

Treasury Finalizes U.S. Outbound Investment Restrictions

November 8, 2024

Introduction

On October 28, 2024, the Office of Investment Security of the U.S. Treasury Department (“Treasury”) issued a final rule (the “Outbound Investment Rule”) implementing Executive Order 14105 (the “Outbound Order”) and establishing new regulatory controls on certain investments by U.S. persons in or related to the People’s Republic of China and the Special Administrative Regions of Hong Kong and Macau (collectively, “China”).¹

These investment controls apply not only to *direct* U.S. investment into China but also to certain *indirect* investment activities of U.S. persons, including passive investment into non-U.S. investment funds that themselves invest in or alongside Chinese companies. In addition, U.S. persons are required to take “all reasonable steps” to ensure controlled non-U.S. entities also comply with the new rules, as if U.S. persons.

The Outbound Investment Rule’s effective date is **January 2, 2025**. However, these may not be the only outbound investment compliance obligations imposed on U.S. persons in the coming months. U.S. lawmakers are actively negotiating their own legislation to regulate outbound U.S. investment, with the goal of adopting further outbound investment restrictions and requirements during the lame duck session, and the Trump Administration is very likely to favor continued implementation and expansion of these limits.

Considered together, this means that the remaining months of the year provide a brief transition period to the new investment controls, and U.S. investors should consider using this period to conduct risk-based assessments of their international investment activities and determine whether internal investment approval and management processes should account for the new obligations and related diligence expectations of

¹ Treasury, Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (Oct. 28, 2024), available [here](#).

the Outbound Investment Rule. At a minimum, we expect many U.S. investors will adopt new diligence processes and consider whether related representations and commitments are warranted, particularly where the target is a non-U.S. investment fund.

Below, we discuss the key definitions and concepts of the new regulations; additional details for definitions are in the Appendix.²

On November 20, 2024, we are hosting a webinar on the Outbound Investment Rule and its implications. Please register [here](#) if you are interested in attending.

What Does the Outbound Investment Rule Require, and Who Must Comply?

Most fundamentally, the Outbound Investment Rule imposes either a notification requirement or an outright prohibition on China-related investment activities by a U.S. person involving quantum information technologies, artificial intelligence and semiconductors and microelectronics, as set forth in the Appendix.

For this purpose, a “U.S. person” is:

- a United States citizen or a lawful permanent resident, wherever located;
- an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches of any such entity), wherever doing business; or
- any person physically present in the United States.³

Notably, U.S. persons are obligated not only to ensure their own compliance but also to take “all reasonable steps” to ensure their “controlled foreign entities” also comply with the Outbound Investment Rule as if they were U.S. persons (as discussed further below). Under the rule, a “controlled foreign entity” is any entity with respect to which a U.S. person:

² The Outbound Investment Rule largely follows Treasury’s earlier Notice of Proposed Rulemaking, which we discussed previously [here](#), with certain technical or clarifying changes.

³ This definition is provided by the International Emergency Economic Powers Act (“IEEPA”), which authorizes the Outbound Investment Rule. Accordingly, this definition is identical to the definition of “U.S. person” under most U.S. sanctions programs, which also are authorized under IEEPA.

- directly or indirectly holds more than 50 percent of the outstanding voting interests or voting power of the board;
- is the general partner (“GP”), managing member or equivalent; or
- for an entity that is a pooled investment fund, is the investment adviser.

For a U.S. person, Treasury intends to assess whether “all reasonable steps” were taken with respect to the U.S. person’s controlled foreign entities’ compliance under a facts-and-circumstances review. The Outbound Investment Rule highlights certain measures that a U.S. person may take relative to its controlled foreign entities, including compliance commitments, governance rights, internal controls, periodic training, internal reporting and documented testing and auditing.

Finally, a U.S. person (individual or entity) that has authority to make or substantially participate in decisions on behalf of a non-U.S. entity is prohibited from “knowingly directing” a transaction by that non-U.S. entity if the U.S. person knows, at the time of the transaction, that engaging in that activity is prohibited to the U.S. person under the Outbound Investment Rule.

This restriction is intended to close “a potential loophole” through which a U.S. person could direct a non-U.S. investment fund to make an investment prohibited to the U.S. person and potentially may apply to U.S. persons serving on a limited partner advisory committee or similar advisory body to the extent that the body has the ability to control investment decisions of an investment fund or decisions of the GP (or equivalent) regarding current fund investments. However, the Outbound Investment Rule provides a safe harbor for U.S. persons that recuse themselves from the decision-making process in alignment with particular restrictions set out in the rule.

What Activities Are Targeted by the Outbound Investment Rule?

The new regulations target “covered transactions” that involve a “covered foreign person.”

Covered Transaction

Because the Outbound Investment Rule imposes investment restrictions, the activities captured by “covered transactions” (which do not include “excepted transactions,” as discussed below) all have an investment nexus and generally include:

- acquiring equity or contingent equity interests in a covered foreign person;

- providing debt financing to a covered foreign person that provides particular rights to the lending party;
- assisting with the establishment of a covered foreign person;
- entering into a joint venture with a covered foreign person to engage in certain activities; or
- passive investment in a non-U.S. investment fund that engages in a covered transaction.⁴

For each covered transaction, a U.S. person generally must both engage in the covered activity and have “knowledge” that the activity involves a “covered foreign person.” For example, an acquisition of an equity interest or contingent equity interest is a “covered transaction” if a U.S. person knows at the time of its acquisition that the investment target is a “covered foreign person.”

Importantly, a U.S. person’s indirect actions also result in a covered transaction where the U.S. person acts through a non-U.S. intermediary, such as where a U.S. person uses a newly formed non-U.S. legal entity as an acquisition vehicle.

Covered Foreign Person

A “covered foreign person” is any of the following:

- a “person of a country of concern” engaged in a “covered activity”;
- a person that has a particular relationship (described below) with a “person of a country of concern” engaged in a “covered activity”; or
- a “person of a country of concern” participating in a joint venture engaged in a “covered activity.”

The Outbound Order identifies the People’s Republic of China, along with the Special Administrative Regions of Hong Kong and Macau, as a “country of concern.”

Consequently, an entity from one of these jurisdictions is a “person of a country of concern” and, to the extent engaged in a “covered activity,” a “covered foreign person.”

As noted, the definition of a covered foreign person also encompasses a person that is not itself a “person of a country of concern” but has a significant connection to such a

⁴ Please see the Appendix (“Covered Transactions”) for additional details about the activities captured by the definition.

person engaged in a covered activity. In particular, a “covered foreign person” includes any person that meets two conditions:

- the person holds a specified interest in one or more “persons of a country of concern” engaged in a “covered activity,” where such specified interests include voting or equity interests, board rights or control rights to direct management or policies; and
- the person receives, on an annual basis, more than 50 percent of its revenue or net income from, or attributes 50 percent or more of its capital expenditure or operating expenses to, “persons of a country of concern” engaged in a “covered activity.”

For the second condition, the first person aggregates relevant revenue, income, expenditures and expenses from all “persons of a country of concern” engaged in “covered activities” to determine if the 50 percent threshold is met but, in doing so, excludes any such figures if they are, for a particular “person of a country of concern,” less than \$50,000.

Knowledge

As noted above, a U.S. person generally must know that a transaction involves a covered foreign person for the transaction to be a covered transaction.

For this purpose, “knowledge” includes both actual knowledge that a fact or circumstance exists or is substantially certain to occur, as well as an awareness of a high probability of a fact’s or circumstance’s existence or future occurrence or reason to know of a fact’s or circumstance’s existence. This definition is similar to the knowledge standard for purposes of U.S. export controls under the Export Administration Regulations.

In determining whether a U.S. person had knowledge or reason to know of a particular fact or circumstance, Treasury will assess if a U.S. person undertook a “reasonable and diligent inquiry” at the time of the transaction (as discussed further below).

Excepted Transactions

Certain “excepted transactions” are out of scope of the Outbound Investment Rule’s prohibitions and notification requirements (see the Appendix for a full list of excepted transactions, and below for discussion of an excepted transaction for certain limited partner (“LP”) investments).

Does the Outbound Investment Rule Impose a Review and Clearance Regime, Like CFIUS?

No, the Outbound Investment Rule does not provide for case-by-case review of transactions by U.S. authorities, which means expectations and obligations for U.S. persons arising under the Outbound Investment Rule differ from those under clearance regimes, such as foreign investment reviews by the Committee on Foreign Investment in the United States (“CFIUS”).

The Outbound Investment Rule instead follows a regulatory framework similar to U.S. sanctions and export controls, placing a compliance burden on U.S. persons to determine applicability and appropriate internal controls.

Accordingly, U.S. persons are expected to develop and maintain risk-based compliance approaches under which they must conduct appropriate due diligence and reach their own determinations of permissibility regarding outbound investments. Those determinations may be reviewed by U.S. authorities in an enforcement context, with the U.S. person facing potential liability for non-compliance (see penalties discussed below).

What Due Diligence Is Required by the Outbound Investment Rule?

As discussed above, the Outbound Investment Rule is not a strict liability regime and, if a U.S. person undertakes a “reasonable and diligent inquiry” but does not have knowledge of a fact or circumstance that would render a transaction a “covered transaction,” the U.S. person should not face liability for inadvertently missing a notification requirement or engaging in a prohibited investment. Conversely, a U.S. person that fails to conduct a reasonable and diligent inquiry may be deemed to have had reason to know of a fact or circumstance that would cause a transaction to be a covered transaction.

To assess if a U.S. person undertook a “reasonable and diligent inquiry” at the time of a transaction, Treasury will consider the totality of relevant facts and circumstances, with a focus on certain factors listed under the Outbound Investment Rule, including consideration of inquiries made by the U.S. person, contractual representations or warranties obtained by the U.S. person, efforts to obtain and consider non-public information and public information, the presence or absence of warning signs, the use of available public and commercial databases and indications that the U.S. person purposefully avoided learning or seeking relevant information.

Treasury declined to adopt prescriptive diligence standards or include a diligence safe harbor in the Outbound Investment Rule but offered some general considerations:

- U.S. persons should not limit their diligence for a transaction to information already in their possession but, at the same time, will not be expected to consider all publicly available information.
- There is no general expectation that diligence will be conducted on persons that are not party to a transaction, although inquiries to such persons may be necessary in some cases.
- In cases where a U.S. person faces difficulties in obtaining relevant information about a transaction, the U.S. person may seek representations or warranties from transaction counterparties regarding pertinent information, such as the investment target's or counterparty's ownership, investments and activities.
- A U.S. person generally will be expected to consider a counterparty's responses or statements in light of other information from commercially available information sources and publicly available information.

What Are the Notification Requirements for a Notifiable Transaction?

Notice of a notifiable transaction will be required to be submitted electronically on Treasury's Outbound Investment Security Program website pursuant to filing instructions that Treasury will issue prior to the effective date of the Outbound Investment Rule.

The notification form will require U.S. persons to provide certain information about the transaction, including information about the U.S. person, the covered foreign person, the covered transaction and the relevant national security technologies and products. If a U.S. person does not provide all required information in the notification, the U.S. person must explain why the information is unavailable and the efforts to obtain such information. If such information subsequently becomes available, the U.S. person must submit the information to Treasury no later than 30 calendar days following such availability. U.S. persons must also notify Treasury no later than 30 days after learning of a material omission or inaccuracy in any notification submitted to Treasury.

Copies of a U.S. person's notification to Treasury and supporting documentation must be retained by the U.S. person for 10 years from the date of filing.

What Obligations Apply If New Information Indicates a U.S. Person Missed a Notification or Conducted a Prohibited Investment?

A U.S. person is subject to notification obligations if the U.S. person acquires actual knowledge after completion of a transaction that would have resulted in the transaction constituting a “covered transaction” had the U.S. person known of the relevant facts at the time of the transaction. This requirement applies regardless of whether the relevant transaction would have been a notifiable or prohibited transaction.

A U.S. person must submit such notification no later than 30 calendar days following the U.S. person’s acquisition of actual knowledge in the case of post-transaction knowledge.

Do U.S. Persons Face Obligations for Non-U.S. Funds They Manage?

Yes, under the Outbound Investment Rule, U.S. fund managers are subject to compliance obligations with respect to, and face potential liability for, the activities of non-U.S. funds they manage or advise.

A non-U.S. fund with a U.S. GP, managing member or equivalent or a U.S. investment adviser is considered a controlled foreign entity of the U.S. person. As a result, the U.S. person must take “all reasonable steps to prohibit and prevent any transaction by [the non-U.S. fund] that would be a prohibited transaction if undertaken by a U.S. person,” as well as file a notification for any transaction by the non-U.S. fund that would be a notifiable transaction if engaged in by a U.S. person.

Are U.S. LP Investors in Non-U.S. Funds Affected by the Outbound Investment Rule?

To begin with, and as noted above, certain LP investments are excepted transactions not subject to the Outbound Investment Rule. Specifically, a U.S. LP’s investment in a non-U.S. fund will be an excepted transaction if the LP’s committed capital is not more than \$2,000,000 on an aggregate basis *or* the LP secures a binding contractual assurance at the time of its capital commitment that its contributions will not be used to engage in a transaction that would be a prohibited or notifiable transaction, as applicable, if engaged in by a U.S. person (regardless of the amount of the U.S. LP’s committed capital).

In addition, the Outbound Investment Rule provides an exception for transactions made after the effective date of the Outbound Investment Rule (*i.e.*, January 2, 2025) pursuant

to a binding, uncalled capital commitment entered into before the effective date of the Outbound Investment Rule. This exception would not apply if a U.S. person executes a binding agreement with an investment target (*i.e.*, not an investment fund), but the completion date falls after January 2, 2025.

Assuming an exception does not apply, a U.S. LP's investment in a non-U.S. fund will be a covered transaction if the U.S. LP knows at the time of its investment that the non-U.S. fund "likely will invest" in a person of a country of concern that is in a specified sector *and* the non-U.S. fund in fact subsequently undertakes a transaction that would be a covered transaction if undertaken by a U.S. person.

This means that U.S. LPs, at the time they invest in a non-U.S. fund, should conduct a "reasonable and diligent inquiry" to ascertain whether the fund is likely to engage in one or more covered transactions. Treasury declined to provide a safe harbor under the Outbound Investment Rule for U.S. LPs that engage in good faith diligence.

Consequently, before U.S. LPs make an investment in a fund, appropriate risk-based due diligence should be considered to understand the fund's intended investments. U.S. LPs also may wish to seek additional representations and commitments regarding the use of the U.S. LP's capital by the fund.

Are Credit Funds in Scope of the Outbound Investment Rule?

A covered transaction under the Outbound Investment Rule includes a U.S. person's direct or indirect "[p]rovision of a loan or a similar debt financing arrangement" to a covered foreign person that "afford[s] 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."

Thus, to the extent a U.S. credit fund may extend debt financing with equity-like characteristics to covered foreign persons, such investments may constitute covered transactions under the Outbound Investment Rule. In addition, U.S. LP investors in a non-U.S. credit fund that undertakes such investments that would be covered transactions if undertaken by a U.S. person also may engage in a covered transaction by investing in such fund. As a result, such U.S. LP investors and credit funds should consider whether they face related obligations and due diligence expectations under the Outbound Investment Rule.

Are U.S. Persons Participating in Non-U.S. JVs Affected under the Outbound Investment Rule?

A U.S. person's joint venture ("JV") with a person of a country of concern will be a covered transaction if the U.S. person "knows at the time of entrance into the [JV] that the [JV] will engage, or plans to engage, in a covered activity."

The Outbound Investment Rule does not require an assessment of the U.S. person's intent to engage in a covered activity when entering the JV (as was proposed). Rather, whether a U.S. person's entrance into a JV with a person of a country of concern is a covered transaction will depend on the U.S. person's knowledge with respect to the goals of the JV at the time the U.S. person enters the JV.

Thus, prior to entering into a JV with a person of a country of concern, U.S. persons should conduct appropriate due diligence and seek representations, warranties and covenants with respect to the JV's planned activities.

For existing non-U.S. JVs, the Outbound Investment Rule applies on a forward-looking basis and generally will not cover activities relating to an existing JV into which a U.S. person has already entered. However, Treasury makes clear that the Outbound Investment Rule may apply to future transactions involving an existing JV that meet the definition of a covered transaction (e.g., the acquisition of an additional equity interest in an existing JV that is a covered foreign person).

What Are the Penalties for Noncompliance under the Outbound Investment Rule?

Conduct that constitutes a violation of the Outbound Investment Rule includes:

- taking any prohibited action;
- failing to take any required action within the timeframe and in the manner specified;
- making materially false or misleading representations to Treasury, or falsifying, concealing or omitting any material fact, when submitting any required information;
or
- evading or avoiding any of the prohibitions.

The maximum civil penalty that may be imposed for violations of the Outbound Investment Rule is the greater of twice the amount of the transaction that is the basis for the violation or \$250,000, which amount is subject to adjustment for inflation (the adjusted amount is \$368,136 as of January 12, 2024). A voluntary self-disclosure may be considered a mitigating factor by Treasury in determining the appropriate enforcement response.

As under the proposed rule, a willful violation of the Outbound Investment Rule may result in criminal penalties of up to \$1,000,000 and/or 20 years' imprisonment.

Are Further Guidance, Rules or Legislation Expected?

Yes, Treasury has indicated that it anticipates issuing additional information and other guidance on the application of the Outbound Investment Rule before January 2, 2025 (including, as discussed above, instructions for filing required notification forms with Treasury).

In the coming months, we also expect Congress potentially to act, as limiting outbound investments focused on China is a bipartisan issue on Capitol Hill. However, the scope of any such legislation remains to be seen, including the extent to which any such legislation may go beyond the Outbound Investment Rule's requirements. In addition, no clear statements have been made by Treasury about potential future expansions of the sensitive technologies and products covered by the Outbound Investment Rule but, as we have seen in other areas of U.S. trade regulation with respect to China, multiple other sectors may be implicated by this new regime as future policy considerations develop.

Thus, the Outbound Investment Rule is not likely to be the last word with respect to controls on U.S. persons' outbound investments, and firms should be sure to stay apprised of any new or updated rules that may affect their activities.

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We are closely monitoring developments in this area. Please do not hesitate to contact us with any questions.



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Appendix—Key Terms

<p>Covered Activities (Prohibited and Notifiable Transactions)</p>	<p>The term “covered activity” means, in the context of a particular transaction, any of the activities referred to in the definition of notifiable transaction or prohibited transaction, as set forth below:</p> <p>Semiconductors and Microelectronics</p> <p><u>Prohibited Transactions</u></p> <ul style="list-style-type: none"> • Develops⁵ or produces⁶ any electronic design automation software for the design of integrated circuits or advanced packaging.⁷ • Develops or produces any: (1) front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits, including equipment used in the production stages from a blank wafer or substrate to a completed wafer or substrate (<i>i.e.</i>, the integrated circuits are processed, but they are still on the wafer or substrate); (2) equipment for performing volume advanced packaging; or (3) 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. • Fabricates⁸ any of the following: <ul style="list-style-type: none"> ○ logic integrated circuits using a non-planar transistor architecture or with a production technology node of 16/14
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⁵ Develop means to engage in any stages prior to serial production, such as design or substantive modification, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design and layouts.

⁶ Produce means to engage in any of the post-development stages of realizing the relevant technology or product, such as engineering, manufacture, integration, assembly, inspection, testing and quality assurance.

⁷ Advanced packaging means to package integrated circuits in a manner that supports the two-and-one-half-dimensional (2.5D) or three-dimensional (3D) assembly of integrated circuits, such as by directly attaching one or more dies or wafers using through-silicon vias, die or wafer bonding, heterogeneous integration or other advanced methods and materials.

⁸ Fabricate means to form devices such as transistors, poly capacitors, non-metal resistors and diodes on a wafer of semiconductor material.

	<p>nanometers or less, including fully depleted silicon-on-insulator (FDSOI) integrated circuits;</p> <ul style="list-style-type: none"> ○ 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. <ul style="list-style-type: none"> ● Packages⁹ any integrated circuit using advanced packaging techniques. ● Develops, installs, sells or produces any supercomputer enabled by advanced integrated circuits that can provide a theoretical compute 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. <p><u>Notifiable Transactions</u></p> <ul style="list-style-type: none"> ● Designs any integrated circuit that is not described in the third activity listed above. ● Fabricates any integrated circuit that is not described in the fourth activity listed above. ● Packages any integrated circuit that is not described in the fifth activity listed above.
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⁹ Package means to assemble various components, such as the integrated circuit die, lead frames, interconnects and substrate materials to safeguard the semiconductor device and provide electrical connections between different parts of the die.

	<p>Quantum Information Technologies</p> <p><u>Prohibited Transactions</u></p> <ul style="list-style-type: none"> • Develops a quantum computer¹⁰ 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. • Develops or produces any quantum network or quantum communication system designed for, or which the relevant covered foreign person intends to be used for: <ul style="list-style-type: none"> ○ 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. <p><u>Notifiable Transactions</u></p> <ul style="list-style-type: none"> • None. <p>Artificial Intelligence Systems</p> <p><u>Prohibited Transactions</u></p> <ul style="list-style-type: none"> • Develops any AI system¹¹ that is designed to be exclusively used for, or which the relevant covered foreign person intends to be used for, any: <ul style="list-style-type: none"> ○ 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,
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	<p>or video; image recognition; location tracking; or surreptitious listening devices).</p> <ul style="list-style-type: none"> • Develops any AI system that is trained using a quantity of computing power greater than: <ul style="list-style-type: none"> ○ 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. <p><u>Notifiable Transactions</u></p> <ul style="list-style-type: none"> • Develops any AI system that is not described above and that is: <ul style="list-style-type: none"> ○ 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 by the covered foreign person or joint venture to be used for any of the following: (i) cybersecurity applications; (ii) digital forensics tools; (iii) penetration testing tools; or (iv) the control of robotic systems; or ○ trained using a quantity of computing power greater than 10^{23} computational operations (e.g., integer or floating-point operations). • Additionally, all covered transactions will be subject to a prohibition if conducted with an entity that is engaged in any covered activity and that: (i) is included on the Commerce Department’s Bureau of Industry and Security’s (“BIS”) Entity List or Military End User List, or meets the definition of a
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¹⁰ Quantum computer means a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference or entanglement.

¹¹ 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).

	<p>Military Intelligence End-User under the Export Administration Regulations (“EAR”); (ii) is a Specially Designated National (“SDN”) under any sanctions program maintained by Treasury’s Office of Foreign Assets Control (“OFAC”), whether by reason of designation on the SDN list or because of ownership by one or more persons on the SDN list, individually or in the aggregate, directly or indirectly, of a 50 percent or greater interest; (iii) is included on OFAC’s list of Non-SDN Chinese Military-Industrial Complex Companies; or (iv) is designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. § 1189.</p>
<p>Covered Foreign Person</p>	<p>The term “covered foreign person” includes:</p> <ul style="list-style-type: none"> • a person of a country of concern that engages in a covered activity; • a person that directly or indirectly holds a board seat on, a voting or equity interest (other than through securities or interests that would satisfy the conditions for an excepted transaction) 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 it derives or incurs more than 50 percent of its revenue, net income, capital expenditure or operating expenses (individually or as aggregated across such persons from which it incurs at least \$50,000 or equivalent of its revenue, net income, capital expenditure or operating expenses, respectively) on an annual basis; or • a person of a country of concern that participates in a joint venture with a U.S. person if the JV is engaged in a covered activity.
<p>Covered Transaction</p>	<p>The term “covered transaction” means a U.S. person’s direct or indirect:</p> <ul style="list-style-type: none"> • acquisition of an equity interest or contingent equity interest in a person that the U.S. person 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, where 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

	<p>or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan;</p> <ul style="list-style-type: none"> • 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, (i) the establishment of a covered foreign person or (ii) 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 joint venture will engage, or plans to engage, in a covered activity; or • 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 the fund is not a U.S. person) that a U.S. person knows at the time of the 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.
<p>Excepted Transaction</p>	<p>Excepted transactions that are not prohibited or notifiable transactions include:</p> <ul style="list-style-type: none"> • an investment by a U.S. person in a publicly traded security (whether on a U.S. or non-U.S. exchange); • an investment by a U.S. person in a security issued by a registered investment company, such as an index fund, mutual fund or exchange-traded fund, or issued by any company that has elected to be a business development company; • an investment by a U.S. person LP in a venture capital fund, private equity fund, fund of funds or other pooled investment fund where (i) the U.S. person LP's committed capital is not more than \$2,000,000, aggregated across any investment and

	<p>co-investment vehicles of the fund, or (ii) the U.S. person LP has secured binding contractual assurances that its capital in the fund will not be used to engage in a transaction that would be a prohibited transaction or notifiable transaction, as applicable, if engaged in by a U.S. person;</p> <ul style="list-style-type: none">• an investment by a U.S. person LP 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 (this exception was added in the Outbound Investment Rule);• a U.S. person's full buyout of all equity or other interests in an entity held by a person of a country of concern, such that, following such acquisition, the entity does not constitute a covered foreign person;• an intracompany transaction between a U.S. person parent and its controlled foreign entity 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;• a transaction made after January 2, 2025, pursuant to a binding, uncalled capital commitment entered into before January 2, 2025;• the acquisition of a voting interest in a covered foreign person upon default or other condition involving a loan, where the loan was made by a syndicate of banks in a loan participation, and the U.S. person lender in the syndicate (i) cannot on its own initiate any action vis-à-vis the debtor and (ii) is not the syndication agent;• a U.S. person individual's receipt of employment compensation 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 (this exception was added in the Outbound Investment Rule); or• certain transactions involving a person of a country or territory outside of the United States where the Secretary of the Treasury determines that the country or territory is addressing national security concerns substantially similar to those described in the Outbound Order and related to outbound investment, and the transaction is of a type for which the Secretary of the Treasury determines the related national security concerns are likely to
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	<p>be adequately addressed by measures taken or that may be taken by the government of the relevant country or territory.</p>
<p>Person of a Country of Concern</p>	<ul style="list-style-type: none"> • an individual citizen or permanent resident of a country of concern and not a U.S. citizen or permanent resident; • 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; and • an entity in which any persons identified in the above categories individually or in the aggregate, directly or indirectly, hold at least 50 percent of (i) the outstanding voting or equity interests or (ii) the voting power of the board.