

# Congress of the United States

Washington, DC 20510

May 16, 2019

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

Dear Secretary Mnuchin:

We write to you regarding En+ Group PLC's (En+) proposed investment in Braidy Atlas, a Kentucky rolling mill that would be the largest new aluminum plant built in the United States in decades. United Company Rusal PLC (Rusal), a Russian subsidiary of En+, will obtain a 40-percent stake in the project in exchange for its proposed investment of \$200 million, according to the letter of intent it signed with Braidy Industries, Inc. (Braidy). Given that En+ is a company substantially owned by individuals and entities with close ties to the Russian government, we believe the proposed transaction warrants immediate review by the Committee on Foreign Investment in the United States (CFIUS).

In April 2018, the Treasury Department imposed sanctions against Oleg Deripaska and a host of other senior Russian government officials, oligarchs, and companies they own or control for their role in supporting the Russian government's malign activities around the globe, including attempts to subvert Western democracies.<sup>1</sup> The Treasury also imposed sanctions on Mr. Deripaska's companies, En+ and Rusal.

In December 2018, the Treasury Department's Office of Foreign Assets Control (OFAC) notified Congress of its intention to lift sanctions imposed on En+ and Rusal. OFAC claimed that its decision was based on the reduction of Mr. Deripaska's nearly 70 percent share of En+.<sup>2</sup> Notwithstanding this reduction, the two largest shareholders in En+ are Mr. Deripaska, with a 45-percent stake, and VTB Bank (VTB), with a 24-percent stake.<sup>3</sup> VTB is owned and controlled by the Russian government and was placed under U.S. sanctions in 2014 in response to Russia's annexation of Crimea.<sup>4</sup> Senior VTB executives have close ties with Russian President Vladimir

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<sup>1</sup> Department of the Treasury, *Press Release: Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity* (Apr. 6, 2018) <https://home.treasury.gov/news/press-releases/sm0338>.

<sup>2</sup> Department of the Treasury, *Press Release: OFAC Notifies Congress of Intent to Delist En+, Rusal, and EuroSibEnergo* (Dec. 19, 2018) <https://home.treasury.gov/news/press-releases/sm576>.

<sup>3</sup> Jack Farchy, *Deripaska Share Recipients Include His Own Charity, Source Says*, Bloomberg (Dec. 19, 2018) <https://www.bloomberg.com/news/articles/2018-12-19/deripaska-share-recipients-are-said-to-include-his-own-charity>.

<sup>4</sup> Department of the Treasury, *Press Release: Announcement of Additional Treasury Sanctions on Russian Financial Institutions and on a Defense Technology Entity* (Jul. 29, 2014) <https://www.treasury.gov/press-center/press-releases/pages/jl2590.aspx>.

Putin;<sup>5</sup> indeed, the bank has been referred to as “Putin’s piggy bank.”<sup>6</sup> An investigation revealed that members of Putin’s inner circle used offshore entities to move vast sums of money through a subsidiary of VTB.<sup>7</sup>

Accordingly, we were deeply alarmed to learn of efforts by En+, through its subsidiary Rusal—both companies in which Mr. Deripaska continues to play a key role—to jointly construct and operate the Braidy Atlas flat-rolled aluminum rolling plant in Ashland, Kentucky. Rusal will invest \$200 million in Braidy Atlas for a 40-percent stake in the project, with the remaining ownership held by Braidy. Braidy announced that it is applying to the U.S. Department of Energy and the German National equipment finance programs to fund the debt portion of its capital structure. Public reports indicate the plant will make “unspecified materials for the Department of Defense,” among other products.<sup>8</sup> The letter of intent signed between En+ and Braidy specifies that Rusal will serve as Braidy’s exclusive supplier of imported aluminum, providing close to two million metric tons over ten years.<sup>9</sup> Braidy’s press release states that this will be “the world’s largest order for one mill of high-quality, pre-alloyed and low-carbon primary aluminum slabs.”<sup>10</sup>

As you are aware, the Treasury Department’s Office of Investment Security issued an interim rule in October 2018 implementing provisions of the Foreign Investment Risk Review Modernization Act (FIRRMA), which expanded the scope of transactions subject to review by CFIUS and requires mandatory declarations for certain transactions.<sup>11</sup> The interim rule acknowledges that “certain strategically motivated foreign investment could pose a threat to U.S. technological superiority and national security.” The list of pilot program industries included in the rule and subject to mandatory declaration requirements was carefully developed to target industries facing imminent threats of erosion of technological superiority from foreign direct investment.

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<sup>5</sup> Jenny Strasburg and Rebecca Ballhaus, *Deutsche Bank in Late 2016 Raced to Shed Loan it Made to Russian Bank VTB*, Wall Street Journal (Feb. 2, 2019) <https://www.wsj.com/articles/deutsche-bank-in-late-2016-raced-to-shed-loan-it-made-to-russian-bank-vtb-11549147289>.

<sup>6</sup> Cristina Maza, *Trump Administration to Lift Sanctions on Putin-Linked Oligarch’s Companies and the Bank Linked to Trump Tower Moscow Project will Benefit*, Newsweek (Dec. 20, 2018) <https://www.newsweek.com/trump-russia-putin-deripaska-paul-manafort-vtb-bank-glencore-1266018>.

<sup>7</sup> Luke Harding, *Revealed: The \$2bn Offshore Trail That Leads to Vladimir Putin*, The Guardian (Apr. 3, 2016) <https://www.theguardian.com/news/2016/apr/03/panama-papers-money-hidden-offshore>.

<sup>8</sup> Joe Deaux, *With Sanctions Lifted, Rusal to Invest in U.S. Aluminum Mill*, Bloomberg (Apr. 14, 2019) <https://www.bloomberg.com/news/articles/2019-04-15/with-sanctions-lifted-rusal-to-invest-in-kentucky-aluminum-mill>; Jack Brammer and Daniel Desrochers, *Aluminum Plant Getting Millions in State Incentives to Create Jobs in E. Kentucky*, Lexington Herald Leader (Apr. 26, 2017) <https://www.kentucky.com/news/politics-government/article146877009.html>.

<sup>9</sup> Braidy Industries, Inc., *Press Release: Braidy Industries Secures Partnership for America’s First Low-Carbon, High Value Aluminum Mill* (Apr. 14, 2019) <https://www.apnews.com/3c8f99d2321e4c6db3dc7c09395480d6>.

<sup>10</sup> *Id.*

<sup>11</sup> Determination and Temporary Provisions Pertaining to a Pilot Program to Review Certain Transactions Involving Foreign Persons and Critical Technologies, 31 C.F.R. § 801 (2018) available at <https://www.govinfo.gov/content/pkg/FR-2018-10-11/pdf/2018-22182.pdf>. Under § 801.407 of the pilot program, CFIUS may “initiate a unilateral review of the transaction” after receipt of a mandatory declaration. The regulations emphasize that such unilateral review can occur “if that member has reason to believe that the transaction is a pilot program covered transaction and may raise national security considerations.”

Notably, the list of pilot program industries includes “Alumina Refining and Primary Aluminum Production” and “Secondary Smelting and Alloying of Aluminum” as critical technologies.<sup>12</sup> The interim rule also makes clear that foreign investors do not need to acquire a controlling interest in order to affect decisions made by, or to obtain certain sensitive information from, a U.S. business with respect to the use, development, acquisition, or release of critical technology, and that such investment from a foreign investor can take non-controlling and non-passive forms.

Russia remains a central threat to U.S. national security and prosperity and is, along with China, one of our most aggressive and capable adversaries. The proposed investment by En+—a company that is majority owned by a U.S.-sanctioned Russian national and Russian state bank—in an American aluminum mill, raises serious questions of national security, particularly given the mill promises to supply materials to the Department of Defense. Any efforts by En+ to expand its influence in our economy, or access technologies critical to our national security, must be closely scrutinized by CFIUS. This immediate review is all the more necessary, since President Trump relied upon national security as the reason for imposing tariffs on imported aluminum under Section 232 of the Trade Expansion Act of 1962.<sup>13</sup>

Accordingly, we request that CFIUS undertake an immediate review of En+’s proposed investment in the Braidy Atlas mill to assess, among other things, potential risks to the integrity of our defense supply chain and whether Russia could obtain access to sensitive technologies impacting U.S. national security.

Thank you for your attention to this matter.

Sincerely,



Ron Wyden  
Ranking Member  
Senate Committee on Finance



Sherrod Brown  
Ranking Member  
Senate Committee on Banking  
Housing, and Urban Affairs



Adam Schiff  
Chairman  
House Permanent Select Committee on  
Intelligence



Maxine Waters  
Chairwoman  
House Financial Services Committee

<sup>12</sup> *Id.*

<sup>13</sup> The White House, *Press Release: What You Need To Know: Section 232 Investigations and Tariffs*, (Mar. 8, 2018) <https://www.whitehouse.gov/briefings-statements/need-know-section-232-investigations-tariffs>.

*Eliot L. Engel*

Eliot Engel  
Chairman  
House Committee on Foreign Affairs

*Elijah E. Cummings*

Elijah E. Cummings  
Chairman  
Oversight and Reform Committee

*Jim Himes*

Jim Himes  
United States Representative

*Lloyd Doggett*

Lloyd Doggett  
United States Representative