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Compliance Update

Treasury Proposes Outbound Investment Regulations Under the COINS Act

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On October 22, 2026, the U.S. Department of the Treasury (Treasury) released a notice of proposed rulemaking (the Proposed Rule) to implement the Comprehensive Outbound Investment National Security Act of 2025 (the COINS Act), together with a Fact Sheet and FAQs.[1] The Proposed Rule effectively builds on the Outbound Investment Security Program (the Existing Rule), which prohibits U.S. persons from making certain technology-related investments with respect to China. In particular, the Proposed Rule would expand the program's technological and geographic scope. Secretary of the Treasury Scott Bessent stated that the Proposed Rule "would strengthen the existing Outbound Investment Security Program to prevent our adversaries from using U.S. investment to develop critical technologies that threaten U.S. national security."[2] Comments are due December 7, 2026, and the Existing Rule remains in effect until a final rule takes effect.[3]

The most notable aspects of the Proposed Rule are with respect to artificial intelligence (AI) and biotechnology. The Existing Rule treats certain investments in AI as prohibited and others as subject to notification. The Proposed Rule would eliminate the notification category, effectively prohibiting all covered investments (i.e., those involving covered foreign persons) in companies that develop AI systems. The Proposed Rule would also add biotechnology as a prohibited sector, even though the COINS Act does not name that sector.

In this client alert, we discuss the key provisions of the Proposed Rule and offer important takeaways for multinational companies and investors.

I. Background

The Outbound Investment Security Program originated in Executive Order 14105 of August 2023, and Treasury's Existing Rule took effect on January 2, 2025.[4] The program to date has been, in short, a restriction on U.S. capital and expertise flowing to Chinese companies in a small number of important and emerging technologies. The Existing Rule applies to U.S. persons (U.S. citizens, permanent residents, entities organized in the United States and their foreign branches, and any person in the United States) and the foreign entities they control. The Rule covers certain investments when the target is a Chinese company (including Hong Kong and Macau) engaged in specified activities in the semiconductors and microelectronics, quantum information technologies, or AI sectors. Depending on the technology, the investment is either prohibited outright or permitted but must be reported to Treasury within 30 days of

closing. There is no application or approval process, unlike review of inbound investment by the Committee on Foreign Investment in the United States.[5]

As discussed in our prior client alert, on October 7, 2026, Treasury announced its first penalty under the Outbound Investment Security Program, penalizing a U.S. investor for failing to file a required notification related to an investment made by a Chinese fund owned by the investor's subsidiary.[6]

The COINS Act, enacted on December 18, 2025, as part of the FY2026 National Defense Authorization Act, provided a statutory basis for the program and requires the issuance of new implementing regulations within 450 days of enactment, that is, by March 13, 2027.[7]

II. The Proposed Rule

The Proposed Rule generally follows the structure of the Existing Rule. The program applies when a U.S. person, or a foreign entity it controls (a "controlled foreign entity"), undertakes a covered transaction with a covered foreign person, meaning a person of a "country of concern" that is engaged in a covered technology. If the technology is a prohibited technology, the transaction cannot proceed absent a national interest exemption (explained in more detail below); if it is a notifiable technology, the transaction may proceed but must be reported to Treasury within 30 days.

Treasury does not screen transactions or publish a list of covered foreign persons, although it is considering whether to create such a list. As its FAQs note, "the relevant U.S. person undertaking a transaction would have the obligation to determine whether the given transaction is prohibited, permissible but subject to notification, or not covered by the rule because it is either an excepted transaction or not within the jurisdiction of the OISP."[8]

A. Covered Transactions

Under the Proposed Rule, the first question is whether the investment is a covered transaction at all. A U.S. person or its controlled foreign entity undertakes a covered transaction when it does any of the following with or for a covered foreign person:[9]

- Acquires an equity interest or a contingent equity interest, such as a convertible note or a warrant (the later conversion of such an instrument into equity is a separate covered transaction, but only where the instrument was acquired on or after the effective date of the final rule);
- Provides debt financing that carries equity-like rights, such as a right to board representation or to convert into equity;
- Forms a joint venture, whether or not a new entity is created;
- Funds a greenfield or expansion project that will engage in a covered technology;
- Knowingly directs a transaction by a non-U.S. person that would be a covered transaction if a U.S. person undertook it (for example, a U.S. citizen who sits on the investment committee of a non-U.S. fund and approves such an investment; recusing from the decision can avoid this); or
- Acquires a limited partner interest in a non-U.S. fund that the U.S. person knows is likely to invest in covered foreign persons in a covered sector (an investment in a fund that already holds covered investments may also be an indirect covered transaction).

Whether a transaction that falls within one of these categories would be excepted is addressed in Section II.D below.

B. Countries of Concern and Covered Foreign Persons

The Proposed Rule defines a covered foreign person by reference to a country of concern. Under the Existing Rule, China (including Hong Kong and Macau) is the only country of concern. As the statute requires, the Proposed Rule would add Cuba, Iran, North Korea, and Russia as countries of concern.[10] Existing sanctions already foreclose most U.S. investments in those jurisdictions, so the practical impact of these additions may be relatively limited, and we expect that investment in China will remain the most practically significant aspect of the rules. As to Venezuela, the COINS Act provides that Venezuela "under the regime of Nicolás Maduro Moros" is a country of concern, but Treasury has now stated that the regime "no longer exists" and therefore "Venezuela does not meet the NPRM's definition of a country of concern."[11]

The Proposed Rule divides a covered foreign person into one of two categories:

- **Persons in a country of concern**. A citizen, permanent resident, or government of a country of concern, and an entity organized or headquartered there.
- **Entities outside a country of concern**. An entity, wherever organized, that falls into one of the following groups:
  - *Ownership*. Persons in a country of concern hold 50% or more of the entity's voting interest, board voting power, or equity.
  - *Control*. Persons in a country of concern have the power to direct the entity's management or policies, whether through ownership, contract, or otherwise.
  - *Financial ties*. The entity holds equity, a board seat, or contractual control in a covered foreign person engaged in a covered technology and derives more than half of its revenue, net income, capital expenditure, or operating expenses from such persons.[12]

Under the Existing Rule, an otherwise notifiable investment becomes prohibited if the target is on certain U.S. government lists, such as the Entity List or the Specially Designated Nationals and Blocked Persons (SDN) List. The Proposed Rule would broaden this restriction to include two additional lists — the Department of War's list of Chinese military companies (the 1260H list) and the BIOSECURE Act list of biotechnology companies of concern — and it would include investments where the target's affiliate or subsidiary is listed, not just the target itself.[13]

C. Covered Sectors

The Proposed Rule would cover six technology sectors: the three covered under the Existing Rule issued pursuant to Executive Order 14105 (semiconductors, quantum, and AI), the two explicitly added by the COINS Act (high-performance computing and hypersonic systems), and biotechnology, which Treasury has added under the authority the COINS Act gives it to designate additional technologies.

1. Artificial Intelligence ('Super Intelligence') Systems

The Proposed Rule expands the scope of the prohibition on covered investments in AI systems. Consistent with Executive Order 14434's direction to federal agencies, the Proposed Rule refers to "super intelligence" or "SI" in place of "artificial intelligence."[14]

Under the Existing Rule, an investment in a Chinese AI developer is prohibited if the AI system is designed exclusively for, or intended for, military, government intelligence, or mass surveillance uses, or is trained using very large amounts of computing power. Such an investment is notifiable if the AI system is designed for any such use, is intended for certain other uses such as cybersecurity or the control of

robotic systems, or is trained above a lower computing threshold. Investments in other AI developers are outside the program.[15] The Proposed Rule would remove those distinctions and prohibit investment in any covered foreign person that develops any AI system, regardless of its capability or intended use. Treasury's reasoning is that "no single measure, benchmark, or threshold is currently sufficient to distinguish advanced models," that end uses have become "more challenging to isolate," and that a flat prohibition "does not rely on a U.S. person ascertaining the technical capabilities or thresholds of SI systems being developed by a covered foreign person."[16] Treasury "particularly welcomes feedback" on this approach and on "possible alternative approaches aimed at the same policy intent."[17]

If adopted in its present form, the Proposed Rule could have significant impacts on investments in AI in China and in Chinese-owned or Chinese-controlled companies elsewhere. The prohibition would likely reach most China-based companies that develop an AI-enabled product, whether built on their own model or on a third-party foundation model. Two definitions produce that result. First, an AI system is defined broadly. It includes systems that "generate content" and any "application, tool, or utility that operates in whole or in part using an SI system," which would cover software that allows a model to act autonomously (so-called agents) and physical systems that run on AI, such as robots and other autonomous or unmanned systems, including drones.[18] Second, a company that "enhances or extends the capability" of a third-party model, for example by building an agentic product on it, develops an AI system. The only use of a third-party model that the text expressly excludes is use "strictly for internal, non-commercial purposes," including fine-tuning for internal use.[19] The definition of "develop" also reaches work done through affiliates and "high-level oversight, direction, approval, conceptual input, or strategic planning," so a parent or holding company that directs an affiliate's AI work may itself be treated as a developer.[20]

2. Biotechnology

The most significant expansion is the addition of biotechnology as a prohibited-only (i.e., not notifiable) sector. Proposed § 851.226(r) through (u) would prohibit investment in a covered foreign person that uses biological systems to produce controlled or novel agents and toxins, energetic materials, novel functional materials, pharmaceutical compounds (including "small molecules, polymers, vaccines, ... cell and gene therapies, and monoclonal antibodies"), or biofuels, and in a covered foreign person that develops brain-computer interfaces, export-controlled biomanufacturing equipment, sequencing technology, certain laboratory instruments, bioinformatics tools, or laboratory automation.[21] As drafted, the category would reach a substantial share of China's pharmaceutical and life-sciences tools industries. Treasury acknowledges the potential effect on public health and on U.S. businesses and asks whether the category should be limited to "advanced or frontier technologies."[22]

3. Other Sectors

For the sectors already covered under the Existing Rule, the Proposed Rule would expand the existing restrictions as follows:[23]

- **Semiconductors and microelectronics**. The Proposed Rule would expand the prohibition on investments involving advanced integrated circuits (ICs) "to include radiation-hardened ICs, photonic ICs, high bandwidth memory, and additional categories of advanced ICs."

- **High-performance computing and supercomputing**. The Proposed Rule "maintains the existing prohibition for U.S. person investment into supercomputers" and would add a notification requirement for high-bandwidth, low-latency interconnects used in high-performance computing.

- **Quantum information technologies**. The Proposed Rule would expand "the prohibition to cover U.S. person investment into the development of algorithms or applications for quantum computing."

The Proposed Rule would also add hypersonic systems as a covered sector. It would prohibit investment in "hypersonic systems or a propulsion system capable of enabling hypersonic flight," as well as certain related materials and test facilities, and would require notification of investment in sensors, control equipment, and software for hypersonic systems and certain dual-use materials capable of use in a hypersonic system.[24]

D. Excepted Transactions

The Proposed Rule carries forward most of the exceptions in the Existing Rule, adds the exceptions enacted in the COINS Act, and leaves several questions open for comment. The exceptions for publicly traded securities, registered funds, limited partner interests, and derivatives are unavailable where the investment affords governance rights beyond standard minority shareholder protections (which include, for example, anti-dilution rights and the power to block a sale of substantially all assets).[25]

1. Exceptions Carried Forward From the Existing Rule

The following exceptions would carry forward largely unchanged:

- Investments in publicly traded securities, registered funds and derivatives, full buyouts, intracompany transfers, and employee equity compensation remain excepted. The Existing Rule's exception for investments in business development companies is not carried forward, although Treasury invites comment on restoring it.

- A U.S. investor's limited partner interest in a non-U.S. fund remains excepted where the investor's committed capital is $2 million or less (aggregated across the fund's co-investment vehicles) or where the fund has given the investor a binding contractual assurance that its capital will not be used for prohibited or notifiable investments. An assurance covering notifiable investments relieves the investor of the notification requirement; an assurance covering prohibited investments protects the investor if the fund breaches it.

- A transaction in a country that the secretary designates as having adopted an outbound investment mechanism similar to the OISP remains excepted. Treasury describes the exception as an incentive for allies to adopt such mechanisms, but no country has been designated.

- A lender's acquisition of a voting interest in a covered foreign person upon a borrower's default remains excepted, although Treasury asks whether the exception is redundant with the new bank-lending exception.

2. New Exceptions

The Proposed Rule adds several new exceptions:[26]

- Bank lending, underwriting, custody, prime brokerage, and other activities "secondary to" or ancillary to a covered transaction would be excepted.

- Transactions of $50,000 or less, aggregated over the preceding 12 months, would be excepted from the notification requirement (but not from the prohibition).

- Ordinary or administrative business transactions would be excepted, although Treasury has not proposed a definition and invites comment on what the term should cover.

Under the Proposed Rule, a transaction made after the effective date of the Proposed Rule pursuant to a binding, uncalled capital commitment entered into before that date may be exempt, though it would still be subject to the Existing Rule. Additionally, the FAQs note that licensing, consulting, and procurement

contracts are generally outside the program, and that the program does not bar U.S. nationals from working at covered foreign persons (though they may need to be recused from certain matters).[27]

E. Nonbinding Feedback and the National Interest Exemption

- **Nonbinding feedback**. The Proposed Rule provides a process for eligible persons to request nonbinding feedback from Treasury regarding whether a transaction would constitute a prohibited transaction. Only a person with a direct financial interest in a transaction may request such feedback. The requestor can seek anonymized public guidance or confidential nonbinding feedback.

- **National interest exemption**. Consistent with the Existing Rule, under the Proposed Rule, a U.S. person may request an exemption from the application of the prohibition on the basis that a transaction is in the national interest of the United States.

F. Penalties and Enforcement

A violation would be subject to civil penalties up to the maximum amount permitted under the International Emergency Economic Powers Act (IEEPA) (which is the greater of $250,000, as adjusted for inflation, or twice the amount of the transaction).[28] Further, the secretary of the treasury could compel divestment of a prohibited transaction.

The Proposed Rule would also create a confidential channel through which any person could submit information to Treasury indicating that a foreign person is a covered foreign person engaged in a notifiable or prohibited technology. Voluntary self-disclosure would remain a mitigating factor, but a disclosure would need to include "a proposal for mitigation of any harms associated with the violation, including divestment or a voluntary disgorgement of profits."[29]

III. Key Takeaways

- **Comments are due December 7, 2026**. Treasury has requested comments that discuss the scope and impacts of the Proposed Rule, as well as potential alternative approaches.[30]

- **The Existing Rule remains in effect**. The Existing Rule remains in effect until a final rule takes effect. While the Proposed Rule has not been finalized, companies and investors may also wish to undertake planning to consider how the Proposed Rule will impact their activities.[31]

- **The knowledge standard requires reasonable diligence**. Under the Existing Rule, a U.S. person must conduct a "reasonable and diligent inquiry," which includes questions to the target, contractual representations or warranties, and review of public and available nonpublic information, including commercial databases. Treasury also considers "warning signs" and whether a U.S. person "purposefully avoided learning or seeking relevant information."[32] The Proposed Rule carries this framework forward and adds that Treasury will also consider whether the investor took account of any information Treasury provided before closing, including any Treasury assessment that a particular target may be engaged in a covered technology. This knowledge standard should be incorporated into the outbound-investment compliance program of U.S. investors.

- **U.S. persons are responsible for the actions of their controlled foreign entities**. Under the Existing Rule, a U.S. person must notify Treasury of notifiable transactions by its controlled foreign entities and must take "all reasonable steps to prohibit and prevent" prohibited ones. The recent penalty against Amidi LLC, covered in our prior client alert, involved an unreported investment by a Chinese fund owned by a U.S. sponsor's subsidiary, underscoring that this is an area of focus for Treasury.[33] The Proposed Rule would apply the knowledge standard to a

controlled foreign entity, such that what the controlled foreign entity knows bears on whether its U.S. person parent is complying with the requirements of the program.[34] Treasury is also considering expanding the "parent" definition to incorporate certain sub-advisers to a non-U.S. person fund, and welcomes comments on this definition. U.S. investors with controlled foreign entities, including investment firms with operations outside the United States (including in China), may wish to consider their global compliance programs and oversight in that light.

Paul Hastings will continue to monitor developments in the Outbound Investment Security Program and provide updates as appropriate.

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1 U.S. Dep't of the Treasury, Press Release, *Treasury Issues Proposed Rule to Implement Comprehensive Outbound Investment National Security Act* (Oct. 22, 2026), available here; Outbound Investment Security Program Regulations, 91 Fed. Reg. 67396 (Oct. 26, 2026) (the Proposed Rule), available here; U.S. Dep't of the Treasury, *Fact Sheet: Treasury Department Issues Notice of Proposed Rulemaking on Implementation of the Comprehensive Outbound Investment National Security (COINS) Act* (Oct. 22, 2026) (the Fact Sheet), available here. Page citations to the Proposed Rule are to the pre-publication version released by Treasury on October 22, 2026.

2 Treasury Press Release, *supra* note 1.

3 Proposed Rule at 2; *id.* at 10 (stating that "the provisions contained in the Proposed Rule will not have retroactive effect. The Part 850 Regulations, however, will continue to apply to activities occurring between January 2, 2025, and the effective date of the final regulations implementing Title VIII."); proposed 31 C.F.R. § 850.105.

4 Exec. Order No. 14105, 88 Fed. Reg. 54867 (Aug. 9, 2023); Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. 90398 (Nov. 15, 2024) (codified at 31 C.F.R. pt. 850).

5 31 C.F.R. §§ 850.217, 850.224.

6 Paul Hastings, *Treasury Announces First-Ever Penalty Under the Outbound Investment Security Program* (Oct. 22, 2026), available here.

7 Pub. L. No. 119-60, tit. LXXXV (Dec. 18, 2025).

8 Fact Sheet, *supra* note 1 (FAQ: "Would this program establish a transaction screening process?").

9 Proposed § 851.209; Proposed Rule at 20–23.

10 Proposed § 851.207; Proposed Rule at 15.

11 Proposed Rule at 15 ("With respect to inclusion of the Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros in Title VIII, that regime no longer exists. On March 5, 2026, the United States recognized Delcy Rodríguez as the head of state of Venezuela and her government is not the regime of Nicolás Maduro Moros."); Fact Sheet, *supra* note 1.

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[12] Proposed §§ 851.208(a), (c)–(d), 851.214(b); Proposed Rule at 15–18, 24; proposed § 851.208(a)(8); 31 C.F.R. § 850.209(a)(2). "Principal place of business" would include both an entity's headquarters and the place of its main business activity, so a U.S.-headquartered company managed from China would have its principal place of business in both. Proposed § 851.224.

[13] Proposed §§ 851.202, 851.226(v); Proposed Rule at 14, 42–43.

[14] Exec. Order No. 14434, 91 Fed. Reg. 63129 (Sept. 29, 2026).

[15] 31 C.F.R. §§ 850.217(d), 850.224(j)–(k).

[16] Proposed Rule at 35–36.

[17] *Id*.

[18] Proposed § 851.232; Proposed Rule at 45.

[19] Proposed § 851.226(h)(1)–(2); Proposed Rule at 36.

[20] Proposed § 851.210; Proposed Rule at 23–24.

[21] Proposed § 851.226(r)–(u).

[22] Proposed Rule at 41–42.

[23] Fact Sheet, *supra* note 1.

[24] Fact Sheet, *supra* note 1.

[25] Proposed § 851.501; Proposed Rule at 48–60. The standard minority shareholder protections are listed at 31 C.F.R. § 850.501(a)(2).

[26] Proposed Rule at 48-60.

[27] Fact Sheet, *supra* note 1 (FAQ: "Are technology licensing, consulting, or procurement contracts covered?"; FAQ: "Will U.S. nationals working at foreign entities be affected?").

[28] 50 U.S.C. § 1705.

[29] Proposed §§ 851.605, 851.701, 851.703, 851.704; Proposed Rule at 63–64.

[30] Proposed Rule at 10, 36, 41.

[31] Proposed Rule at 10; proposed 31 C.F.R. § 850.105.

[32] 31 C.F.R. § 850.104(b)–(c); Proposed § 851.104(c); Proposed Rule at 13.

[33] U.S. Dep't of the Treasury, Press Release, *Treasury Announces First Enforcement Penalty Under the Outbound Investment Security Program* (Oct. 7, 2026), available here; Paul Hastings, *supra* note 6.

[34] Proposed §§ 851.104(e), 851.402, 851.403; Proposed Rule at 13, 47.