



February 18, 2020

*Via [www.regulations.gov](http://www.regulations.gov)*

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

Re: National Venture Capital Association Comments on **Provisions Pertaining to Certain Investments in the United States by Foreign Persons**, RIN 1505-AC64, specifically Interim Rule 31 CFR 800.239, Concerning the Definition of “Principal Place of Business”

Dear Mr. Feddo:

The National Venture Capital Association (“NVCA”) appreciates the efforts by the Committee on Foreign Investment in the United States (“CFIUS”) to implement the Foreign Investment Risk Review Modernization Act (“FIRRMA”). Since the enactment of FIRRMA, CFIUS and its member agencies have engaged productively with NVCA, and NVCA is pleased that CFIUS has addressed some of NVCA’s concerns regarding FIRRMA implementation.

NVCA is particularly gratified that CFIUS has implemented, as an interim rule, a new definition of “principal place of business.” Under the definition, when a fund’s activities and investments are “primarily directed, controlled, or coordinated by or on behalf of the general partner, management member, or equivalent,” and such general partner or member is located primarily in the United States, the fund will not be considered a foreign entity. See 31 CFR 800.239(a). Many funds managed by NVCA’s membership of U.S. venture capital firms are controlled in this manner, and NVCA and its members are pleased that such funds will not be considered foreign entities.

However, to safeguard national security without undue burdens for venture capital firms, this letter requests clarification with respect to certain aspects of the new “principal place of business” definition.

#### Venture Capital Firms and NVCA

To briefly reiterate relevant background from previous comments, NVCA notes that the model of venture capital firms is to raise capital from investors (limited partners, or LPs) to invest in early-stage companies. Some of these limited partners are from abroad, as foreign investors seek returns in the same manner as

U.S. investors. NVCA has a diverse membership base of venture capital firms spread across the country, investing in sectors as varied as medical devices, information technology, biotechnology, and cybersecurity. Venture capitalists invest and partner with high-growth startups with transformative ideas that power innovation and our economy. As the voice of the U.S. venture capital community, NVCA empowers its members by advocating for policies that encourage innovation and reward long-term investment. NVCA also serves as the definitive resource for venture capital data and unites its member firms through a full range of professional services.

#### NVCA Comments on “Principal Place of Business”

NVCA’s comments on the new definition of “principal place of business” concern subsection (b). This subsection reasonably seeks to preclude inconsistent representations regarding the location of a fund’s principal place of business. Specifically, 31 CFR 800.239(b) states that if a fund has represented that its principal place of business is outside the United States and has made that representation to the U.S. or foreign government, or a subnational government thereof, then it cannot take a contrary position with CFIUS. It is reasonable for CFIUS to preclude inconsistent representations.

However, while seeking to create a bright-line test for what constitutes inconsistent representations, the rule currently contains ambiguities. In particular, subsection (b) states that a fund may not claim for CFIUS purposes that its principal place of business is in the United States if the fund has represented to a government that any of the following are outside the United States: “its principal place of business, principal office and place of business, address of principal executive offices, address of headquarters, or equivalent.” That list, particularly the “or equivalent” phrase, creates too much uncertainty.

“Principal place of business” and “headquarters” are synonymous. If a fund represents that its principal place of business or headquarters is outside the United States, then the fund should not be able to assert that its principal place of business is inside the United States. But maintaining an offshore “principal place of business” or “headquarters” should exhaust the terms that would preclude a U.S. principal place of business claim. The term “or equivalent” significantly muddies the waters where clarity is critical. Maintaining an offshore “registered agent,” or “place of business,” for example, should not preclude claiming a U.S. “principal place of business.”

Accordingly, for the sake of clarity, NVCA proposes that 31 CFR 800.239(b) be revised to read as follows (strikethrough and bold underlining indicating changes):

If the location determined under paragraph (a) of this section is in the United States and the entity has represented to the U.S Government or a subnational government of the United States or any foreign government, in the most recent submission or filing to such government (other than a submission or filing to the Committee) in which the entity has identified its principal place of business, ~~principal office and place of business, address of principal executive offices, or~~ **address of headquarters, or equivalent**, that ~~any~~ **either** of the foregoing is outside the United States, then the location identified in such submission or filing is deemed for purposes of this definition to be the entity’s principal place of business unless the entity can demonstrate that such location has changed to the United States since such submission of filing.

In furtherance of its goal of clarifying the new definition, NVCA also proposes adding this example to a section 31 CFR 800.239(c) addressing the application of the new test:

**Fund A is chartered in Jurisdiction B, outside the United States. Fund A is managed exclusively by a Jurisdiction B-incorporated general partner, whose management team consists entirely of U.S. citizens resident in the United States. Fund A files an annual report with the government of Jurisdiction B stating that Fund A maintains an office in Jurisdiction B, which office address is Fund A's primary mailing address. The report filed with the government of Jurisdiction B does not indicate that Fund A's principal place of business or equivalent is in Jurisdiction B and does not preclude Fund A from claiming that its "principal place of business" is in the United States.**

NVCA also urges CFIUS to add another example to that same new subsection to illustrate how a fund may demonstrate that a principal place of business has changed to the United States after the fund previously has identified its primary place of business as being outside the United States:

**Fund A is chartered in Jurisdiction B, outside the United States. Fund A is managed exclusively by a general partner also chartered in Jurisdiction B, but whose management team consists entirely of U.S. citizens resident in the United States. Fund A files an annual report with the government of Jurisdiction B. In the previous report, Fund A stated that its principal place of business is in Jurisdiction B and that its general partner's headquarters is in Jurisdiction B. Subsequently, Fund A amends that report to state that its principal place of business has moved to the United States and the general partner's headquarters have moved to the United States, but that Fund A and its general partner maintain offices in Jurisdiction B, which office address is the fund's and the general partner's primary mailing address. Fund A may claim that its principal place of business is in the United States.**

Note that neither example is dependent upon the textual change proposed by NVCA above. However, both the rule clarification and illustrations requested above would advance the apparent goal of ensuring that funds do not make inconsistent claims about the location of a "principal place of business," while simultaneously ensuring that there is a bright-line test for what constitutes inconsistency. The language of the current rule leaves too much ambiguity.

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NVCA again expresses its appreciation to CFIUS for its engagement with NVCA and particularly for the helpful "principal place of business" definition.