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Beyond Unprecedented: The Post-Pandemic Economy
Season 5, Episode 1:
"Uncle Sam, Shareholder"

[00:00:08] **Jim Millstein:** My guess is that equity investments will be part of the arsenal tool set the government uses even after the Trump administration is gone. Putting guardrails around it is going to be important.

[00:00:23] **[Music and media clips of journalists]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented, and we just don't know.

[00:00:37] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy*, a limited series podcast from Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. I'm Eric Talley, Marc and Eva Stern Professor of Law and Business at Columbia Law School and co-director of the Millstein Center.

[00:00:54] **Dorothy Lund:** And I'm Dorothy Lund, Columbia 1982 Alumna Professor of Law at Columbia Law School and co-director of the Millstein Center.

[00:01:06] **Talley:** So as we kick off what is now our fifth season of *Beyond Unprecedented*, we find ourselves in another moment of transformation, political, economic, and technological, all of which are conspiring to shake up the corporate and legal landscape. Companies, investors, consumers, and lawyers are working to navigate these shifts in real time. And to explore these changes with our guest, I'm excited once again to welcome my surviving co-host, Dorothy Lund, to join me. Hi, Dorothy.

[00:01:38] **Lund:** Thanks, Eric, and yeah, you haven't made it too easy, but I really do look forward to another season unpacking unprecedented legal regulatory and economic developments. This season, we're going to ask a lot of questions, and I'll just share a few that are on my mind right now. One is, how should we understand the U.S. government's recent equity investments in various private sector companies? Another, what are the implications of ongoing challenges to the independence of the U.S. Federal Reserve? And what's the future of the Trump administration's signature tariff policy? We'll be bringing in experts to help us answer questions like these over the coming weeks and months.

[00:02:16] **Talley:** So, Dorothy, one of the things that's kind of interesting about this moment, and maybe I'm just going to speak from a longer arc, but as—

[00:02:24] **Lund:** Much longer.

[00:02:24] **Talley:** Someone who's been teaching business law for 30 years, usually I kind of set these things up, at least to the extent that politics comes into play as sort of saying, okay, look, economic policy has an effect on business and business law. And usually through the lens of the more sort a progressive agenda, which is greater centralized control over the economic levers of activity, and what has traditionally been the Republican approach, which is, no, let's just let markets do what markets do. They're better at allocating things than centralized planning. And we're kind of in this weird moment where up is down and down is up. The Trump administration has redirected the Republican platform to not be so much about unbridled competition or open markets. The government seems to be playing a much more important role.

[00:03:17] **Lund:** Yeah, absolutely. And Eric and I are not public law professors. Our focus is in corporate law. But it's this funny moment where public law and corporate law are becoming much more intertwined than ever before. And having movements towards having a very strong executive branch is having all sorts of knock-on effects for corporations. And I think it's a really hard and challenging moment for the people that run and manage corporations figuring out how to navigate all of this. It's been definitely an interesting time to be teaching corporate law and a great time to be hosting a podcast like this.

[00:03:55] **Talley:** It's really the opportune time to be discussing the recent moves and investments the Trump administration has made with both private companies, publicly traded companies, and negotiated in the global market setting. As I noted earlier, for much of the last century, actually, regardless of whether the progressive or the more conservative wings have been stewarding government, the default position was that the U.S. government was not going to own pieces of for-profit, publicly traded, or private companies. And this was in part out of concern that government stakes in private entities could spur a type of cronyism, could cause the choosing of who's going to win and who's going to lose, could reduce innovation and incentives. And even when the federal government does take equity in private firms, at least historically, it's framed it as kind of a reluctant, crisis-driven moment and it's just temporary. For example, after the New Deal, the economic reforms of the 1930s, the Reconstruction Finance Corporation, which was a U.S. government agency, bought and traded securities of private companies, but then backed off. In the 1980s, the FDIC took an 80% stake in Continental Illinois Bank to bail out that firm, but step back. Fast forward to 2008, the Great Financial Crisis and Troubled Asset Relief Program, or TARP, acquired shares of a lot of U.S. companies and banks after a global financial crisis. And then during the COVID pandemic, the Treasury stepped in again. But in each one of these cases, the action of the government was advertised as sort of a one-off thing, an emergency tool that would be unwound and essentially step back from as quickly as would be practicable. And in fact, even during the TARP intervention, then-Treasury Secretary Tim Geithner said that he would, quote, “never support a program designed to nationalize banks and other businesses.” So that was 2008. Flash forward to today where the philosophy looks a lot different. The Biden administration, even before Trump too, leaned into industrial policy through legislation like the CHIPS Act and the Inflation Reduction Act, which were basically about giving big grants and tax credits to certain types of industrial and economic activities, but still resisted actual ownership. Under the Trump administration, this has been kicked up a notch or two or three even and today equity stakes just aren’t an emergency exception anymore. They seem to be becoming part of the policy toolkit. And so Department of Commerce, the Defense Department or Department of War, the Energy Department are taking minority equity positions in firms like MP Materials, Intel, Lithium America, and others. And elsewhere, they’re negotiating a special type of sort of government golden share that would give them special shareholder rights. The plans that had been in place to allow Fannie Mae and Freddie Mac to go public and loosen their government control seemed to have stalled and been pulled back. And the government’s even brokering third party investments with other countries, bundling U.S. tariff relief with somewhat opaque multi hundred billion dollar investment commitments from those countries. Now, that’s a radical shift, as I noted, from 18 years ago or so when the great financial crisis enlisted the U.S. government as a reluctant kind of lifeguard. The U.S. government is now situating itself as a strategic equity partner to critical businesses and some of the Trump administration’s goals seem to be supply chain, resilience, national security, and affordability, but it also seems to be about how to generate financial upside for taxpayers in supporting the government.

[00:07:44] **Lund:** This shift raises a number of questions. What exactly is the government acquiring and holding and why focus on these particular companies and sectors? How are markets reacting? What types of deals will come next? And how should we think through the role of equity in U.S. industrial policy? To help us think through these issues, we’re thrilled to be joined by today’s guest, Jim Millstein. Jim is the co-chairman of Guggenheim Securities. Before joining Guggenheim, he was the founder and CEO at Millstein & Co., an independent financial advisory firm. And from 2009 to 2011, Jim was the chief restructuring officer at the U.S. Department of the Treasury, where he helped recapitalize and restructure companies like AIG that the government bailed out following the 2007 to 2008 financial crisis. Before his government service, Jim held leadership roles at Lazard and Cleary Gottlieb Steen & Hamilton. And what a coincidence to have Jim Millstein here on a podcast brought to you by the Millstein Center. Jim is a proud alumnus of Columbia Law School, where he serves as chair of the Millstein Center Advisory Board. Welcome, Jim.

[00:08:55] **Jim Millstein:** Thanks guys, happy to be here.

[00:08:58] **Lund:** So, Jim, at a high level, what has actually changed between the old days that Eric was describing just now and today? So if we compare today with the model of the New Deal Construction Finance Corporation or Continental Illinois in the

1980s, TARP in 2008, how different is this old approach from the current approach to U.S. government equity investing?

[00:09:23] **Millstein:** Well, it's a big change, surely, in my lifetime. And I think you have to situate it in the context of President Trump's tariff campaign, because maybe they realized it in advance, but they surely realized it after so-called Liberation Day, when the president sought to impose universal tariffs, basically on every country with whom we trade. And the Chinese response was to say, oh, well, there are these critical minerals and magnets that we control basically 95% of the refining and processing and production of. And in particular, the magnets are critical inputs to electric motors and electric motors are everywhere. They're in cars, they're in missiles, they're in refrigerators. And so the Chinese response to the Liberation Day tariffs was to say, you know, we could embargo the export from China of magnets. The president quickly backed off. Liberation Day came and went. And at about the same time, he entered an executive order that directed the Department of War to change its acquisition strategy for missile systems, tanks, ships, and the like. And they began to do things very differently, particularly in those supply chains related to critical minerals, magnets, that are critical to the industrial base and the defense industrial base in particular. And so starting in July, we had a series of equity investments in and around the critical minerals area and magnets where, you know, using both minority equity investments, you know, they've talked about the taxpayer daring in the upside from defense procurement programs, but I really think it's more kind of to cement relationships with domestic suppliers that are few and far between in these critical areas. And so on top of the equity and warrants that they've taken, they have also in some cases provided loan commitments to facilitate the expansion of refining mining operations, as well as price support and long-term procurement contracts. Again, because this is an area in which we have to completely rebuild the domestic supply chains. The tariff regime sort of highlighted the interruption in global supply chains to just reorganize, by definition, required the reorganization of global supply chains because it changed the cost-benefit analysis of having shipped offshore our refining operations. You know, refining is incredibly dirty business. Over the course of the 1960s, 70s, and 80s, particularly after we passed the Environmental Protection Act, and particularly after the EPA got up and running and started enforcing it in the late 70s and early 80s, the critical minerals mining all shifted offshore and in particular to China. You put an embargo on magnets from China to the United States and you can put a world of hurt on the defense industry in the United States. So I think there was a wake up call on Liberation Day. It does seem to be a very thoughtful coordinated strategy to rebuild domestic supply chains in lithium, in critical minerals, in magnets, in gallium arsenide, which is critical to advance semiconductors, to alumina, which is also critical to the semiconductor industry. This is a five to 10 year process of rebuilding these domestic supply chains. And the truth is we're never going to rebuild them completely because demand here for these minerals far exceeds even the most optimistic projections of what the Trump administration is doing in partnership with U.S. industry.

[00:13:54] **Talley:** Is it that people didn't anticipate that the Chinese government would respond this way? Or do you think that maybe people in government sort of saw the handwriting on the wall, the juggernaut on magnets and some battery technology was essentially going to bubble up at some point and so this was sort of all part of the plan? And then I guess a slightly related question is who are the principal actors that are, you know, essentially trying to broker these deals, both with companies and with other governments?

[00:14:29] **Millstein:** Let me answer your first question first, which is the use of tariffs was obviously something the president, particularly with vis-a-vis China, started in his first term in 2017, 2018. And I think then, again, as a consequence of the reordering of supply chains, particularly with China, I think in particular the defense establishment realized that when you looked at any military system currently in production and use by the U.S. military, I think the stat I remember reading back in the teens was as a result of the first set of tariffs was that something like 60% of the intermediate inputs to every system the Defense Department employs comes from offshore. Just as American companies had looked for cheaper intermediate inputs from offshoring, so had the Defense Department and its prime contractors, with the result that we were very much dependent on international suppliers for critical inputs to our defense system. And then the Biden administration clearly also got the joke and both the Department of Energy Loan Program Office and the CHIPS Act and the IRA had elements of that funding, but that grant and tax credit funding targeted to try to bolster domestic supplies. The second Trump administration came in both aware of it, but I think as when the Chinese threatened an embargo, it really upped the ante for them. So that’s the history here. I think that in terms of the people, the deputy secretary who runs the department is a guy who ran a big successful private equity fund for 35 years and gave that up to come into the department to run the Defense Department and really transform its acquisition strategy for critical mission technologies. And as I said, they’re not hiding the ball on this. The other thing that went on over the last 30 or 40 years is a series of mergers and acquisitions in the defense and aerospace sectors that resulted in the prime contractor universe shrinking from 51 prime contractors when Eisenhower was in office to five prime contractors now. And the new strategy is clearly to create competition to these five prime contractors, both because of the incredible cost overruns that the virtual oligopoly they have on critical systems has permitted them to make. The strategy that this fellow Steve Feinberg, who was formerly at Cerberus now as the deputy secretary, has outlined explicitly is to create competitions for the primes and to change the relatively cumbersome way the Department of War purchases systems to try to speed up production on the one hand and to promote innovation on the other, you know. War as the Ukrainians have demonstrated is changing pretty quickly in terms of, you know, the use of drones and the use of satellites and the use of technology, you know, broadly defined. And we’re still building, you know, big things that are easy targets for drones. And so Feinberg has brought in a series of basically investment professionals to help both evaluate the industrial base on the one hand and on the other hand, try to figure out where there are critical gaps in our ability to supply ourselves on a domestic basis for critical components to the systems that we currently use and the systems of the future.

[00:18:31] **Lund:** Thanks, Jim. You've been discussing some of the sectors where the U.S. government has been playing a bigger role, and we'd just love to get an overview of some of those specific investments being made and the strategic objectives. Is this all about national security? You know, is U.S. Steel, the investment there? Are there different underlying objectives?

[00:18:52] **Millstein:** Sure. So, in the rare earth supply area, which are the rare earths go into a variety of critical systems, most importantly, magnets, semiconductors, and industrial controls. And these are all things that are critical to defense systems. So they've made two critical investments, one in a company called MP Materials, which to create a new domestic facility to produce rare earth magnets. And then in Vulcan Elements and ReElement Technologies, which would be a magnet facility and bolster the supply chain. So in each of those, they've taken equity and offered procurement contracts, long-term procurement contracts to support the investments, because these companies are actually, they've got to open mines, they've got to build production and refining facilities. This isn't, you know, just to flip the switch, create a procurement contract. This is actually making investments to build out the industrial supply chain from mines to production of magnets. The Department of Energy similarly, has made an investment in a company called Lithium Americas, which is intended to both reopen and open new lithium mines in the United States and to create the processing for lithium, which is incredibly dirty and difficult. The Department of Commerce has converted one of the grants that was made to one of the original innovators in semiconductors, Intel. They converted a grant into an equity investment in Intel to help Intel transform itself from being a supplier of, you know, microprocessors and memory chips to becoming a foundry that can supply the kind of unique and proprietary designs that other systems builders in the electronics area ask it to build. Again, using the tariffs as a threat, he has induced, in particular Japan and Korea, to commit to make half a trillion to $350 billion of investments in the United States and you know, these are sort of more agreements in principle right now than they are hard and fast agreements. So we don't quite know exactly how that's going to work, but each country traded a reduction in the tariffs that Trump otherwise threatened to impose in exchange for a commitment to invest in various U.S. businesses. So the Japanese have subsequently outlined a commitment to support U.S. energy infrastructure, making a hundred billion dollar commitment for new Westinghouse reactors, nuclear reactors. We haven't built a new nuclear facility in the United States in 40 years, and we need them desperately. And similarly, Hyundai and the private equity fund that the Deputy Secretary of War left behind, Cerberus, have entered into a partnership to rebuild and modernize U.S. shipyards. The Chinese build 5,000 new ships a year. We build five new ships a year, so again, this is a business we just let move to East Asia that we dominated in World War II. And separately there's an agreement between a big Korean steel company and one of the companies in which the Defense department has invested ReElement Technologies to bolster the U.S. rare earth supply chain. So, you know, they're using a lot of tools. I think it's worth just saying here that there is something called, that was created in 2018, called the Development Finance Corporation, which was a merger of a couple of U.S. government agencies that were used to make grants and equity investments in various businesses overseas as part of our soft power, helping other countries stand up areas where they needed investment. There is a bill pending in Congress to give that entity authority to make equity investments in the United States. And it thereby could become a very serious instrument of Trump administration policy outside the Department of War and the Commerce Department to bolster the U.S. industrial base. We'll see. You know, for purposes of its foreign investments, it had a $5 billion budget or something in that order of magnitude. So I suspect they're going to turn this agency into a vehicle for domestic investment. My guess is the budget's going to increase quite significantly. When the government is a big owner of even a minority stake, you're not sitting on a board of directors and making completely independent decisions. You're going to check with your government owners to make sure that you're not doing something to which they object. And so even without, you know, voting agreements, corporate governance arrangements, you know super voting shares, the mere presence of the government in owning 15% of Intel and MP Materials and Lithium Americas, you know, those boards of directors are going to be checking in with the Department of War and the Department of Commerce before they do anything material. I think with these stakes, the minority stakes, and they don't have particular control rights, what these stakes are intended to signify is the government's making a long-term commitment to try to meet the strategic deficiencies in our supply chains to these companies. The risk, of course, is that the next administration or the next secretary of war decides to use these as playgrounds for their friends and load the boards up with friends and family and the like. But for the moment, I think like we did in the TARP program, it's largely hands-off on terms of governance as long as they're doing what we expect them to do. The golden share in U.S. Steel. That industry has shrunk in terms of the number of actual U.S.-owned, U.S.-based companies. But in the event we were involved in a major conflict, we would have to have a serious expansion of our domestic steelmaking capacity. Under CFIUS, which is, you know, a 12-agency committee that gets to review and approve control investments made in U.S. companies deemed to be of critical or strategic importance to the defense industry. CFIUS has a quid pro quo for approving the acquisition by Nippon Steel, a Japanese company, of U.S. Steel, one of our largest steel makers still producing steel in the United States, and made it a condition that the government of the United States be given a golden share, which gives it the right, ultimately, to exercise control over U.S. Steel. And again, one doesn't anticipate that that right would be exercised except in the context of a major conflict in which steel production was critical to the building of ships and boats and planes and everything that the defense industry might need in a war.

[00:26:57] **Talley:** I want to think a little bit about the other part of the Trump administration's investment project, purported bilateral agreements with Japan, Korea, most recently Taiwan. I want to set aside a narrative that, you know, what we may be partially witnessing is a reemergence of a type of a regionalist world order. That's a bit of a tug of war. How do you see it playing out?

[00:27:22] **Millstein:** You know, the White House published maybe a month ago now, National Defense Strategy, a really interesting document. I recommend all your listeners take the time to read the 20-odd pages. And it does lay out a, what jokingly referred to as the updated Monroe Doctrine, the Donroe Doctrine, which is that, hey, you know, the

Western Hemisphere belongs to us and foreign powers should stay out. The Asia thing is difficult because Taiwan–if, this is my view, if the Chinese invaded Taiwan or blockaded Taiwan, they'd be in a world of hurt too. They depend on Taiwan semiconductor manufacturing at least as much as we do. All of the most advanced semiconductors in the world come out of Taiwan and South Korea today. So, you know, a shutdown of Taiwanese semiconductor manufacturing would throw the world into a great depression. I think as much as the Chinese have said Taiwan's part of greater China, the risk to China of taking it by force and causing an interruption in manufacturing there is so great, it's actually I think one of the greatest strategic weaknesses, which they are trying to remedy. They've made a huge push into advanced semiconductor manufacturing, but they're still probably you know, 5 to ten years away from being able to live without Taiwan. And similarly, you know, I mean, if I were in South Korea and Japan, given, you know, the Trump administration's lack of unwavering support for its European allies, yeah, I'd be making some investment commitments to the United States to try to induce the Trump administration to continue to think that I'm part of what fits under the U.S. security umbrella. And so I think these countries have been smart to make these kinds of commitments. It'll be interesting to see if the Supreme Court ever gets around to deciding the IEEPA case, as I think your listeners probably know, the president's imposition of universal tariffs, that is a tariffs on everything coming out of any country, and he imposed them on almost every country, was done under the emergency authority granted under the International Economic Emergency Act, in which he alleges that he has tariff authority, despite the fact that the statute does not use the word tariff at all. It seems like a pretty clear-cut case to me, but the Supreme Court has obviously recognized that the president has used it to extract investment commitments and to extract reductions in tariffs for our export industries abroad. And so in practice, by virtue of their delay in ruling, he continues to use these tariffs, the bullying authority of these tariffs to try to extract value for the United States. Now, the truth of the matter is we haven't seen any dollars from abroad come into the United States yet. I think the, I'm sure all of these countries are slow playing the actual investment, unless it makes sense for the industrial company who they're using as the agent for their investment. So, the partnership on shipbuilding between the Koreans and Cerberus probably goes forward because there are clearly the procurement contracts behind it from Navy. And so regardless of whether or not tariffs are held to be valid or invalid, there's good economic rationale, financial rationale, for making those investments. Similarly, the Japanese commitment to Westinghouse, building new nuclear reactors here. I mean, there's clearly a shortage of electrons in the United States and demand for power of all sorts, whether nuclear, gas, fire, or renewable. So those things will probably occur but the president throws out $18 trillion of new investment. You know, maybe I've seen analyses of that. It's probably if you added up the press releases at least, you know, maybe it gets to seven trillion. And if you look at the kind of hard announcements that have been made with actual foreign companies saying I'm bringing investment dollars into the United States, that's about $700 billion. You know, it's not chump change, $700 billion is still real money, but I think we'll have to see whether or not the IEEPA tariffs survive because if they don't, he's got a lot of alternatives to reimpose them. But it requires a little more heavy lifting in terms of studies and reports and demonstrating the case for why you need them. The oddity on the tariffs, just to stick there for a second, is why hasn't he gone to Congress? Why hasn't he gone to the Republicans in the House and the Senate and said, give me this authority? Just clarify for me and the world that I have this authority. And the reason he hasn't, I think, is the tariffs are they hit different American companies differentially. If you're a domestic producer, yeah, maybe you like it. But if you're a multinational with international supply chains, you don't like it at all. And to throw it back to Congress would be to open up a lobbying party like we haven't seen in a long time. There's a reason why trade bills don't get passed that often. It's really hard.

[00:33:19] **Talley:** You mentioned the IEEPA tariff case in front of the Supreme Court, but there's another underlying issue with a lot of these deals that the U.S. has been striking, which is whether the U.S. government is even allowed to do it. I know that this was something that created obstacles back when you were working with the government during the Great Financial Crisis, right? Does the government actually have the authority to take equity positions and operating companies and under what circumstances? And who would raise those challenges? Would these be private plaintiffs, attorneys general? Would it be a legislative challenge by Congress? So forth.

[00:33:56] **Millstein:** First and foremost, if you're spending money, whether it's on equity, preferred stock, common stock, warrants, and the like, if you're going down that road, you still have to have budgetary authorization to do it. You just can't wake up one morning as the executive branch and say, I'm going to invest $8 billion in Intel. You gotta have a source, a budget. You have to an authorized, congressionally authorized source of funding for that. Then the question is, did Congress say you may or you shall take equity interests? The Congress hasn't said that in a long time. And even in the TARP program, there was a very slender read, like one dependent clause in one sentence of the TARP bill that Secretary Paulson relied on to say he could take preferred stock interests in major financial institutions. But the Department of Treasury and White House lawyers signed off on it, you know, it said and or other financial instruments and equities of preferred stocks a financial instrument. That was enough for people to hang their hats on then. In the case of what they're doing today, the Defense Production Act, which is the funding source for most of this critical minerals investments, has some very broad language in it about loans, contracts, and other forms of financial support. There's some broad language in the Defense Production Act that, like the broad language in the TARP Act, I think protects the Department of War in making the investments it made. In the case of Intel, again, there's something called, this is, you'd have to be a real government public law geek to know this, there's something called the Federal Compromise of Claims Act.

[00:35:51] **Talley:** Wow, you sound like an administrative law geek.

[00:35:55] **Millstein:** What the Commerce Department did with a CHIPS Act grant to Intel is compromise its future commitment of future monies that had been granted to convert them into an equity investment. So there's some maneuvering that can be done as long as you have the budgetary authorization for the investment. In terms of like, who's going to complain? So it's early days, right? The companies who have been chosen, the chosen ones, are not going to complain. In most cases, these critical minerals companies are small little companies that didn't have very bright prospects and have now got a much better future ahead of them as a result of being singled out by the Department of Defense. So they're not complaining and their shareholders aren't complaining that the government might lack authority or budgetary authority to do what they're doing. And as I said, since the supply base, the domestic supply base for critical minerals has been so hollowed out and the domestic refining of critical minerals has been virtually shut down, there are no competitors really out there that would complain that the government has conferred a competitive advantage through these investments on these other companies. Now there may be a line of entrepreneurs with maps of old mines that are lining up at the at the Pentagon saying, hey, fund me too. We'll see.

[00:37:32] **Talley:** I want to wrap up with one question, which is really to ask you to take out your crystal ball and talk a little bit about what should we expect over the coming years? Should we expect more of this activity and a continued ramp up of this activity? But then the other side of that is, you know, to the extent that what the federal government is currently involved in is sort of like a type of industrial, some people would call it a big push kind of mentality, right, to put infrastructure and critical minerals and refining and production in place at a scale that had been allowed to atrophy over the years. Is there an exit strategy for unwinding that greater governmental role, or does that just sort of become the new normal?

[00:38:24] **Millstein:** In some critical areas to the broader well-being of our economy, we have really allowed ourselves to come to rely on the stability of global supply chains. Tariffs had been kind of a tool of the early 20th century and sort of had disappeared from, you know, the general drift of the world economy was away from tariff protection and the use of tariffs. And yet, you know, a new president, Donald Trump, in 2016 gets elected and, you know, for whatever reason, is a believer in tariffs and imposed tariffs on China, which the Biden administration actually not only kept, but augmented. So having now kind of reinvented the use of equity as a signaling mechanism, and that the government believes this is a really important area for domestic production, and as a way of giving companies assurance that the government is going be a long-term purchaser of their output, my guess is that this is going to be part of the arsenal toolset that the government uses going forward, even after the Trump administration is long gone. Putting guardrails around it, I think, is going to be important. I mean, getting Congress to do anything today is, probably the hardest thing to do in America, is passing a bill out of both houses that the president will sign. But if this is going to become a part of the tools we use to protect our welfare and economy and to protect our ability to defend ourselves, we do need to have kind of a public debate on how should the tool be used. If you look at, you know, how China came out of nowhere in the 1970s to become a manufacturing powerhouse, you know they basically followed a script that the Japanese before them and the South Koreans before them used, which is a combination of protecting their domestic market so as to allow infant industries to emerge, to force foreign companies to transfer technology in exchange for market access. And then, in the case of China, basically directing the party apparatus in each of the major municipalities to invest in a car manufacturer, invest in a steel company, invest in a coal production facility. And they created national competitors through that process. Were it me in the White House, I'd be telling the Chinese, yeah, you can sell here. You got to, BYD has got to build plants here and transfer technology here in partnership with GM or Tesla or Ford or Stellantis or some Rivian or whomever, new startup. We got to catch up in a bunch of these areas and we should be using access to our domestic market the way China, Japan, Korea used access to theirs to get us to transfer technology to them over the last 50 years

[00:41:59] **Talley:** Is there anything else that that we didn't cover that you think would be kind of interesting to throw it in?

[00:42:05] **Millstein:** You know, when you're, as a government, deciding you've got a deficiency in this area or that, you're going to need to make, or want to make, an equity investment in a publicly traded company, you have market-moving information. And so they have to be very careful how they do this. I've been a lawyer at a major New York law firm and a banker at a couple of different boutique investment banks, including my own, and, you know, when you're in possession of market moving material, non-public information, you guard that information under penalty of serious fines and potential jail sentences for tipping and insider trading. In some of these cases, there was huge option activity ahead of the government's announcement of its equity investment. And just the trading behavior suggests that there were leaks ahead of the announcement. The one thing about governments is a lot of people have to know what you're planning to do. So the potential for leaks is high. And so again, this is part of the stuff that rather than doing this on the fly, procedures and policies, what can we buy? How do we buy it? Who has to know? Who has to sign off on it? How do we protect the confidentiality of our intentions and how do we exercise the rights that we are acquiring? I think, you know, there's some serious thinking that needs to go on around all of it.

[00:43:43] **Talley:** Jim, thanks so much for joining us today. This has been incredibly informative and helpful.

[00:43:48] **Millstein:** My pleasure.

[00:43:50] **Talley:** Our guest today was Jim Millstein. Join us next time for another episode of *Beyond Unprecedented*, and make sure to follow us on Apple, Spotify, or wherever you get your podcasts. Thanks so much for listening. Our executive producer is Michael Patullo. Julie Godsoe, Cary Midland, and Martha Moore, our producers. Editing and engineering by Jake Rosati. Production coordination by Elise Dunaway. Special thanks to Erica Mitnick Klein and Molly Calkins at the Millstein Center. If you like what you hear, please leave us a review on your podcast platform. If you're interested in learning more about law, the economy, and society, visit us at law.columbia.edu or follow us on LinkedIn, Instagram, Facebook, and X.