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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**WESTINGHOUSE ELECTRIC
COMPANY LLC, et al.,**

Debtors.

Chapter 11

Case No. 17-10751 (MEW)

(Jointly Administered)

**NOTICE OF THE UNITED STATES OF AMERICA
CONCERNING THE REVIEW OF CERTAIN TRANSACTIONS BY THE
COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES**

The United States of America, by its attorney Joon H. Kim, Acting United States Attorney for the Southern District of New York, respectfully submits this statement on behalf of the Committee on Foreign Investment in the United States (“CFIUS”), to address the potential that certain transactions involving the sale of Debtors or their assets could be subject to CFIUS review, which could affect the transactions’ timing, terms, and ability to be completed. A description of the CFIUS review process is set forth herein.

1. CFIUS is an inter-agency committee authorized to review certain transactions that could result in control of a U.S. business by a foreign person, in order to determine the effect of such transactions on the national security of the United States. 50 U.S.C. § 4565(b)(1)(A).

2. Section 721 of the Defense Production Act of 1950, as amended (“Section 721,” codified at 50 U.S.C. § 4565), authorizes the President, acting through CFIUS, to review any merger, acquisition, or takeover “which could result in foreign control of any person engaged in interstate commerce in the United States” (referred to as “covered transactions”). 50 U.S.C. § 4565(a)(3). The term “person” is defined to mean any individual or entity. 31 C.F.R. § 800.221. Covered transactions could include a purchase by a foreign person of an entity engaged in interstate commerce in the United States (a “U.S. business”) that is in bankruptcy, including components of a business or assets that constitute a U.S. business under the CFIUS regulations. *See* 31 C.F.R. Part 800.

3. The members of CFIUS include the Secretaries of the Treasury (chair), State, Defense, Commerce, Energy, and Homeland Security; the Attorney General; the United States Trade Representative; the Director of the White House Office of Science and Technology Policy; and the heads of any other executive department, agency, or office, as determined to be appropriate, on a case-by-case basis. 50 U.S.C. § 4565(k); Exec. Order No. 11858 § 3(b), *as amended* by Exec. Order No. 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008). The Director of National Intelligence and the Secretary of Labor are nonvoting, *ex officio* members, and officials of five White House offices are observers. *Id.*

4. After receiving notification of a covered transaction, CFIUS must complete a “review” within 30 days of accepting the notice filed by the parties. 50 U.S.C. § 4565(b)(1)(E). CFIUS may then initiate an “investigation” that may last up to 45 additional days if CFIUS

determines that it needs additional time to complete its assessment. *Id.* § 4565(b)(2)(C). If CFIUS determines that the transaction poses national security concerns that cannot be resolved, it will refer the transaction to the President, unless the parties choose to abandon the transaction. 31 C.F.R. § 800.506; Exec. Order No. 11858, *as amended*, § 6(c). The President may suspend or prohibit the transaction. 50 U.S.C. § 4565(d)(1). The President has 15 days after completion of CFIUS’s investigation to make his decision, and the decision is made public. *Id.* § 4565(d)(2). The President’s decision is not subject to judicial review. *Id.* § 4565(e).

5. In conducting its national security risk analysis, CFIUS assesses whether a foreign person has the capability or intention to exploit or cause harm (the “threat”) and whether the nature of the U.S. business, or its relationship to a weakness or shortcoming in a system, entity, or structure, creates susceptibility to impairment of U.S. national security (the “vulnerability”). *See* U.S. Dep’t 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. 74567 (Dec. 8, 2008). National security risk is a function of the interaction between threat and vulnerability, and the potential consequences of that interaction for U.S. national security. *See id.* Section 721(f) and the Guidance provide an illustrative list and examples of the factors that CFIUS considers in assessing national security risk.

6. Generally, parties voluntarily submit notices of transactions to CFIUS. In making their decision about whether to submit a voluntary notice to CFIUS, parties to a transaction may wish to consider whether their transaction could present national security considerations. It is also important that parties consider whether a CFIUS filing is warranted *before* completing the transaction. CFIUS has the authority, and in the past has exercised this authority, to initiate a review of covered transactions and take appropriate actions—even absent a voluntary notice, and

even after a transaction has been completed. 50 U.S.C. § 4565(b)(1)(D). Such actions could include interim measures pending final CFIUS action, mitigation measures at the conclusion of CFIUS action to resolve any national security concerns, and/or a recommendation to the President that the President suspend or prohibit the transaction. 50 U.S.C. § 4565(d)(1) and (l)(1).

7. Accordingly, CFIUS has the authority to review any acquisition by a foreign person that could result in foreign control of Debtors or of their components or assets that constitute a U.S. business. Moreover, if CFIUS identifies any national security concerns with such acquisition, CFIUS or the President could take action that affects the ability of the parties to complete the transaction, the timing of completion, and/or the terms of the transaction.

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Respectfully submitted,

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