

Long-Awaited U.S. Outbound Investment Regime Published, Will Become Effective January 2, 2025

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On October 28, 2024, the U.S. Department of the Treasury (“Treasury”) issued a long-awaited [Final Rule](#) (the “Final Rule”) implementing the U.S. Outbound Investment Security Program (the “Program”).¹ Under the Program, effective January 2, 2025, U.S. persons will be prohibited from engaging in, or required to notify Treasury regarding, a broad range of transactions involving entities engaged in certain activities relating to semiconductors and microelectronics, quantum information technologies, and artificial intelligence (“AI”) systems in “countries of concern” (presently limited to China, Hong Kong, and Macau).

The United States currently has the authority to review certain inbound foreign investment through the Committee on Foreign Investment in the United States (“CFIUS”). Although commonly referred to as “reverse CFIUS” in industry circles, unlike CFIUS, which conducts transaction-by-transaction reviews of investments by foreign persons, the Program does not contemplate a transaction-by-transaction review process. Instead, the Program will require parties to determine whether a given transaction is either prohibited, subject to notification, or permissible without notification, subject to potential imposition of penalties for engaging in a prohibited transaction or failing to notify Treasury of a notifiable transaction. This would require that parties determine whether (i) a “U.S. person” is making or directing (ii) a “Covered Transaction” with (iii) a “Covered Foreign Person”—*i.e.*, a “Person of a Country of Concern” engaged in a “Covered Activity.” Each of these elements is discussed below.

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¹ See [Press Release: Treasury Issues Regulations to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern](#), U.S. Department of the Treasury (Oct. 28, 2024). The Final Rule implements [Executive Order No. 14105](#), *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern*, 88 Fed. Reg. 54867 (Aug. 9, 2023).



The Final Rule is the third rulemaking by Treasury relating to the Program. The initial rulemaking was in the form of an Advanced Notice of Proposed Rulemaking (“ANPRM”)² issued on August 14, 2023, which was followed almost one year later by a Notice of Proposed Rulemaking (“NPRM”)³ issued on July 5, 2024. We previously wrote about the ANPRM [here](#) and the NPRM [here](#).⁴

I. U.S. Persons

U.S. persons include U.S. citizens, lawful permanent residents, entities organized in the United States (including any foreign branch of any such entity) and any person located in the United States.⁵ A few key implications of this definition are that compliance obligations under the Program may apply to non-U.S. citizens as well as certain individuals or entities located or operating abroad. For example, U.S. citizens and green card holders working abroad for non-U.S. companies are within the scope of the Program, as are non-U.S. citizens working in the United States.

Importantly, although the affirmative compliance obligations of the Program apply to U.S. persons, such obligations include activities that may implicate non-U.S. affiliates of U.S. persons:

— *Knowingly directing.* First, the Program prohibits a U.S. person from “knowingly directing” a non-

U.S. person to engage in a transaction prohibited for a U.S. person. A U.S. person “knowingly directs” a transaction when the U.S. person has authority, individually or as part of a group, to make or substantially participate in decisions on behalf of a non-U.S. person, and exercises that authority to direct, order, decide upon, or approve a transaction. Such authority exists when a U.S. person is an officer, director, or otherwise possesses executive responsibilities at a non-U.S. person, including: (1) participating in formal approval and decision-making processes related to the transaction, including making a recommendation; (2) reviewing, editing, commenting on, approving, and signing relevant transaction documents; and (3) engaging in negotiations with the investment target (or, as applicable, the relevant transaction counterparty, such as a joint venture partner). A U.S. person that has such authority and recuses themselves from the above-listed activities will not be considered to have exercised such authority.

— *Reasonable steps to prohibit and prevent.* The Program also requires that U.S. persons “take all reasonable steps to prohibit and prevent” transactions by a “controlled foreign entity” (effectively, a non-U.S. entity with a U.S. person parent subject to certain nuances)⁶ that would be

² *Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern*, [88 Fed. Reg. 54961](#) (Aug. 14, 2023) (Advanced Notice of Proposed Rulemaking).

³ *Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern*, [89 Fed. Reg. 55846](#) (July 5, 2024) (Notice of Proposed Rulemaking).

⁴ Section VII below highlights some key differences between the ANPRM/NPRM and the Final Rule.

⁵ This is consistent with the concept of a U.S. person under most U.S. economic sanctions regimes administered by Treasury’s Office of Foreign Assets Control (“OFAC”) and implemented pursuant to the International Emergency Economic Powers Act (“IEEPA”), the same statute underlying the Program.

⁶ The following rules apply in determining whether an entity is a parent of another entity in a tiered ownership structure: (1) where the relationship between an entity and another entity is that of parent and subsidiary, the holdings of voting interest or voting power of the board, as applicable, of a subsidiary shall be fully attributed to the parent; (2) where the relationship between an entity and another entity is not that of parent and subsidiary (*i.e.*, because the holdings of voting interest or voting power of the board, as applicable, of the first entity in the second entity is 50 percent or less), then the indirect downstream holdings of voting interest or voting power of the board, as applicable, attributed to the first entity shall be determined proportionately; and (3) where the circumstances in (1) and (2) apply (*i.e.*, because a U.S. person holds both direct and indirect downstream holdings in the same entity), any holdings of voting interest are aggregated, and any holdings of voting

prohibited if engaged in by a U.S. person and requires U.S. persons to provide notification of any transaction by a “controlled foreign entity” that would be a notifiable transaction if engaged in by a U.S. person. If a controlled foreign entity engages in a transaction that would be prohibited for a U.S. person, whether the relevant U.S. person took all “reasonable steps” to prohibit and prevent such transaction would be evaluated by a number of fact-specific factors relating to the existence and implementation of internal controls.⁷

II Covered Transactions and Excepted Transactions

The Program applies to a broad range of commercial activities beyond the mere acquisition of an equity interest. Covered Transactions, as described below, require certain “knowledge” by a U.S. person. Such requirement includes not only actual knowledge, but also what was substantially certain to occur and what could have been known through reasonable diligence. The Program also includes a number of exceptions for investments in certain types of securities, LP investments, derivatives, and other transactions, as discussed below.

A. Covered Transactions

“Covered Transaction” means a U.S. person’s direct or indirect:

- Acquisition of an **equity interest** or **contingent equity interest**⁸ in a person that the U.S. person

power of the board are aggregated. Voting interest is not aggregated with voting power of the board.

⁷ Such factors include: (1) the execution of agreements with respect to compliance with this part between the subject U.S. person and its controlled foreign entity; (2) the existence and exercise of governance or shareholder rights by the U.S. person with respect to the controlled foreign entity, where applicable; (3) the existence and implementation of periodic training and internal reporting requirements by the U.S. person and its controlled foreign entity with respect to compliance with this part; (4) the implementation of appropriate and documented internal controls, including internal

knows at the time of the acquisition is a Covered Foreign Person.

- Provision of a loan or a similar **debt financing** arrangement to a person that the U.S. person *knows* at the time of the provision is a Covered Foreign Person, when such debt financing affords or will afford the U.S. person an interest in profits of the Covered Foreign Person, the right to appoint members of the board of directors (or equivalent) of the Covered Foreign Person, or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan.
- **Conversion of a contingent equity interest into an equity interest** in a person that the U.S. person *knows* at the time of the conversion is a Covered Foreign Person, where the contingent equity interest was acquired by the U.S. person on or after January 2, 2025.
- **Acquisition, leasing, or other development of operations, land, property, or other assets** in a country of concern that the U.S. person *knows* at the time of such acquisition, leasing, or other development will result in, or that the U.S. person plans to result in, the establishment of a Covered Foreign Person or the engagement of a Person of a Country of Concern in a Covered Activity.
- **Entrance into a joint venture**, wherever located, that is formed with a Person of a Country of Concern, and that the subject U.S. person *knows* at the time of entrance into the joint venture that the

policies, procedures, or guidelines that are periodically reviewed internally, by the U.S. person and its controlled foreign entity; and (5) the implementation of a documented testing and/or auditing process of internal policies, procedures, or guidelines.

⁸ The term contingent equity interest means a financial interest (including debt) that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event or at the discretion of the U.S. person that holds the financial interest.

joint venture will engage, or plans to engage, in a Covered Activity.

- Acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund (in each case where such fund is not a U.S. person) that a U.S. person *knows* at the time of acquisition likely will invest in a Person of a Country of Concern that is in the semiconductors and microelectronics, quantum information technologies, or artificial intelligence sectors, and such fund undertakes a transaction that would be a Covered Transaction if undertaken by a U.S. person.

As noted above, under the Program, a U.S. person has “knowledge” if that person (i) possesses actual knowledge that a fact or circumstance exists or is substantially certain to occur, (ii) possesses an “awareness of a high probability” of a fact or circumstance’s existence or future occurrence, or (iii) could have possessed such information through a “reasonable and diligent inquiry.” While the Final Rule clarifies that consideration will be given to the totality of the facts and circumstances related to a

transaction, there remains ambiguity as to what constitutes “reasonable due diligence” in specific circumstances.⁹

B. Excepted Transactions

As noted above, the Program excludes from its prohibitions and reporting requirements certain “excepted transactions” by U.S. persons (so long as any investment would not afford the U.S. person rights beyond standard minority shareholder protections with respect to the Covered Foreign Person):

- *Publicly traded securities.* An investment in any **publicly traded security**,¹⁰ denominated in any currency, that trades on a securities exchange or “over-the-counter” in any jurisdiction.¹¹
- *Certain types of securities.* An investment in a security issued by: (i) an “investment company”¹² that is registered with the U.S. Securities and Exchange Commission (“SEC”), such as index funds, mutual funds, and exchange traded funds; and (ii) any company that has elected to be regulated or is regulated as a business development company pursuant to section 54 of

⁹ Treasury’s statement issued in implementing and commenting on the Program outlines certain factors that will be considered in assessing whether a U.S. person undertook a reasonable and diligent inquiry. Those factors include: (1) the inquiry a U.S. person made regarding an investment target or other transaction counterparty; (2) the contractual representations or warranties the U.S. person obtained from an investment target or other counterparty; (3) the U.S. person’s efforts to obtain relevant non-public information; (4) the U.S. person’s consideration of relevant public information; (5) whether the U.S. person purposefully avoided learning or seeking relevant information; (6) the presence or absence of warning signs from an investment target or other counterparty; and (7) the use of public databases to identify and verify relevant information.

¹⁰ The Program relies on the definition of “security” in section 3(a)(10) of the Securities Exchange Act of 1934, as amended, at 15 U.S.C. 78c(a)(10). The ’34 Act definition of “security” generally includes GDRs, ADRs, futures, swaps, and options. Derivative products

that are not “securities” under the ’34 Act may rely on the separate excepted category for derivatives.

¹¹ Treasury has provided guidance explaining that because the securities offered in an initial public offering (“IPO”) are not yet publicly traded, the publicly traded securities exemption does not apply to IPOs. Furthermore, agreements, such as an underwriting arrangement, where an underwriter purchases and resells securities, or an over-allotment option, where the underwriting syndicate enters into an option to acquire equity securities, also would be Covered Transactions potentially subject to the Program. While Treasury’s statements do not directly address follow-on equity offerings, Treasury likely would apply a similar analysis for other primary equity capital market transactions in which new shares are sold to investors by a company.

¹² As defined in section 3(a)(1) of the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a-3(a)(1).

the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a-53.

- *Certain LP investments.* An investment made as a **limited partner or equivalent in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund** where: (i) the limited partner or equivalent's committed capital is not more than \$2,000,000, aggregated across any investment and co-investment vehicles of the fund; or (ii) the limited partner or equivalent has secured a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a prohibited transaction or a notifiable transaction, as applicable, if engaged in by a U.S. person.
- *Derivatives.* An investment in a **derivative**, so long as such derivative does not confer the right to acquire equity, any rights associated with equity, or any assets in or of a Covered Foreign Person.
- *Buyouts of country of concern ownership.* The **"buyout" acquisition** of equity or other interests held by one or more persons of a country of concern, provided that: (i) a U.S. person is acquiring all equity or other interests in such entity held by all persons of a country of concern; and (ii) following such acquisition, the entity does not constitute a Covered Foreign Person.
- *Intracompany transactions.* An **intracompany transaction** between a U.S. person and its controlled foreign entity that would be considered a Covered Transaction, but that supports operations that are not covered activities or that maintains Covered Activities that the controlled foreign entity was engaged in prior to January 2, 2025.
- *Certain pre-Final Rule binding commitments.* A transaction made after January 2, 2025, pursuant to a **binding, uncalled capital commitment** entered into prior to January 2, 2025.
- *Certain syndicated debt financings.* The acquisition of a voting interest in a Covered Foreign Person upon **default or other condition**

involving a loan or a similar financing

arrangement, where the loan was made by a syndicate of banks in a loan participation where the U.S. person lender(s) in the syndicate: (i) cannot on its own initiate any action vis-à-vis the debtor; and (ii) is not the syndication agent.

- *Equity-based compensation.* The receipt of **employment compensation** by an individual in the form of an award of equity or the grant of an option to purchase equity in a Covered Foreign Person, or the exercise of such option.
- *Third-country measures.* A transaction that is: (i) with or involving a person of a **country or territory outside of the United States** designated by the Secretary of the Treasury, after taking into account whether the country or territory is addressing national security risks substantially similar to the Program; and (ii) of a type for which the Secretary of the Treasury has determined that the related national security concerns are likely to be adequately addressed by measures taken or that may be taken by the government of the relevant country or territory. The specific factors for such determination, as well as the categories of excepted activities, will be determined in future guidance or rulemaking.

III. Covered Foreign Person

"Covered Foreign Person" means:

- A Person of a Country of Concern that engages in a Covered Activity; or
- A person, **of any nationality**, that directly or indirectly holds a board seat on, a voting or equity interest (other than through securities or certain interests) in, or any contractual power to direct or cause the direction of the management or policies of any Person of a Country of Concern that engages in a Covered Activity from or through which the upstream party:
 - derives more than 50 percent of its revenue individually, or as aggregated across such persons from each of which it derives at least

\$50,000 (or equivalent) of its revenue, on an annual basis;

- derives more than 50 percent of its net income individually, or as aggregated across such persons from each of which it derives at least \$50,000 (or equivalent) of its net income, on an annual basis;
- incurs more than 50 percent of its capital expenditure individually, or as aggregated across such persons from each of which it incurs at least \$50,000 (or equivalent) of its capital expenditure, on an annual basis; or
- incurs more than 50 percent of its operating expenses individually, or as aggregated across such persons from each of which it incurs at least \$50,000 (or equivalent) of its operating expenses, on an annual basis.¹³

A. Person of a Country of Concern

Countries of concern currently are limited to China, Hong Kong, and Macau. The term “Person of a Country of Concern” means:

- Any individual that: (i) is a citizen or permanent resident of a country of concern (*i.e.*, China, Hong Kong, or Macau); (ii) is not a U.S. citizen; and (iii) is not a permanent resident of the United States;
- An entity with a principal place of business in, headquartered in, or incorporated in or otherwise organized under the laws of, a country of concern;
- The government of a country of concern, including any political subdivision, political party, agency, or instrumentality thereof; any person acting for or on behalf of the government of a country of concern; or any entity with respect to which the government of a country of concern holds individually or in the aggregate, directly or indirectly, 50 percent or more of the entity’s outstanding voting interest, voting power of the board, or equity interest, or otherwise possesses

the power to direct or cause the direction of the management and policies of such entity (whether through the ownership of voting securities, by contract, or otherwise); or

- Any entity in which one or more persons of a country of concern, individually or in the aggregate, directly or indirectly (*i.e.*, including entities that are themselves 50 percent or greater owned by the foregoing), holds at least 50 percent of any of the following interests of such entity: outstanding voting interest, voting power of the board, or equity interest.

Under this definition, entities located outside of a country of concern can be considered a Person of a Country of Concern depending on their relationship with individuals and entities in or the government of a country of concern (*e.g.*, the Program could cover subsidiaries and portfolio companies of Chinese companies, wherever located).

B. Covered Activity

At this time, “Covered Activities” fall within three categories of specified technology and products: (i) semiconductors and microelectronics; (ii) quantum information technologies; and (iii) AI systems. A transaction may be prohibited or require notification based on what Covered Activity the Covered Foreign Person is engaged in, as explained below.

— Semiconductors and microelectronics

- Prohibited transactions. Covered Transactions involving a Covered Foreign Person that:
 - develops or produces any electronic design automation software for the design of integrated circuits or advanced packaging;
 - develops or produces:
 - front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits, including equipment used in the

¹³ With respect to joint venture Covered Transactions, the Person of a Country of Concern that participates in the

joint venture is deemed to be a Covered Foreign Person by virtue of its participation in the joint venture.

- production stages from a blank wafer or substrate to a completed wafer or substrate (*i.e.*, the integrated circuits are processed but they are still on the wafer or substrate);
- equipment for performing volume advanced packaging; or
 - commodity, material, software, or technology designed exclusively for use in or with extreme ultraviolet lithography fabrication equipment;
 - designs any integrated circuit that meets or exceeds the performance parameters in Export Control Classification Number 3A090.a in supplement No. 1 to 15 CFR part 774, or integrated circuits designed for operation at or below 4.5 Kelvin;
 - fabricates any of the following:
 - logic integrated circuits using a non-planar transistor architecture or with a production technology node of 16/14 nanometers or less, including fully depleted silicon-on-insulator (FDSOI) integrated circuits;
 - NOT-AND (NAND) memory integrated circuits with 128 layers or more;
 - dynamic random-access memory (DRAM) integrated circuits using a technology node of 18 nanometer half-pitch or less;
 - integrated circuits manufactured from a gallium-based compound semiconductor;
 - integrated circuits using graphene transistors or carbon nanotubes; or
 - integrated circuits designed for operation at or below 4.5 Kelvin;
 - packages any integrated circuit using advanced packaging techniques; or
 - develops, installs, sells, or produces any supercomputer enabled by advanced integrated circuits that can provide a theoretical computing capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope.
 - Notifiable transactions. Covered Transactions involving a Covered Foreign Person that designs, fabricates, or packages any integrated circuit not subject to a prohibition.
- **Quantum information technologies**
- Prohibited transactions. Covered Transactions involving a Covered Foreign Person that:
 - develops a quantum computer or produces any of the critical components required to produce a quantum computer such as a dilution refrigerator or two-stage pulse tube cryocooler;
 - develops or produces any quantum sensing platform designed for, or which the relevant Covered Foreign Person intends to be used for, any military, government intelligence, or mass surveillance end use; or
 - develops or produces any quantum network or quantum communication system designed for, or which the relevant Covered Foreign Person intends to be used for:
 - networking to scale up the capabilities of quantum computers, such as for the purposes of breaking or compromising encryption;
 - secure communications, such as quantum key distribution; or
 - any other application that has any military, government intelligence, or mass surveillance end use.
 - Notifiable transactions. None

— **AI systems**¹⁴

- **Prohibited transactions.** Covered Transactions involving a Covered Foreign Person that:
 - develops any AI system that is designed to be exclusively used for, or which the relevant Covered Foreign Person intends to be used for, any
 - military end use (*e.g.*, for weapons targeting, target identification, combat simulation, military vehicle or weapon control, military decision-making, weapons design (including chemical, biological, radiological, or nuclear weapons), or combat system logistics and maintenance); or
 - government intelligence or mass-surveillance end use (*e.g.*, through incorporation of features such as mining text, audio, or video; image recognition; location tracking; or surreptitious listening devices); or
 - develops any AI system that is trained using a quantity of computing power greater than:
 - 10^{25} computational operations (*e.g.*, integer or floating-point operations); or
 - 10^{24} computational operations (*e.g.*, integer or floating-point operations) using primarily biological sequence data.
- **Notifiable transactions.** Covered Transactions involving a Covered Foreign Person that engages in the development of any AI system not subject to a prohibition that is:
 - designed to be used for any military end use (*e.g.*, for weapons targeting, target identification, combat simulation, military

vehicle or weapons control, military decision-making, weapons design (including chemical, biological, radiological, or nuclear weapons), or combat system logistics and maintenance); or government intelligence or mass-surveillance end use (*e.g.*, through incorporation of features such as mining text, audio, or video; image recognition; location tracking; or surreptitious listening devices);

- intended to be used for cybersecurity applications, digital forensics tools, penetration testing tools, or the controls of robotic systems); or
- trained using a quantity of computing power greater than 10^{23} computational operations.

In addition, the Program imposes prohibitions on activities that otherwise would merely be notifiable if the Person of a Country of Concern involved is on any of several U.S. restricted parties lists, including the Military End-User List (MEU List), the Military Intelligence End User List (MIEU List), the Entity List maintained by the Department of Commerce, Bureau of Industry and Security, the Chinese Military-Industrial Complex Companies List (CMIC List), and the Specially Designated Nationals and Blocked Persons (SDN) List maintained by OFAC.

IV. National Interest Exemption

U.S. persons may request an exemption for a Covered Transaction that otherwise would be prohibited on a case-by-case basis on the ground that the transaction is in the national interest of the United States, which the Treasury Secretary may grant in his or her discretion based on the totality of the relevant facts and circumstances and which may be informed by, among other considerations, the transaction's effect on critical

¹⁴ The term AI system means: (a) a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments—i.e., a system that: (1) uses data inputs to perceive real and virtual environments; (2) abstracts such perceptions into models through automated or algorithmic statistical

analysis; and (3) uses model inference to make a classification, prediction, recommendation, or decision; or (b) any data system, software, hardware, application, tool, or utility that operates in whole or in part using a system described in (a).

U.S. supply chain needs, domestic production needs in the United States for projected national defense requirements, U.S. technological leadership globally in areas affecting U.S. national security, and the impact on U.S. national security if the U.S. person is prohibited from undertaking the transaction. The Final Rule does not specify how such exemptions may be requested, which is subject to future guidance.

V. Notification Requirement and Contents

U.S. persons must submit notifications no later than 30 days following the completion date of a notifiable transaction. Notifications must be submitted using a new online submission portal created for the Program.¹⁵

Notably, the Program effectively imposes a continuing reporting requirement for transactions that are later found to be notifiable: if a U.S. person later acquires actual knowledge that a transaction was notifiable, the U.S. person must submit a notification within 30 days of acquiring such knowledge. Following any notification, Treasury may ask follow-up questions concerning the transaction, to which the U.S. person must respond within the timeframe specified by Treasury.

With certain exceptions, information or documentary materials not otherwise publicly available that are submitted to Treasury in connection with the Program

will be treated as confidential and not disclosed to the public.

VI. Penalties and Enforcement

Violations may fall within three general categories. First, failure to fulfill any requirement under the Program, such as entering into a prohibited transaction or failing to notify Treasury of a notifiable transaction. Second, making any material misrepresentation, concealment, or omission of fact in any submission or communication to Treasury. Third, any action that evades or attempts to evade the requirements of the Program is also a violation.

Violations of the Program are subject to a civil penalty of either \$368,136 or twice the value of the transaction, whichever is greater. Also, any willful violations may result in a fine of up to \$1,000,000 or 20 years imprisonment. If a U.S. person closed a prohibited transaction, Treasury may nullify, void, or otherwise compel divestment of the transaction.

A U.S. person who has committed a violation of the Program may submit a voluntary self-disclosure, which Treasury may consider as a mitigating factor when determining an appropriate penalty.

VII. Key Differences between the ANPRM/NPRM and the Final Rule

Based on public comments and other feedback received by Treasury in connection with the ANPRM and the NPRM, Treasury made certain changes to the

¹⁵ The following information must be included in a notification: (1) contact information for the U.S. person or representative, including name, title, email address, mailing address, phone number, and employer; (2) the U.S. person's name, principal place of business, place of incorporation, company address, website, and ultimate owner; (3) a post-transactional organizational chart that includes the name, principal place of business, and place of incorporation of intermediate and ultimate parent entities of the U.S. person, as well as the identity of any Covered Foreign Person(s); (4) a brief description of the transaction's commercial rationale; (5) a brief description of how the U.S. person determined that the transaction is a Covered Transaction; (6) the transaction's actual or expected closing date; (7) the total transaction value in U.S.

dollars or equivalent, including an explanation of how that value was determined and a description of the consideration; (8) the U.S. person's aggregate equity interest, voting interest, and board seats in the Covered Foreign Person; (9) the Covered Foreign Person's name, principal place of business, place of incorporation, company address, website, ultimate owner, full legal names and titles of each officer, director, and manager, and a post-transaction organizational chart—the U.S. person must include a statement describing the attributes that cause the entity to be a Covered Foreign Person; and (10) a description of the Covered Activities undertaken by the Covered Foreign Person.

scope of the proposed regime included in the ANPRM/NPRM and the Program included in the Final Rule, including:¹⁶

- the scope of coverage of transactions involving AI systems, clarifying the definition of military end-uses and the level of computational operations covered by the Program;
- the knowledge standard that describes the knowledge a U.S. person must have regarding certain facts and circumstances related to a transaction to trigger obligations under the Program, no longer considering the steps taken by the U.S. person’s legal counsel but now requiring U.S. persons to ask questions to other transaction counterparties (including joint venture partners);
- the scope of the prohibition on U.S. persons “knowingly directing” certain transactions, providing particular activities from which a U.S. person must recuse themselves to avoid “knowingly directing” a transaction;
- the scope of LP investments that are Covered Transactions under the Program and those that are excepted, limiting the scope of excepted transactions to those where the LP’s committed capital is not more than \$2 million or the LP has secured binding contractual assurances that its capital in the fund will not be used to engage in a covered transaction;
- the definition of Covered Foreign Person with respect to persons holding an interest in a Person of a Country of Concern;
- the treatment of certain debt and contingent equity transactions, clarifying that interests convertible into equity at the discretion of the holder fall under the definition of “contingent equity transactions”;
- a new category of excepted transactions for derivative transactions;

- the exception of certain transactions between a U.S. person and its controlled foreign entity, allowing the maintenance of Covered Activities that a controlled foreign entity was engaged in prior to January 2, 2025;
- a new category of excepted transactions for employee compensation in the form of stock or stock options; and
- confidential treatment of information submitted to the U.S. government under the Program, allowing Treasury to disclose confidential information to the public when disclosure is determined to be in the national interest.

VIII. Looking Ahead

The Program represents the first time that the United States or a democratic European government has regulated outbound investment for national security purposes. That being said, following the lead of the United States, the European Commission recently published a White Paper on outbound investment screening indicating that the European Union plans to introduce its own outbound investment screening regime, with an initial policy proposal expected no sooner than late 2025. We expect the U.S. government to seek to coordinate with other countries, in particular with its allies and partners for purposes of potential third-country exceptions to the Program, as described in Section II.B. above.

In the United States, the upcoming change in Presidential administration, evolving national security-related concerns, technological developments, and geopolitical events could impact implementation of, and result in changes to, the Program. For example, additional countries could be designated as countries of concern based on future geopolitical events and additional types of semiconductors and microelectronics, quantum information technologies, and AI systems, as well as many other types of technologies considered to be important for U.S.

¹⁶ See [Frequently Asked Questions](#), *Additional Information on Final Regulations Implementing*

Outbound Investment Executive Order (E.O. 14105), U.S. Department of the Treasury 5–6 (Oct. 28, 2024).

national security, could become subject to prohibitions or notification requirements under the Program. Indeed, given the broad scope of certain of the notification requirements under the Program, we expect that notifications made under the Program potentially could be used to expand the scope of prohibited transactions by identifying technologies being developed in countries of concern.

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