA submits that this expansion is unwarranted and extends the broader concerns discussed above regarding SWF and CFIUS-related information collection.

Under the Updated HSR Form,[33] parties were required to provide "information regarding the filers' contracts with DOW that involve a horizontal competitive overlap." This requirement was appropriately tailored to the antitrust purpose of the HSR Act: where merging firms compete in the same market, information about defense contracts may be relevant to the Agencies' assessment of competitive effects in that market. Expanding this requirement to all transactions, regardless of whether any competitive overlap exists, would sever the connection between DOW-related information and antitrust analysis, effectively converting the HSR filing process into a general-purpose national security screening tool. Where there is no horizontal overlap between the merging parties, there is no basis to conclude that a transaction could harm competition in any defense-related market, and the antitrust agencies do not need DOW contract information to assess competitive effects in unrelated markets.

This expansion would impose a particularly acute burden on fund managers and their portfolio companies. MFA members frequently hold minority investments across a wide range of industries, some of which may have DOW contracts. Requiring identification and reporting of all DOW-related contracts and sales for every HSR-reportable transaction, regardless of competitive overlap, would significantly increase filing

[33] The Updated HSR Form took effect on February 10, 2025, and was subsequently vacated by a federal district court on February 12, 2026. Memorandum Opinion and Order, No. 75, *Chamber of Commerce v. FTC*, 6:25-cv-00009-JDK (E.D. Tex. Feb. 12, 2026). However, the requirement to submit a copy of the HSR filing to the DOW continues.

costs and complexity. These costs would ultimately be borne by the underlying investors, including pension plans and university endowments, without any corresponding antitrust benefit.

Congress has already provided separate mechanisms to address DOW supply chain concerns. As the RFI acknowledges, "pursuant to Section 857 of the National Defense Authorization Act for Fiscal Year 2024, some filers may be required to submit a copy of their HSR premerger notification filing to DOW." The RFI also contemplates "requesting voluntary waivers of the HSR disclosure exemption to permit the Agencies to disclose to DOW, upon DOW's request, information about the underlying transaction." These existing mechanisms provide interagency coordination without expanding the HSR form's substantive scope. Requiring duplicative disclosure would add compliance burden without advancing antitrust analysis, blur the line between antitrust review and national security screening, and would weaken each regime rather than strengthening either. Forcing the HSR process to serve dual purposes dilutes the Agencies' ability to focus their limited enforcement resources on transactions that present genuine competitive concerns, while simultaneously providing the DOW with information gathered through a framework not designed for (and ill-suited to) national security analysis.

E. Recommendation

MFA respectfully urges the Agencies to refrain from expanding HSR filings to encompass SWF, CFIUS-related, or DOW contract information beyond what is currently required for transactions with horizontal competitive overlaps. The HSR Act's mandate is limited to antitrust review; Congress has established CFIUS and the DOW's own mechanisms (including Section 857 of the NDAA) to address national security and defense supply chain concerns. Expanding HSR beyond its intended scope would exceed the Agencies' statutory authority, impose unjustified compliance burdens, chill beneficial foreign investment, and divert enforcement resources from transactions presenting genuine competitive concerns. Blurring the boundary between antitrust review and national security screening would weaken both regimes, undermining the effectiveness of the HSR process as an antitrust tool while providing national security decision-makers with information gathered through a framework not designed for that purpose. Existing interagency referral mechanisms provide an appropriate and lawful channel for coordination without repurposing the premerger notification system.

IV. The Agencies Should Preserve the Real Estate Exemptions for Single-Family Housing Acquisitions

The RFI acknowledges that "Sections 802.2 and 802.5 (the 'real estate exemptions') of the HSR rules exempt certain acquisitions of real estate from filing under the HSR Act because historically these transactions were considered unlikely to violate the antitrust laws." The Agencies' review of these exemptions stems from Executive Order 14376, "Stopping Wall Street from Competing with Main Street Homebuyers," 91 Fed. Reg. 3023 (Jan. 20, 2026). While MFA recognizes the administration's interest in housing affordability, modifying or removing these exemptions would be inappropriate and ineffective for the reasons below.

A. The Existing Exemptions Are Well-Calibrated and Long-Standing

These exemptions are long-standing and well-calibrated to the HSR Act's core purpose of screening for transactions that may raise competitive concerns. By excluding categories of real estate acquisitions that, as the Agencies acknowledge, historically "were considered unlikely to violate the antitrust laws," the exemptions help focus premerger review on transactions with meaningful antitrust signal and avoid imposing filing costs and delay on routine real estate investments that are unlikely to warrant Agency attention.

The existing exemptions also provide an administrable approach to valuation by permitting filers, in appropriate circumstances, to look through and deduct residential housing assets (including worker housing) from the size-of-transaction analysis; removing that framework would create substantial uncertainty (e.g., how to treat portfolios and mixed-use assets, and whether trailer parks, mobile home communities, or apartment complexes are covered) and would predictably drive over-filing without advancing antitrust enforcement.

B. The Proposed Changes Would Harm MFA Members and Their Investors

The removal of these exemptions would directly harm MFA members and their investors. Many MFA members invest in portfolio companies or syndicated combinations of commercial and residential real estate. If the exemptions are eliminated, the value of residential housing held by a portfolio company would be included in the size-of-transaction calculation, pushing more transactions over the HSR threshold for acquisitions that have no bearing on competition. For example, a fund acquiring a portfolio company that happens to hold residential real estate alongside its primary commercial operations would face a filing obligation driven entirely by assets unrelated to competitive dynamics. This expansion of regulatory hurdles runs directly counter to the mandate the Trump administration has given to the regulatory agencies to reduce unnecessary burdens on businesses and investors in order to facilitate capital formation.

C. The HSR Rules Are Not the Appropriate or Effective Forum to Address Housing Policy

The HSR rules are not the appropriate or effective forum to address housing policy concerns. The HSR Act identifies transactions that may substantially lessen competition; it does not regulate real estate ownership. As the RFI acknowledges, Real Estate Investment Trust ("REIT") acquisitions "are largely exempt under 7A(c)(1) of the statute", reflecting Congress's considered judgment about the treatment of real estate in the HSR framework. We understand that the administration has concerns about institutional investment in housing affordability; however, HSR filing requirements are not tailored to advance that objective.

Requiring antitrust filings for transactions with little to no competitive significance would impose substantial costs and delays on market participants without meaningfully addressing the underlying housing supply and affordability dynamics that drive housing costs. Those concerns should be addressed through targeted housing policy or other regulatory mechanisms specifically designed for that purpose; for example, tools that can directly influence housing supply, zoning, and development incentives, rather than by diverting Agency enforcement resources toward transactions that present no competitive concern.

D. Recommendation

MFA respectfully urges the Agencies to preserve the existing real estate exemptions under the HSR rules. Removing or restricting these exemptions would impose unjustified filing burdens, create significant valuation and definitional challenges, disproportionately impact MFA members and their investors, and divert the Agencies' limited enforcement resources toward transactions that present little competitive concern, all without advancing either the antitrust objectives of the HSR Act or the administration's housing affordability goals. To the extent the administration seeks to address concerns about institutional investment in single-family housing, those objectives should be pursued through targeted housing policy tools specifically designed for that purpose.

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MFA appreciates the opportunity to provide comments to the Agencies on these important reforms to the HSR premerger notification rules. We believe the recommendations set forth in this letter would improve the efficiency and calibration of the HSR system, reduce unnecessary burdens on filing parties and the Agencies, better align the premerger notification process with its intended statutory purpose, and ensure that the Agencies' limited enforcement resources are directed toward transactions that present genuine competitive concerns rather than consumed by low-risk filings and non-antitrust information collection. If you have any questions about these comments, please do not hesitate to contact Jill R. Whitelaw at JWhitelaw@mfaalts.org or the undersigned at Jhan@mfaalts.org regarding this letter.

Respectfully submitted,

/s/ Jennifer W. Han

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