AMENDMENT TO RULES COMMITTEE

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OFFERED BY MS. PORTER OF CALIFORNIA

At the end of subtitle C of title XVIII, add the following:

1 SEC. ___. STUDY AND REPORT ON FEASABILITY OF SUSPENSION OF MERGERS, ACQUISITIONS, AND TAKEOVERS OF CERTAIN FOREIGN SURVEILLANCE COMPANIES.

   (a) IN GENERAL.—The Secretary of Commerce, in consultation with the Secretary of the Treasury, the Secretary of State, the Secretary of Defense, the Director of National Intelligence, and the heads of other relevant agencies, shall—

      (1) study the feasibility of using existing authorities to implement a suspension of any merger, acquisition, or takeover that would result in control, including full or partial ownership of some or all assets, of a covered foreign entity described in subsection (c) by a United States person; and

      (2) submit to the appropriate congressional committees a report on the results of such study.
(b) MATTERS TO BE INCLUDED.—The study and report required by subsection (a) shall include the following:

(1) An assessment of whether the President or Executive branch agencies have the authority to implement a suspension as described in subsection (a) and what additional authorities would be required if needed.

(2) An assessment of whether the President or Executive branch agencies could lift a suspension only if a determination is made that the merger, acquisition, or takeover described in subsection (a)—

(A) does not pose a significant counterintelligence or national security risk to the United States or United States treaty allies, including an undue risk of subversion of the United States intelligence community or United States national security interests through the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of targeted digital surveillance technologies;

(B) does not seek or intend to evade or circumvent United States export control laws, including through a transaction, transfer, agreement or arrangement intended or designed to
limit exposure to United States export controls;

or

(C) does not affect any existing contracts between the United States Government and the United States person.

(c) COVERED FOREIGN ENTITY DESCRIBED.—A covered foreign entity described in this subsection is an entity, including a subsidiary or affiliate of the entity, that—

(1) is organized under the laws of or having its principal place of business in a foreign country;

(2) develops, sells, or otherwise controls proprietary technology, including non-sensitive technologies, related to targeted digital surveillance capabilities; and

(3) is included on the list maintained by the Bureau of Industry and Security of the Department of Commerce and set forth in Supplement No. 4 to part 744 of title 15, Code of Federal Regulations.

(d) DEFINITIONS.—In this section:

(1) CONTROL.—The term “control” means the power, direct or indirect, whether exercised or not exercised, to determine, direct, or decide important matters affecting an entity, subject to regulations prescribed by the Secretary of Commerce.
(2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(3) TARGETED DIGITAL SURVEILLANCE.—The term “targeted digital surveillance” means the use of items or services that enable an individual or entity (with or without the knowing authorization of the product’s owner) to detect, monitor, intercept, collect, exploit, preserve, protect, transmit, retain, or otherwise gain access to the communications, sensitive or protected information, work product, browsing data, research, identifying information, location history, and online and offline activities of other individuals, organizations, or entities.

(4) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

(B) an entity organized under the laws of the United States or of any jurisdiction of the United States, including a foreign branch of such an entity.