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Proposed Outbound Investment Regimes Trigger Widespread Commentary Across Many Industries

Client Alert | October 20, 2023

On August 9, 2023, the Biden Administration issued Executive Order ("EO") 14,105, outlining proposed controls on outbound U.S. investment in certain foreign entities.[1] The EO was accompanied by an Advance Notice of Proposed Rulemaking ("ANPRM") issued by the U.S. Department of the Treasury ("Treasury") seeking information regarding implementation of the EO.[2] In an earlier update, Gibson Dunn explained Treasury's ANPRM and the complicated compliance landscape it proposed to create.

As part of the rulemaking process, Treasury opened a 45-day window to allow for public comment on the ANPRM that closed on September 28, 2023. Treasury requested feedback on a broad list of 83 questions.[3] The comment period generated significant interest from industries that will be affected by the potential outbound investment regime (the comments may be viewed in full at Regulations.gov). Major actors in the investment community; manufacturers; semiconductor, microelectronics, and quantum companies; financial institutions; and trade associations all weighed in with broad and specific comments. Across industries, commenters emphasized the need for more clarity, narrower coverage to prevent chilling of investment and spill-over into non-targeted industries, and wider exemptions.

As discussed in our previous update, it is very rare for Treasury to conduct a notice and comment rulemaking process under the International Emergency Economic Powers Act ("IEEPA"), the authority offered in the EO. Thus, significant uncertainty remains surrounding the proposed rule's implementation or how comments will factor in. The discussion below lays out certain key unresolved issues and concerns raised in the submitted comments.

I. Clearer definitions and guidance regarding covered U.S. persons, covered foreign persons, and "country of concern":

First, many commenters noted that the definitions are vague with respect to which U.S. actors or investors, foreign partners, and types of investments and transactions are subject to the restrictions.

1. Clarify which "U.S. persons" are covered by the rule.

The ANPRM proposes to adopt the definition of "U.S. person" set out in the EO, which comports with the standard definition in U.S. sanctions practice, and includes "any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States."[4]

- Commenters asked Treasury to clarify that the obligation to comply with the EO applies only to the U.S. person entity or individual undertaking the covered transaction and not to other parties involved in or tangential to the transaction,

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including third-party financial institutions.[5]

- Commenters also recommended Treasury clarify the status of dual citizens under the regulations.[6]
- Commenters further noted that the definitions of U.S. persons and covered foreign person should be made mutually exclusive to prevent situations where a company is classified as both.[7]
- Similarly, many commentators noted that the definition of U.S. person creates ambiguity as to whether non-U.S. companies that have U.S. nationals as board members or senior employees will be affected by the regulations, and requested more clarity.[8]
- Commenters representing European parent companies of U.S. subsidiaries also expressed concern that they might erroneously be considered "U.S. persons."[9]

2. Clarify the indicia for identifying a "covered foreign person".

Treasury has proposed to define "covered foreign person" to mean either (1) a "person of a country of concern" that is engaged in, or that a U.S. person knows or should know will be engaged in, an identified activity with respect to a "covered national security technology or product"; or (2) a person whose direct or indirect subsidiaries or branches are referenced in item (1) and which, individually or in the aggregate, comprise more than 50 percent of that person's consolidated revenue, net income, capital expenditure, or operating expenses.[10]

- Many commenters indicated that the kind of information needed to make either of these two determinations is often unavailable for various reasons, meaning it will be hard for U.S. persons to comply and properly conduct due diligence. Commenters emphasized that access to Chinese banking and ownership information is not readily available, and in some cases is obscured or prohibited by China's legal regime; thus, U.S. persons may not be able to fully assess whether covered activity comprises more than 50 percent of a foreign person's revenue, net income, or other metrics in the ANPRM.[11]
- Others noted that the 50 percent rule would fail to capture various loophole situations—for example, where a large company has a small subsidiary that is only a small portion of a large company's revenue—making the regulations less effective.[12] They noted that the definition similarly does not clarify whether it refers to an operating company employing the personnel engaged in the covered activity, or whether a holding company may be considered "engaging in" the covered activity.[13]
- Many commenters indicated that it may be hard for companies to monitor for changes in these already hard-to-get metrics over time.[14] As a solution to these issues, many urged Treasury to publish and maintain a fixed list of entities determined to be "covered foreign persons," following the example of existing Department of Commerce restricted party lists (such as the Entity List) or Treasury sanction lists (such as the List of Specially Designated Nationals and Blocked Persons (SDN) List).[15] If Treasury does not rely on such lists, many suggested that Treasury should draw very narrow categories, including a de minimis standard that covers only entities "primarily" or "substantially" engaged in a covered activity.[16]

3. Definition of "person from a country of concern" is similarly vague and as written might create overlaps or loopholes.

Treasury has proposed multiple broad definitions of "person of a country of concern."[17]

- Many noted that these definitions are overly broad and could unintentionally restrict, for example, the formation of a joint venture or the founding of a startup

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between U.S. persons and individuals who have Chinese backgrounds but are lawfully resident in the United States, and suggested exempting lawful U.S. residents from this definition.[18]

- To address this, some commentators encouraged Treasury to establish a greenfield and young startup exception to the definition of "person of a country of concern" as in the CFIUS context to ensure innovative businesses are founded in the U.S.[19] Others suggested Treasury clarify whether the presence of a minority investor from a country of concern will trigger restrictions on the entity.[20]

II. Compliance and obligations under the regulations:

To determine whether a transaction will be covered by the new regime, Treasury has proposed that a U.S. person would "need to know, or reasonably should know" from an appropriate amount of due diligence "that it is undertaking a transaction involving a covered foreign person and that the transaction is a covered transaction."[21]

- Commenters overwhelmingly requested clear steps and extensive guidance to make it easier for investors to comply, in addition to requests for other details on how compliance standards will be applied.

1. The due diligence obligations & "knowledge" standard are vague and should be clarified.

Many commenters feel that Treasury's proposed due diligence standard is speculative. For example, the ANPRM standard would require U.S. persons to assess whether an entity "will foreseeably be engaged in regulated conduct."[22]

- Commenters requested more clarity for these vague phrases.
- In addition, given the difficulty of determining the criteria that define covered persons and activities, multiple commenters called for Treasury to use an "actual knowledge" standard as opposed to a "constructive knowledge" standard.[23]
- Many commenters also recommended Treasury adopt a "safe harbor" or a "reasonable reliance" standard, which would allow U.S. persons to rely on diligence responses from the prospective investee or foreign partner.[24]
- Other commenters sought a standard that would require knowledge to be based only on information available to the U.S. person at the time of the transaction, not based on information available later.[25]To clear up ambiguity for complying parties, commenters urged Treasury to publish extensive guidance that describes relevant due diligence steps, red flags, and other specific examples of sufficient practices to meet the standard for "reasonable and appropriate" due diligence.[26]
- Others suggested Treasury simply adopt the existing diligence requirements of the Export Administration Regulations ("EAR"), which would not require a new compliance standard.[27]

2. The ANPRM should be prospective, not retroactive.

Almost all commenters agreed that the EO and the regulation should be prospective, not retroactive, and most agreed that it should be applied only to transactions and investments made after finalization of the rule. One trade association for institutional limited partners urged that the final regulation only apply to financial commitments made after the finalization of the rule, as opposed to previously made commitments.[28] Some commenters highlighted that the rule is ambiguous as to whether Treasury would seek to exercise authority to unwind transactions, and urged that investments once made should not be able to be unwound or divested.[29]

3. Clarify who is liable for failure to comply with the reporting requirements.

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Commenters requested Treasury confirm explicitly that such liability resides solely with the U.S. person undertaking a covered transaction, as imposing an obligation on third parties who are not legally responsible for the transaction will create practical problems, disadvantage U.S. financial institutions vis-à-vis their competitors, and will not advance the national security objectives of the EO.[30] Some commentators wanted to clarify that the filings would be a post-closing notification requirement (so as to not disadvantage U.S. investors and introduce regulatory uncertainty regarding pending transactions).[31]

III. Covered transactions and excepted/exempted transactions:

Commenters sought to clarify Treasury's proposed covered transactions and expand its exemptions to prevent overbroad coverage. In particular, commenters sought to ensure that passive investments by both limited partners and non-limited partners, venture capital and private equity investments, and other transactions are not covered by the regulations. In addition, major financial institution and investment commenters urged Treasury to clarify that coverage does not indiscriminately restrict services provided by financial institutions to their customers with respect to covered transactions.

1. Multiple sectors request exemptions for passive investments and clarification regarding limited partners.

Most groups representing financial institutions, private equity, and venture capital urged Treasury to clarify and expand exemptions for passive investments.

Commenters representing investors urged Treasury to permit limited partners to invest beyond the proposed de minimis threshold, arguing that the nature of limited partner investments are passive and thus not the kind of investments the regulations are meant to target.[32] Commenters urged exemptions for most or all passive investments that do not exceed a certain de minimis threshold (multiple commenters proposed a below-10 percent equity and voting interest) or that do not grant rights in the target company should be exempted, including investments into a venture capital fund, private equity fund, or other pooled investment funds.[33] If not, they urged Treasury to clarify the "knowledge" and "directing" standard for limited partners to ensure that U.S. persons do not automatically meet these criteria merely by serving on a Limited Partnership Advisory Committee or an Investment Committee.[34] Finally, commenters recommended Treasury align exceptions and definitions for publicly traded securities with Treasury's Chinese Military-Industrial Complex Companies ("CMIC") List and generally parallel securities language with other existing regulatory programs.[35]

2. Commenters requested clear and broad exemptions for financial institutions, including as third parties providing services to their customers during transactions.

Many financial, private equity, and venture capital commenters encouraged Treasury to clarify that the scope of "covered transactions" does not include services provided by financial institutions to their clients with respect to covered transactions. Commenters urged the exemption of a long list of transactions, including when a third party institution is serving as an advisor, underwriter, source of debt financing, sponsor, arranger, issuer, or in any other capacity as a U.S. financial institution acting in an intermediary or other capacity.[36] Generally, commenters requested clarification of the treatment of categories like debt financing, investments in index funds, and "indirect" transactions.[37]

3. Commenters suggested other key areas for exemptions.

Commenters requested four more main categories of exemptions. Many sought a clear exception for intracompany transfers, whether just for existing subsidiaries that are already covered foreign persons or regardless of domicile. Relatedly, some recommended exempting (or clarifying the treatment of) corporate restructuring transactions.[38] Second, multiple commenters sought a blanket exemption for joint research ventures unless they are tied to military security concerns; others sought blanket exemptions for intellectual

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property licensing and sales activities.[39] Third, others requested that "teaching partnerships" be excluded as part of the category of research collaborations that are exempted.[40] And fourth, technology and manufacturing groups sought clarification that certain activities, such as contract manufacturing of consumer technology products, or simple conveyance of national security products, are exempt from the regulations.[41]

IV. Covered national security products and technologies:

Many commenters identified two main categories of covered technology that were defined overbroadly, which could significantly chill investment: AI and quantum technology. In general, commenters urged Treasury to regulate more precisely and with greater awareness of the importance of non-military uses of these technologies.

1. Covered technologies should be narrowly and clearly defined.

Commenters mostly agreed that the definitions of covered products and technologies were vague and overly broad, but disagreed on the best alternative. Some debated whether coverage should depend on a technology's "primary" or "exclusive" use.[42] Others argued that the final rule should focus on end *users* rather than end uses, and should rely on existing lists of actors such as the CMIC List maintained by Office of Foreign Assets Control or the Entity List maintained by the Department of Commerce.[43] Still others suggested that the definitions be based on objective features such as technical parameters of products or technology, or their export control classification numbers.[44]

2. The definition of "AI Systems".

Several commenters across industries viewed the definition of "AI system" as overly broad, and were concerned that the proposed regulations would cover technologies designed for commercial use and without military application. These commenters predicted that the proposed definition would chill investment in cutting-edge technologies. They suggested that the scope of coverage be limited to technology that has a dual military and commercial use, or that is specifically or exclusively designed for military or surveillance applications.[45] Other commenters proposed that Treasury employ categorical exemptions for particular industries (such as for AI used in medical technology)[46] or that it focus on restricting specific end users.[47]

3. Quantum technologies.

Quantum technology companies requested more clarity and nuance in the scope of coverage of "quantum computers and components." These commenters pointed out that the coverage of "components" could be overbroad and risks expanding the scope of the rule to cover any piece of hardware that might go into a quantum computer, including some household items and technologies.[48] Others recommended either removing the term "component" or defining it more narrowly based on technical capabilities. One international quantum company suggested looking to regulations enacted by the Spanish government in May 2023 for workable definitions.[49] Yet other commenters urged that the definitions of "quantum sensors," "quantum networking," and "quantum communications systems," be narrowed or qualified to recognize that these technologies have commercial, non-military applications.[50]

V. Other implementation concerns:

Some commenters weighed in on enforcement procedures, coordination with other agencies and governments, and the scope of the regulation as a whole.

1. Alternative enforcement mechanisms.

Many requested that Treasury create a mechanism to apply for waivers, under which an otherwise prohibited transaction might be approved if in the public interest.[51] Others

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proposed an advisory opinion process, through which Treasury could provide advance notice of whether a particular transaction would be notifiable or prohibited. Commenters pointed to similar processes offered by the SEC, CFIUS, and other agencies.[52]

2. Alignment with allies and other federal programs.

Several commenters urged Treasury to encourage allies to establish similar regulations, so as not to put the United States or U.S. persons at a competitive disadvantage. Manufacturers and trade associations raised the concern that without coordination, manufacturing demand would flow to foreign jurisdictions without similar investment controls.[53]

Other commenters suggested that the new regulations be aligned with existing mechanisms such as the CHIPS Act guardrails, the EAR, and sanctions regimes.[54] Some recommended that the definition of "countries of concern" be aligned with the definitions used by the Defense Department and included in the CHIPS Act.[55] Finally, others stated that existing export control and sanctions regimes are sufficiently effective and significantly less invasive, and urged Treasury to rely on those programs rather than implementing an outbound investment regime.[56]

3. The scope of the regulatory project.

A few commenters, including manufacturing groups and unions, urged "a broad view as to the scope of coverage" and "encourage[d] its expansion over time."[57] Former U.S. Deputy National Security Advisor Matt Pottinger even recommended that certain software and AI transactions be entirely prohibited (as opposed to permitted with notification) because the Chinese government has the legal power to access technologies developed by "any firm operating in China," rendering notification ineffective.[58]

Most commenters, however, suggested Treasury narrow the scope of coverage. Some even questioned the wisdom of regulating outgoing investment at all. China-based organizations objected to the regulations as a whole,[59] and, as discussed below, House Financial Services Committee Chairman Patrick McHenry questioned the policy and legal authority behind the regulatory program.

VI. A high-ranking House leader raised significant policy disagreements and legal concerns with the ANPRM's approach:

On September 27, 2023, House Financial Services Chairman (and current Acting Speaker of the House of Representatives) Patrick McHenry wrote a letter to Treasury Secretary Yellen commenting on the ANPRM.

First, Chairman McHenry raised legal issues with the proposed regulations, asserting that the Office of Investment Security cannot statutorily implement the regulation, and also questioned the ANPRM's reliance on the International Emergency Economic Powers Act (IEEPA) as part of the authority for the regulation, describing its use as "novel."[60] Second, he questioned the Biden Administration's policy of decreasing U.S.-driven investment in China, arguing that instead public policy should be to *increase* private U.S. investment and control of Chinese entities.[61] Third, he questioned whether the program should be administered through Treasury's OFAC sanctions regime, rather than through the CFIUS regime.[62] Chairman McHenry's comments are significant because they may identify grounds for parties to challenge the final regulations and because they highlight a sharp disagreement in the top levels of government regarding the role of U.S. investment in China.

Gibson Dunn attorneys are monitoring the outbound investment regime developments closely and are available to counsel clients regarding potential or ongoing transactions and other compliance or public policy concerns.

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[1] Exec. Order No. 14,105, 88 Fed. Reg. 54,867 (Aug. 11, 2023).

[2] Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 88 Fed. Reg. 54,961 (Aug. 14, 2023) [hereinafter ANPRM].

[3] ANPRM, 88 Fed. Reg. at 54,962.

[4] See ANPRM, 88 Fed. Reg. at 54,963–64.

[5] *See, e.g.*, Securities Industry and Financial Markets Association ("SIFMA"), Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 1–2 (Sept 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0042.

[6] *See, e.g.*, Semiconductor Industry Association, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 6–7 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0056.

[7] *Id*. at 7.

[8] *See, e.g.*, The Confederation of the Netherlands Industry and Employers, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2 (Sept. 25, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0011.

[9] *See, e.g.*, Transatlantic Business Initiative, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3–4 (Sept. 27, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0010.

[10] *See* ANPRM, 88 Fed. Reg. at 54,964.

[11] *See, e.g.*, SIFMA, *supra* note 5, at 8 ("Treasury should consider the possibility of potential conflicts of law from other jurisdictions that may place restrictions on the export of data from China and create other challenges in obtaining research on investment targets in China . . . .").

[12] *See, e.g.*, Hewlett Packard Enterprise, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0032.

[13] *See, e.g.*, SIFMA, *supra* note 5, at 6–7.

[14] *See, e.g.*, Hewlett Packard Enterprise, *supra* note 12, at 2.

[15] *See, e.g.*, Business Roundtable, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 6–7 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0028.

[16] *See, e.g.*, *id*. at 7.

[17] *See* ANPRM, 88 Fed. Reg. at 54,962.

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[18] *See, e.g.*, Quantum Economic Development Consortium, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 4 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0057.

[19] *See, e.g.*, National Venture Capital Association, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 6–7 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0054.

[20] *See, e.g.*, Information Technology Industry Council, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0035.

[21] *See* ANPRM, 88 Fed. Reg. at 54,969–70.

[22] *Id.* at 54,969.

[23] *See, e.g.*, American Investment Council, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0053.

[24] *See, e.g.*, *id.* at 3; *see also* Goldman Sachs, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 4 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0036.

[25] *See, e.g.*, Goldman Sachs, *supra* note 24, at 4.

[26] *See, e.g.*, American Investment Council, *supra* note 23, at 3.

[27] *See, e.g.*, Squire Patton Boggs LLP, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 7 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0060.

[28] *See, e.g.*, Institutional Limited Partners Association ("ILPA"), Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 9-10 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0055.

[29] *See, e.g.*, U.S. Chamber of Commerce, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 6 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0038.

[30] *See, e.g.*, Business Roundtable, *supra* note 15, at 4–5.

[31] *See, e.g.*, Squire Patton Boggs LLP, *supra* note 27, at 8–9.

[32] *See, e.g.*, Institutional Limited Partners Association, *supra* note 28, 2–4.

[33] *See, e.g.*, National Venture Capital Association, *supra* note 19, at 4–5; SIFMA, *supra* note 5, at 11; Business Roundtable, *supra* note 15, at 13.

[34] *See, e.g.*, British Private Equity & Venture Association, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security

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Technologies and Products in Countries of Concern 2-3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0034.

[35] *See, e.g.*, Investment Company Institute, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3-4 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0027; *see also* SIFMA, *supra* note 5, at 10–11.

[36] *See, e.g.*, SIFMA, *supra* note 5, at 2-5; U.S. Chamber of Commerce, *supra* note 29, at 13–15.

[37] *See, e.g.*, Investment Company Institute, *supra* note 35, at 5, 11–12.

[38] *See, e.g.*, Investment Company Institute, *supra* note 35, at 5; U.S. Chamber of Commerce, *supra* note 29, at 17; SIFMA, *supra* note 5, at 10.

[39] *See, e.g.*, SEMI, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0029; Information Technology Industry Council, *supra* note 20, at 3-5.

[40] *See, e.g.*, Eastern Michigan University, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 1–2 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0033.

[41] *See, e.g.*, National Association of Manufacturers, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 4 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0021.

[42] *See, e.g.*, Squire Patton Boggs LLP, *supra* note 27, at 2–3.

[43] *See, e.g.*, National Venture Capital Association, *supra* note 19, at 8.

[44] *See, e.g.*, Business Roundtable, *supra* note 15, at 2–3.

[45] *See, e.g.*, Hewlett Packard Enterprise, *supra* note 12, at 5–6.

[46] *See, e.g.*, Advanced Medical Technology Association, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2–3 (Sept. 29, 2023).

[47] *See, e.g.*, National Venture Capital Association, *supra* note 19, at 8.

[48] *See, e.g.*, Quantum Economic Development Consortium, *supra* note 18, at 4–6.

[49] Bluefors Oy, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0062.

[50] *See, e.g.*, Infleqtion, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2-3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0050.

[51] *See, e.g.*, SIFMA, *supra* note 5, at 12.

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[52] *See, e.g.*, U.S. Chamber of Commerce, *supra* note 29, at 4–5.

[53] *See, e.g.*, Semiconductor Industry Association, *supra* note 6, at 4–6.

[54] *See, e.g.*, National Association of Manufacturers, *supra* note 41, at 2.

[55] *See, e.g.*, MEMA, Comments by MEMA, The Vehicle Suppliers Association, on Notice of Advanced Rulemaking on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0048.

[56] *See, e.g.*, Transatlantic Business Initiative, *supra* note 9, at 1.

[57] Alliance for American Manufacturing, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2–3 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0022; AFL-CIO, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 2 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0040.

[58] Matt Pottinger, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (Sept. 29, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0061.

[59] *See, e.g.*, China Chamber of International Commerce, Comments on Executive Order 14105 and ANPRM 5–7 (Sept. 28, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0018.

[60] Representative Patrick McHenry, Comment Letter on Proposed Rule on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern 1–2 (Sept. 27, 2023), https://www.regulations.gov/comment/TREAS-DO-2023-0009-0013.

[61] *Id*. at 3–4.

[62] *Id*.

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Gibson Dunn's International Trade lawyers are highly experienced in advising companies about the potential legal implications of their international transactions and regularly assist clients in their efforts to comply with the shifting legal landscape and to implement best practices. The firm's Congressional Investigations team has represented numerous clients responding to congressional inquiries regarding national security issues, and its Public Policy Practice Group frequently works with clients to monitor developments on Capitol Hill and the Administration in real time and to ensure their voices are heard in the policy debate. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Gibson Dunn attorneys also have vast experience preparing effective submissions to government regulators and remain ready to assist with this process as well as to help prepare stakeholders for discussions with members of the Treasury or other federal agencies on the proposed regulations.

Please contact the Gibson Dunn lawyer with whom you usually work, the following practice leaders and members, or the authors in Washington, D.C. for additional information about how we may assist you:

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