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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
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October 8, 2019

Mr. Craig Bouchard
Chairman and CEO
Braidy Industries, Inc.
P.O. Box 2065
Ashland, KY 41105-2065

Dear Mr. Bouchard:

As you are aware, 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.¹ 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.

A recent story in *Time* titled "A Kremlin-Linked Firm Invested Millions in Kentucky. Were They After More Than Money?" contained several on the record statements from you regarding Braidy Industries' plan to construct an aluminum plant, through its subsidiary Braidy Atlas, in partnership with formerly sanctioned Russian company United Co. Rusal.² According to the *Time* report, in January 2019 you traveled to Zurich, Switzerland for a "meet and greet" dinner with a Rusal sales executive, despite the fact the company was then sanctioned. As reported by *Time*:

Over dinner at La Rôtisserie, a restaurant with a view of the city's 12th century cathedral, the executive told Bouchard that the company was ready to do business. "They said, 'If we get the sanctions off, let's meet again,'" he recalls. "And I said, 'Wow, that's interesting.'"

¹ 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>.

² Simon Shuster & Vera Bergengruen, *A Kremlin-Linked Firm Invested Millions in Kentucky. Were They After More Than Money?*, *Time*, Aug 13, 2019 <https://time.com/5651345/rusal-investment-braidy-kentucky>.

The *Washington Post* reported that by the next day the Senate had blocked a bill to keep the sanctions in place, and three months later, Rusal announced plans for a partnership with your company.³

Please answer the following concerning this information and investment:

1. Please identify the Rusal sales executive, as well as any other participants, at the January 2019 dinner.
2. Please provide the date of this meeting, how it was arranged, who paid for it, and describe the discussion that occurred during the dinner.
3. Was a potential investment by Rusal in Braidy Atlas discussed during this dinner, or at any other time prior to sanctions being lifted? Please identify the dates and participants in those discussions.
4. Braidy Atlas recently entered into a 10-year supply agreement with a Rusal affiliate to supply 200,000 metric tons of aluminum slab and primary aluminum ingots for Braidy's planned mill. Was the potential for this supply agreement discussed during the January 2019 dinner or at any other time prior to sanctions being lifted? Please identify the dates and participants in those discussions.
5. Was this January 2019 meeting and any prior or subsequent discussion with Rusal representatives disclosed to anyone in the state or federal government prior to sanctions being lifted? If so, when and to whom.
6. Did you or any Braidy representative at any time discuss your business interests with Oleg Deripaska? If so, please provide the dates and participants in those discussions?
7. A January 4, 2019 article in the *Louisville Courier Journal* titled "Braidy Industries extends sale of shares for Ashland mill," notes the following about Braidy's efforts to raise capital, "Giving no specifics, Braidy recently indicated that it has deals with other investors. The company said it has over \$1 billion in 'substantial indications of interest from various accredited parties.'" At the time of this statement, had Braidy had any discussions with Rusal about investing in Braidy Atlas?

³ Tom Hamburger & Rosalind S. Helderman, How a McConnell-backed effort to lift Russian sanctions boosted a Kentucky project, *The Washington Post*, Aug. 14, 2019 https://www.washingtonpost.com/politics/how-a-mcconnell-backed-effort-to-lift-russian-sanctions-boosted-a-kentucky-project/2019/08/13/72b26e00-b97c-11e9-b3b4-2bb69e8c4e39_story.html.

In the 2009 book you authored with James Koch, *America for Sale*, you express a number of concerns about foreign ownership of U.S. industries, particularly ownership by Russian interests. Many of your observations are related to your experience in the steel industry, and you note, for example, “a U.S. steel industry owned predominately by countries antagonistic to the United States is a recipe for future problems, perhaps even disasters” and further state “the bottom line is that we believe it is risky business to trust Russian oligarchs ... to do what is best if they own most of our steel industry.”⁴

You also describe how the “aggressive and petulant moves of Russia’s Vladimir Putin (a former KGB executive) on half a dozen different fronts” have led to a “painful, but major” alteration of the perception of the Russian threat to U.S. industry.⁵ In particular, you note that Russian oligarchs were forced to take large loans from the Russian government after losing much of their wealth during the financial crisis, giving the government significant influence over them. Oleg Derispaska is one of your examples, whose net worth fell from \$28.0 billion in mid-2008 to \$3.5 billion in early 2009. You state that the government’s loans allowed the Russian government to “assume the position of the most powerful interest” in the oligarch businesses, and conclude that the “implications of these moves for U.S. national security cannot be ignored.”⁶

The concerns raised in your book are not limited to the steel industry. In a chapter titled “If We Were Running This Country, We’d ...” you equate the steel industry to the aluminum industry, describing them as “key inputs” used throughout the economy, including national defense-oriented industries.⁷ Describing steel and aluminum as basic, but nevertheless important industries, you note “it is not comforting to know that Russia’s Vladimir Putin might be lurking in the background calling signals for the Russian oligarchs.”⁸ Discussing steel specifically, you state “if Prime Minister Putin harbors a nasty wish to throw a wrench into the works of the U.S. economy, then he now has acquired the means to do so because of significant ownership in the U.S. steel industry.”⁹

You also call for more vigorous oversight of foreign investment by the Committee on Foreign Investment in the United States (CFIUS), stating that “CFIUS is (or should be) one of the most important agencies in the United States government.”¹⁰ For example, in addition to oversight of the steel and aluminum industries, you call for heightened scrutiny of foreign ownership of industries producing superalloys and advanced composite materials. You argue that foreign ownership may only be appropriate for long-term allies such as Canada and Great Britain, and that it would be foolhardy to allow a foreign adversary to acquire ownership of a company producing advanced technology. You state that even if the foreign adversary “did not attempt to

⁴ Craig T. Bouchard & James V. Koch, *America for Sale: How the Foreign Pack Circled and Devoured Esmark* 91-92 (2009) [hereinafter *America for Sale*].

⁵ *America for Sale* 107.

⁶ *Id.* at 109.

⁷ *Id.* at 181.

⁸ *Id.* at 182.

⁹ *Id.*

¹⁰ *Id.* at 187.

exercise control, their access to the science related to such developments would be destructive to national security.”¹¹ Many of changes you called for were in fact enacted by the Foreign Investment Risk Review Modernization Act (FIRRMA), which expanded the scope of transactions subject for review by CFIUS.¹²

Finally, you note your concern about the use of shell companies to escape CFIUS scrutiny, stating “the CFIUS should become more active in examining actual controlling ownership and intent, matters that it now often tends not to investigate closely.”¹³

Please answer the following concerning this information:

8. The two largest shareholders of En+, the parent company of Rusal, are Oleg Deripaska (45-percent stake), who was sanctioned by the U.S. government in 2018 for his role in supporting the Russian government’s malign activities around the globe, including attempts to subvert Western democracies, and VTB Bank (24-percent stake), a financial institution owned and controlled by the Russian government and placed under U.S. sanctions in 2014 in response to Russia’s annexation of Crimea.¹⁴ Do you believe that the major ownership interests in Rusal by Deripaska and VTB might enable Prime Minister Putin to someday “throw a wrench into the works of the U.S. economy?” If not, why not?
9. Braidy Industries, parent company of Braidy Atlas, is a producer of Veloxint, “a proprietary, ultra high-strength, next generation metal alloy that is stronger than steel and lighter than stainless, 3x stronger than today’s most commonly-used metals.” Archived versions of Braidy’s Netcapital listing state “We are in advanced discussions with U.S. government agencies for use of Veloxint in military applications.”¹⁵ Do you consider Veloxint to be a “superalloy” or advanced composite material, as described in *America for Sale*? Would a partnership with Rusal give the company, including its representatives or agents, access to sensitive information about Veloxint? If not, why not?

Another topic discussed in *America for Sale* is the role of sovereign wealth funds in direct foreign investment. In particular, you write “CFIUS should give special attention to sovereign wealth funds, which, even if they do not exhibit strong interest in national security-oriented

¹¹ *Id.* at 184.

¹² 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.”

¹³ *America for Sale* 190.

¹⁴ OFAC Press Release: “Announcement of Additional Treasury Sanctions on Russian Financial Institutions and on a Defense Technology Entity,” July 29, 2014, <https://www.treasury.gov/press-center/press-releases/pages/jl2590.aspx>.

¹⁵ *See, e.g.*, <https://web.archive.org/web/20190128083143/https://netcapital.com/companies/braidy>.

assets, can accumulate political and economic muscle with sufficient acquisitions.”¹⁶ On November 3, 2017, the Russian Direct Investment Fund (RDIF), the Russian sovereign wealth fund invested in En+ Group during its London IPO.¹⁷

According to Special Counsel Mueller’s report on Russian election interference in the 2016 election, in December 2016 and January 2017, Kirill Dmitriev, CEO of RDIF, worked with a hedge fund manager and friend of Jared Kushner “on a proposal for reconciliation between the United States and Russia, which Dmitriev implied he cleared through Putin.”¹⁸ Further, “[o]n January 16, 2017, Dmitriev consolidated the ideas for U.S.-Russia reconciliation that he and Gerson had been discussing into a two-page document that listed five main points: (1) jointly fighting terrorism; (2) jointly engaging in anti-weapons of mass destruction efforts; (3) developing ‘win-win’ economic and investment initiatives; (4) maintaining an honest, open, and continual dialogue regarding issues of disagreement; and (5) ensuring proper communication and trust by ‘key people’ from each country.”¹⁹

According to the Special Counsel, Dmitriev also met with Trump campaign supporter Erik Prince in the Seychelles in January 2017.²⁰ In September 2018, the Daily Beast reported that after the Seychelles meeting, Dmitriev sent Prince a two page memo “characterized as a summary of some of the ideas discussed in the Seychelles.”²¹ According to the reporting, the memo Dmitriev sent appears to be the same reconciliation plan that Dmitriev drafted with Gerson. The third bullet point identified in the Daily Beast reporting, “win-win economic investment initiatives that will be supported by both electorates,” included an additional note that “Russian companies would ‘make investments with RDIF financing to serve the U.S. market in the Midwest, creating real jobs for hard hit area with high employment.’”²²

Please answer the following concerning this information:

10. To your knowledge, is the RDIF still holding ownership of controlling interest, or any interest, in En+? Does RDIF have any ownership or controlling interest in Rusal? If so, what safeguards are in place to prevent the Russian sovereign wealth fund from accumulating “political and economic muscle” over the U.S. aluminum industry through its affiliation with Rusal?
11. Are you aware of any Russian companies with RDIF financing making investments in the U.S. in addition to EN+? If so, please identify those companies.

¹⁶ *America for Sale* 190.

¹⁷ Reuters, “Russia’s RDIF buys into En+ IPO with M.East, Asia-Pacific partners,” November 3, 2017; RDIF Press Release: “RDIF and leading Middle Eastern and Asian funds invest in En+ Group London and Moscow IPO,” November 3, 2017

¹⁸ Robert S. Mueller, III, “Report On The Investigation Into Russian Interference In The 2016 Presidential Election, Volume I of II,” March 2019, at p.147

¹⁹ *Id.* at 158.

²⁰ *Id.* at 153.

²¹ Erin Banco, Betsy Woodruff, “Revealed: What Erik Prince and Moscow’s Money Man Discussed in That Infamous Seychelles Meeting,” *Daily Beast*, September 26, 2018

²² *Id.*

The recent Republican tax cut legislation created an “Opportunity Zone” program to provide tax incentives for long-term investments in designated low-income areas of the country. The program allows investors to reduce and defer taxes on capital gains by reinvesting those gains in “Opportunity Funds” that invest in these zones. According to Braidy filings, “our locations in Boyd and Greenup Counties were designated by the Governor as Opportunity Zones, potentially qualify for 50-100% reductions in capital gains tax.”²³

12. Did you or any Braidy representatives at any time discuss with and state or federal officials designating your locations in Boyd and Greenup Counties as an Opportunity Zone?

Please provide answers to these questions no later than November 1, 2019. Thank you for your attention to this matter.

Sincerely,



Ron Wyden
Ranking Minority Member

²³ Braidy Industries Netcapital filing, <https://netcapital.com/companies/braidy>.