ALERT MEMORANDUM

Treasury Proposes Rule Implementing COINS Act to Significantly Expand U.S. Outbound Investment Security Program

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On October 22, 2026, the U.S. Department of the Treasury (Treasury) issued a proposed rule (the NPRM)[1] to implement the Comprehensive Outbound Investment National Security Act of 2025 (the COINS Act), which Congress enacted in December 2025 as part of the 2026 National Defense Authorization Act.[2] The NPRM would replace the current regulations implementing the U.S. Outbound Investment Security Program (OISP), under which, since January 2, 2025, U.S. persons have been prohibited from engaging in, or required to notify Treasury regarding, a broad range of transactions involving entities engaged in certain activities relating to semiconductors and microelectronics, quantum information technologies, and artificial intelligence (AI) systems in "countries of concern" (presently limited to China, Hong Kong, and Macau).[3] Treasury has stated that the current regulations will remain in effect until the final rule is issued, which is expected by March 2027. Comments on the NPRM are due by December 7, 2026.

1 *See* Press Release, Treasury Issues Proposed Rule to Implement Comprehensive Outbound Investment National Security Act, U.S. Department of the Treasury (Oct. 22, 2026), available here; Outbound Investment Security Program Regulations, 91 Fed. Reg. 67396 (Oct. 26, 2026), available here.

2 We discussed the COINS Act in our prior blog post here.

3 We discussed Treasury's August 2023 advance notice of proposed rulemaking, its July 2024 proposed rule, and its October 2024 final rule implementing the OISP in prior blog posts here, here, and here.

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Although the NPRM retains the OISP's basic structure, it proposes to expand the OISP significantly by: (i) broadening the scope of entities treated as "covered foreign persons"; (ii) treating the development of any AI system as a prohibited technology (currently, the OISP treats only certain AI development as prohibited or notifiable); (iii) expanding the technologies identified in the semiconductor and quantum sectors; (iv) adding supercomputing, biotechnology, and hypersonic systems as new covered sectors; (v) adding Cuba, Iran, North Korea, and Russia as "countries of concern"; and (vi) extending the OISP's prohibition on otherwise notifiable transactions with parties listed on certain U.S. government restricted-party lists to two additional lists and to targets whose affiliates or subsidiaries are listed.

Like the OISP, the NPRM prohibits, or requires notification to Treasury of, certain "covered national security transactions" by U.S. persons (directly or through controlled foreign entities) with a "covered foreign person" that engages in a "prohibited technology" or "notifiable technology." These terms largely correspond to the OISP's "covered transactions" with "covered foreign persons," which generally are "persons of a country of concern" that engage in "covered activities." As under the OISP, parties would need to determine for themselves whether a transaction is prohibited, notifiable, or permissible without notification. That determination turns on four questions, each of which are impacted by the NPRM, as discussed in the following sections: whether an entity is a covered foreign person (Section I), whether the entity engages in a prohibited or notifiable technology (Section II), whether the transaction is a covered national security transaction (Section III), and whether an exception is available (Section IV). We then discuss compliance and enforcement (Section V) and next steps (Section VI).

I. Countries of Concern and Covered Foreign Persons

The NPRM changes the definition of a "covered foreign person" most importantly by adding certain "countries of concern" and broadening the tests for control and principal place of business that determine whether an entity is a covered foreign person.

Countries of concern. The COINS Act added, and the NPRM includes, Cuba, Iran, North Korea, Russia, and "the Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros" as countries of concern in addition to China (including Hong Kong and Macau). The frequently asked questions accompanying the NPRM (the NPRM FAQs) state that Venezuela currently does not meet this definition because the United States recognized Delcy Rodríguez as head of state on March 5, 2026, and her government "is not the regime of Nicolás Maduro Moros."[4] Even so, Treasury cautions that the NPRM could capture certain investments in Venezuelan entities because an entity outside a country of concern still may be a covered foreign person, as discussed below. Given that existing U.S. sanctions already limit U.S. investment in these newly added countries, it would be reasonable to expect few covered national security transactions involving those jurisdictions and for China to remain the practical focus.

Covered foreign person. Under the OISP, a covered foreign person generally is: (i) a person of a country of concern (including a citizen, an entity based or organized there, or an entity owned 50% or more by those persons) that engages in a covered activity, or (ii) a person, wherever located, that derives more than 50% of certain financial metrics from covered foreign persons. The NPRM instead uses "covered foreign person" for what the OISP calls a "person of a country of concern" (and keeps the 50% financial-metrics test, on which the COINS Act is silent). Although the COINS Act's definition of covered foreign person names only certain individuals (members of the Chinese Communist Party Central Committee and other political leadership), the NPRM keeps the OISP's inclusion of all citizens and permanent residents of a country of concern (other

[4] *See* Fact Sheet: Treasury Department Issues Notice of Proposed Rulemaking on Implementation of the Comprehensive Outbound Investment National Security (COINS) Act, U.S. Department of the Treasury (Oct. 22, 2026), available here.

than U.S. citizens and permanent residents).[5] This is important for entities outside a country of concern. Under the NPRM, as under the OISP, any entity in which one or more citizens or permanent residents of a country of concern hold 50% or more would be a covered foreign person irrespective of where the entity is located.[6] Treasury explained that it needs this broader definition to prevent circumvention of the rules, for example, by a national of a country of concern who moves a wholly owned company outside a country of concern. The NPRM's definition also includes entities subject to the direction or control of those individuals, as discussed below.

Direction or control. One key aspect of the NPRM that could significantly expand the scope of entities considered covered foreign persons is that the NPRM treats entities subject to the "direction or control" of a country of concern's government, a citizen, permanent resident, or political leader of a country of concern, or an entity incorporated, organized, or with a principal place of business there as covered foreign persons, potentially even if those persons own less than 50% of the relevant entity. The NPRM defines "direction or control" as the power to direct or cause the direction of an entity's management or policies, whether through ownership, contract, or otherwise. By contrast, the OISP applies a similar test only to the government of a country of concern. Because the NPRM sets no numeric ownership threshold, the analysis likely would turn on facts and circumstances. For example, a Chinese founder who owns less than 50% of an entity organized and headquartered outside China, but controls it through board or shareholder agreement rights, could make the entity a covered foreign person. Until Treasury provides more guidance, investors may be left looking to concepts of "control" in other legal contexts, which can vary significantly. For example, the Committee on Foreign Investment in the United States (which Treasury chairs) follows a relatively broad conception of "control" that means the power to determine, direct, or decide important matters affecting an entity, but nevertheless excludes certain minority shareholder protections, such as the power to block a sale of substantially all of an entity's assets.

This expansion also carries through the rest of the NPRM's definitions. For example, entities 50% or more owned by entities considered to be covered foreign persons only because of their control structure also would be covered foreign persons. Similarly, although the OISP's 50% financial-metrics test already considers whether the upstream entity holds a board seat or contractual control over the target, the NPRM's version of that test also would count revenue, income, and expenses from entities that are covered foreign persons only because of their control structure. A fund or holding company therefore could become a covered foreign person on the basis of investments that do not count toward that calculation under the OISP (*e.g.*, if the fund holds an ownership interest in an entity organized outside of China that is considered a covered foreign person by virtue of its control structure).

Principal place of business. The OISP defines an entity's "principal place of business" as the primary location where its management directs, controls, or coordinates the entity's activities. The NPRM also includes the location of the entity's headquarters and where it conducts its "main business activities" (which the NPRM does not define), and recognizes that an entity may have more than one principal place of business. Treasury explains, for example, that a U.S.-incorporated and U.S.-headquartered company whose CEO primarily manages the business from a country of concern would have a principal place of business in both places. As a result, more entities could become covered foreign persons because a single principal place of business in a country of concern would be sufficient even if the entity's other principal places of business are elsewhere.

[5] Those individuals also are covered foreign persons themselves, although it appears unlikely that, for example, a U.S. person would acquire an equity interest in, or provide debt financing with equity-like characteristics to, an individual.

[6] Under the COINS Act, it appears that those entities would be covered foreign persons only if a country of concern, its government, one of those political leaders, or an entity based there owns or controls them.

II. Prohibited and Notifiable Technologies

The OISP identifies covered activities in three sectors: semiconductors and microelectronics, quantum information technologies, and AI systems. The NPRM expands the technologies that trigger a prohibition or notification requirement in each existing OISP sector, adds three new sectors, and broadens two concepts that cut across all sectors: the definition of "develop" and the scope of restricted party lists.

Development. Under both the OISP and the NPRM, the definitions of most covered activities and prohibited and notifiable technologies turn on whether a target "develops" a covered technology (including products). The OISP defines the term as engaging in any stage prior to serial production, such as design, substantive modification, prototype testing, and pilot production. Although Treasury describes the NPRM's changes to this definition as substantive clarifications, they broaden the definition by including activities that a company carries out "through or in collaboration with" its affiliates and "high-level oversight, direction, approval, conceptual input, or strategic planning." As a result, it appears that Treasury could treat certain activities by a parent or subsidiary as relevant to whether a covered foreign person is developing covered technologies, or an entity that provides "conceptual input" or "direction" on a third party's design as developing that third party's product.

AI systems. The OISP classifies the development of an AI system by the system's end uses and the computing power used to train it. Depending on those factors, a transaction may be prohibited, notifiable, or neither. The NPRM treats the development of any AI system as a prohibited technology. Treasury explained that it dropped the compute thresholds because developers increasingly improve their models through methods other than training compute, so no single metric now reliably identifies advanced AI models. As a result, many investments that fall outside the current OISP (or require only a notification) would become prohibited irrespective of the target's end uses or training compute. (The NPRM calls AI systems "super intelligence" or "SI" systems, following a September 2026 executive order directing federal agencies to use that term.)

Like the OISP, the NPRM defines an AI system in two parts: (i) the underlying model, meaning any machine-based system that can, for a given set of human-defined objectives, generate content or make predictions, recommendations, or decisions influencing real or virtual environments, and (ii) any software, hardware, application, tool, or utility that operates in whole or in part using such an underlying model. The NPRM clarifies that the first part includes systems that "generate content" and that the second part includes agentic harnesses and robotic or other autonomous or unmanned systems that operate using an AI system, although the OISP's broad language likely captures many such activities already.

The OISP treats "substantive modification" of a third-party model as development of that model. The NPRM instead treats a company as developing an AI system when it "enhances or extends" the capabilities of a third-party model, for example by building an agentic harness around it. Treasury presented the approach as simpler for compliance because investors no longer would need to assess a target's computing power or end uses. In practice, however, the key diligence question would become whether a target "develops" an AI system, and for targets that develop products that incorporate third-party models, that question would turn on the broad and undefined standard of "enhances or extends." We expect that standard would take on increased significance under the NPRM because it would separate a prohibited transaction from one that falls outside the rules entirely. In the NPRM, Treasury specifically requested comments on this approach.

Biotechnology. Although the COINS Act does not list biotechnology as a sector, Treasury proposes to use its discretionary authority under the COINS Act to add the sector, treating certain biotechnology activities as prohibited technologies (and none as notifiable). The addition is consistent with the America First Investment Policy, a February 2025 presidential memorandum that contemplated

expanding the OISP to include biotechnology.[7] Notably, Treasury did not adopt the approach proposed in the Biotech Investment National Security Act (BINSA), which members of Congress introduced in June 2026. Whereas BINSA would amend the COINS Act to treat a U.S. person's licensing of certain biotechnology from a covered foreign person as a covered national security transaction, the NPRM does not treat standalone licensing arrangements as covered national security transactions.

The NPRM's prohibited technologies include developing, engineering, or using a biological system or any component of a biological system to modify, enhance, produce, or control any of five categories of compounds or materials: (i) controlled or novel agents and toxins; (ii) energetic materials (such as propellants and explosives); (iii) novel or high-performance functional materials (such as protective coatings and biosensors); (iv) pharmaceutical compounds (including small molecules, vaccines, blood products, cell and gene therapies, and monoclonal antibodies) and their delivery mechanisms; and (v) biofuels. They also include developing or producing: (i) brain computer interfaces (whether invasive, partially invasive, noninvasive, or hybrid); (ii) biomanufacturing equipment subject to certain U.S. export controls; (iii) short-read and long-read sequencing technology; (iv) certain flow cytometers and mass spectrometry instruments; (v) computational or bioinformatics tools used to research, design, optimize, model, simulate, discover, or assess biological systems or processes; and (vi) hardware, robotics, or software for automated scientific discovery or experimentation (such as laboratory automation or cloud lab infrastructure).

The OISP's semiconductor, quantum, and AI provisions generally target cutting-edge technologies. By contrast, several of these categories (such as pharmaceutical compounds and biofuels) on their face could include mature, widely available products. The bioinformatics and automated experimentation categories also could implicate companies outside traditional biotechnology, such as clinical AI developers and robotics companies.

Treasury appears to recognize this breadth in the NPRM. In particular, Treasury acknowledged that these restrictions could create public health risks or harm U.S. businesses, and asked whether it should define several terms more precisely, including by reference to export control definitions or by focusing on "advanced or frontier technologies." Those questions suggest that Treasury may narrow these provisions in the final rule. At the same time, Treasury's suggestion that the final rule could exclude fuels such as ethanol indicates that Treasury intended to capture a broad scope.

Semiconductors. The OISP: (i) prohibits investments in targets that develop electronic design automation software or certain fabrication and advanced packaging equipment, or that design, fabricate, or package advanced integrated circuits, and (ii) requires notification for most other integrated circuit design, fabrication, and packaging. The NPRM meaningfully expands the OISP's semiconductor prohibitions. Most notably, the NPRM adds the development and production of photonic integrated circuits (including optical components and co-packaged optics) as a prohibited technology. These components play a significant role in the operation of AI data centers and currently fall outside the scope of the OISP. The other additions generally fall into three categories:

1. For equipment, the NPRM extends the OISP's prohibition on commodities, materials, software, and technology designed exclusively for extreme ultraviolet lithography equipment to those designed or intended for use with deep ultraviolet equipment as well.
2. For memory, the NPRM adds high-bandwidth memory with a bandwidth density above 2 gigabytes per second per square millimeter, consistent with U.S. export controls, and replaces the OISP's 18-nanometer technology-node threshold for dynamic random-access memory with physical metrics, such as memory cell area and memory density.

[7] We discussed the America First Investment Policy in our prior blog post here.

3. For specialized chips, the NPRM extends the prohibition for compound semiconductors beyond gallium-based integrated circuits (for example, to silicon carbide) and from fabrication to development or production, which could include chip design, and adds radiation-hardened integrated circuits.

Finally, the NPRM requires a notification for any other equipment designed or intended for designing, fabricating, or packaging integrated circuits.

Quantum. The OISP prohibits investments in targets that develop quantum computers or produce critical components for quantum computers, among other activities. The NPRM adds developing software to design, test, or control quantum computers, as well as algorithms and applications for quantum information science technologies. Although Treasury stated that the algorithms provision would include an end-use limitation, the proposed text does not include one, which Treasury may add in the final rule.

Supercomputing. The OISP treats developing, installing, selling, or producing supercomputers above certain computing-power thresholds as part of the semiconductor sector. The NPRM treats high-performance computing and supercomputing as a separate sector. Beyond supercomputers themselves, the NPRM treats as a prohibited technology the same activities for components designed to enable a supercomputer to meet those thresholds and treats certain high-bandwidth, low-latency interconnects as notifiable technologies.

Hypersonic systems. Hypersonic systems, which the COINS Act added as a sector, are entirely new to the OISP. The NPRM defines hypersonic systems as vehicles or weapon delivery systems capable of sustained flight at Mach 5 or greater. Treasury notes that the definition includes civilian systems (which may include systems intended for spaceflight), so the rules could capture certain civilian aerospace investments. The NPRM treats as prohibited technologies the development or production of hypersonic vehicles, propulsion systems, fuels, and certain high-temperature and stealth materials, as well as the development or operation of hypersonic test facilities (such as wind tunnels) and the development of digital twin and digital thread technologies used to model, monitor, or manage data for hypersonic systems. The NPRM treats as notifiable technologies sensors, guidance and control equipment, software, and other materials capable of use in hypersonic systems.

Restricted-party lists. The OISP converts an otherwise notifiable transaction into a prohibited transaction when an entity appears on certain U.S. government export control, sanctions, or terrorism lists. The NPRM broadens this rule in two ways:

1. First, the NPRM adds two lists: the section 1260H list of Chinese military companies and the Office of Management and Budget's BIOSECURE Act list of "biotechnology companies of concern."[8]
2. Second, and more significantly, the NPRM looks beyond the target itself. The OISP asks only whether the target is listed (or, for sanctioned parties, blocked by operation of the 50% rule of Treasury's Office of Foreign Assets Control), whereas the NPRM also asks whether "any of its affiliates or subsidiaries" is listed. Treasury explained that this change aims to deter listed companies from forming subsidiaries to engage in transactions that the listed company could not. The text, however, extends further than that rationale because the NPRM defines "affiliate" broadly to include any person that controls, is controlled by, or is under common control with the target, including parents and sister entities. Investors therefore would need to conduct diligence on the target's broader corporate family, not only the target.

III. Covered National Security Transactions

The OISP's covered transactions include the following transactions by U.S. persons (or their controlled foreign entities): (i) acquisition of equity

[8] We discussed the BIOSECURE Act and recent changes to the 1260H list in our prior publications here and here.

interests or contingent equity interests; (ii) certain loans with equity-like rights; (iii) conversions of contingent equity interests; (iv) greenfield and brownfield investments in a country of concern; (v) joint ventures with persons of a country of concern; and (vi) acquisitions of limited partner interests in non-U.S. funds that likely will invest in persons of a country of concern in the three OISP sectors, if the fund then makes an investment that would be a covered transaction if undertaken by a U.S. person.

The types of transactions treated as covered national security transactions under the NPRM largely track the COINS Act and the OISP definition of covered transactions, but the NPRM changes the treatment of directing transactions, fund investments, conversions, and foreclosures on pledged equity. The NPRM also clarifies the treatment of joint ventures.

Directing transactions. The NPRM both broadens and narrows the OISP's prohibition on U.S. persons knowingly directing a transaction by a non-U.S. person that would be prohibited if engaged in by a U.S. person. Under both, a U.S. person directs a transaction if it has authority to make or substantially participate in decisions on behalf of the foreign person (for example, as an officer or director) and exercises that authority to direct, order, decide upon, or approve the transaction. The NPRM broadens this rule by treating a U.S. person's "direction" of a foreign person's transaction as a covered national security transaction if that transaction would be either prohibited or notifiable if engaged in by a U.S. person. As a practical matter, a U.S. person who directs an otherwise notifiable transaction would need to submit a notification. As under the OISP, U.S. persons would not be treated as directing a transaction if they recuse themself from the relevant transaction. Unlike the OISP, however, the NPRM excludes from "direction" a U.S. person's direction of a foreign person's acquisition of a limited partner interest in a non-U.S. fund.

Funds. Like the OISP, the NPRM treats certain limited partner investments in non-U.S. funds as covered national security transactions (the fund category). Treasury also states that a U.S. person's investment in a fund that already holds an interest in a covered foreign person may itself be an indirect covered national security transaction, separate from the fund category, even if the fund makes no further investments. Treasury describes this position as a clarification, but it appears to resolve a question that the OISP's text left open. As a result, investors in U.S. and non-U.S. funds, whether they acquire their interests from the fund or from another investor, may need to review a fund's existing portfolio, not only its expected investments. Treasury states that the exception for limited partners that commit $2 million or less or obtain binding contractual assurances would be available only under the fund category, "consistent with" the OISP. That exception therefore likely would not except an indirect covered national security transaction arising from a fund's existing holdings, and it appears that Treasury reads the OISP in the same manner.

Joint ventures, conversions, and pledged equity. Treasury clarified that entering into a joint venture does not require forming a new entity, and that the term "joint venture" carries its plain English meaning of two parties contributing capital or assets and sharing profits and losses. Contractual profit-sharing arrangements with a covered foreign person therefore potentially could qualify if the venture will engage in a prohibited or notifiable technology. The NPRM also follows the COINS Act by expressly applying the conversion category to debt that converts into equity. The OISP likely already treats such conversions as covered transactions because its definition of contingent equity interest includes debt. The NPRM treats a conversion as a covered national security transaction only if the U.S. person acquired the instrument on or after the final rule's effective date (rather than January 2, 2025, as under the OISP). Similarly, the NPRM incorporates the OISP's note that issuing or acquiring a loan secured by pledged equity is not an acquisition of an interest in that equity, but that foreclosing on that equity is, and it moves the cutoff for previously pledged equity from January 2, 2025, to the final rule's effective date.

IV. Exceptions and Exemptions

The OISP excepts certain passive investments and other transactions that Treasury views as posing lower national security risks. The NPRM retains most existing OISP exceptions, changes two passive investment exceptions, narrows two that are relevant

to corporate investors, and adds several new exceptions, most notably for underwriting.

Publicly traded securities, other securities, and limited partner investments. The NPRM maintains the OISP's existing exceptions for investments in: (i) securities that trade on an exchange or over-the-counter market (frequently referred to as the "publicly traded securities exception," although the NPRM deletes the words "publicly traded" from the OISP equivalent); (ii) securities of registered investment companies such as mutual funds and exchange-traded funds; and (iii) funds where the limited partner commits $2 million or less or obtains binding contractual assurances that the fund will not use its capital for prohibited or notifiable transactions (available only for transactions analyzed under the fund category, as discussed above).

Treasury also indicates that it likely will reissue its existing guidance on publicly traded securities.[9] That guidance includes OISP frequently asked questions, which clarify that Treasury treats as excepted (i) securities from a follow-on offering that are fungible with publicly traded securities, including securities an underwriter acquires, (ii) shares from an initial public offering (IPO) that already trade publicly when the U.S. person acquires them, even under an agreement signed before listing, and (iii) instruments convertible only into publicly traded securities (or those securities and cash), although a later conversion requires a separate analysis.

Investments that afford governance rights beyond standard minority shareholder protections (such as the right to appoint a member of the board) still would not qualify for these exceptions. Because the OISP disqualifies investments that afford any "rights" beyond those protections, it appears that the NPRM's narrower focus on governance rights could allow investments with additional economic (but not governance) rights to qualify.

The NPRM also does not include one, and amends another, of the existing exceptions. First, the OISP excepts investments in business development companies (a type of closed-end investment fund), but the COINS Act and the NPRM do not include that exception. Treasury invited comments on reinstating it. Second, the OISP excepts derivatives that do not confer rights to acquire equity in or assets of a covered foreign person. The NPRM instead excepts only derivatives of securities that qualify for an exception (*e.g.*, publicly traded securities) even if the derivative confers those rights. Treasury asked whether dropping that limit creates a loophole.

Because the limited partner exception would be available only for transactions analyzed under the fund category, it likely would not except a primary or secondary acquisition of an interest in a fund that already holds an interest in a covered foreign person, as discussed above. That result would differ from the treatment of publicly traded securities, even though a secondary transfer, like a trade on an exchange, moves an existing passive interest from one investor to another without providing new capital to the fund or its portfolio companies.

Buyouts. The OISP excepts a U.S. person's acquisition of all interests that persons of a country of concern hold in an entity, if the entity is not a covered foreign person afterward. The exception is designed for entities located outside a country of concern that are owned by persons of a country of concern. Indeed, an entity incorporated or based in a country of concern engaged in covered activities remains a covered foreign person regardless of who owns it, so it generally would not qualify if it continues its covered activities after the buyout. The exception still could be available under the OISP, however, if after closing the target stops its covered activities (and does not otherwise meet the financial-metrics test) or is no longer incorporated or based in a country of concern. The NPRM makes this limit explicit, following the COINS Act, by limiting the exception to entities or assets "located outside a country of concern." As under the OISP, the U.S. person also would need to acquire all interests held by all covered foreign persons. Although Treasury acknowledged that the COINS Act's text appears to permit the buyout of a single covered foreign person's interest, it concluded that Congress did not contemplate partial buyouts. Under both the OISP and the NPRM, the exception therefore would not be

[9] We discussed Treasury's guidance regarding publicly traded securities in our prior blog post here.

available for a U.S. company's acquisition of 100% of a target in a country of concern that continues to engage in a prohibited or notifiable technology, even though Treasury's stated concern (continued ownership by other covered foreign persons) would not arise in that case. Structuring the deal as an asset purchase likely would not change that result because acquiring assets in a country of concern that the U.S. person knows will be used to engage in a prohibited or notifiable technology may itself be a covered transaction, and the exception would not apply to those assets.

Intracompany transfers. The OISP excepts transactions between a U.S. parent and its controlled foreign entity that support operations outside of covered activities or maintain covered activities that the entity engaged in before January 2, 2025. The NPRM limits the exception to "the provision of cash or credit" by a U.S. parent to its controlled foreign entity for the same purposes. Ordinary intracompany loans without equity-like rights still would fall outside the rules. The NPRM also moves the grandfather date for existing operations from January 2, 2025, to the final rule's effective date. Transfers made before the effective date would remain subject to the OISP and its January 2, 2025 date. Treasury asked how broadly to read "maintain" existing covered activities and offered three options: (i) upkeep and maintenance only; (ii) upgrades and improvements, but not expanded production; or (iii) expanded production and improved capabilities, so long as the entity does not move into a different prohibited or notifiable technology or from a notifiable to a prohibited technology.

New exceptions. The NPRM also adds four exceptions.

— The first, a **de minimis exception**, excepts otherwise notifiable transactions that, combined with all other transactions with and funding provided to the same entity over the preceding 12 months, do not exceed $50,000 (including the fair market value of any non-cash consideration, which Treasury may value independently).

— The second excepts **transactions secondary to a covered national security transaction**, such as bank lending, payment processing, prime brokerage, custody, equity research, and contractual arrangements or procurement of material inputs (other than technology or know-how transfer arrangements). Treasury requested comments regarding whether "bank lending" should except all bank loans and similar debt financing, including loans with equity-like rights that otherwise would be covered national security transactions.

— The third and fourth except **ancillary transactions by financial institutions** and **ordinary or administrative business transactions** (the latter of which Treasury declined to define because it views the other exceptions as already capturing them).

Underwriting. Most significantly for equity capital markets, both the secondary and ancillary transaction exceptions include underwriting services, including an underwriter's temporary acquisition of equity for the sole purpose of facilitating the underwriting (although the NPRM does not define "temporary" or "sole purpose"). Under the OISP, Treasury treats an underwriter's acquisition of IPO shares that are not yet publicly traded as a covered transaction, even if the underwriter holds them only briefly. In practice, pinpointing when an underwriter or other investor acquires IPO shares (and therefore whether they are already publicly traded) can be difficult. The NPRM's underwriting exceptions likely would remove much of that uncertainty for underwriters. Treasury requested comments regarding whether the secondary and ancillary exceptions overlap, including for underwriting. Other IPO investors, such as cornerstone investors, still would need to rely on the publicly traded securities exception and the timing of their acquisition. Until the final rule takes effect, the OISP's approach continues to govern.

Other exceptions and exemptions. The NPRM also keeps the OISP's exceptions for: (i) a **syndicate lender's acquisition** of a voting interest when a borrower defaults (where the lender is not the syndication agent and cannot act against the borrower on its own); (ii) **employee equity compensation**; and (iii) transactions undertaken pursuant to **binding, uncalled capital commitments** made before a cutoff date (with the cutoff moved to the final rule's effective date). Treasury cautioned,

however, that a transaction under a commitment made after the OISP's cutoff of January 2, 2025, still may be a covered transaction under the OISP. For example, if a U.S. person made a binding commitment in January 2026 and the investment occurs before the final rule takes effect, the investment could be a covered transaction under the OISP (if the target engages in a covered activity under the OISP), even though the NPRM would except an investment made under the same commitment after the final rule takes effect.

Further, the NPRM keeps the OISP's process under which Treasury, in coordination with other agencies, may exempt a specific transaction that it determines to be in the U.S. national interest, with two changes. First, consistent with the COINS Act, it appears that an exemption would relieve a U.S. person only from the NPRM's prohibitions, not from a notification requirement. Second, the NPRM adds U.S. public health needs to the factors Treasury may consider (which likely is intended to address the addition of the biotechnology sector under the NPRM). Treasury also is considering a streamlined version of this process for certain technology sectors.

V. Compliance and Enforcement

The NPRM largely keeps the OISP's compliance framework, with several changes to diligence, notifications, and enforcement.

Diligence. Under the OISP, a U.S. person "knows" a fact if it has actual knowledge, is aware of a high probability of the fact, or has reason to know of it. Treasury assesses knowledge based on the information that a U.S. person had or could have obtained through a "reasonable and diligent inquiry," and a U.S. person that fails to conduct that inquiry may be found to have had reason to know. The NPRM keeps the OISP's knowledge standard but extends it to a U.S. person's controlled foreign entity for notification purposes.

The NPRM also adds one diligence factor to the reasonable-and-diligent-inquiry analysis: whether the U.S. person appropriately considered information that Treasury had provided, including any assessment that a target may be engaged in a prohibited or notifiable technology. Treasury tied this change to its experience administering the OISP, and it appears to refer to information that Treasury shares with investors. That information could come from a new process that would allow a party with a direct financial interest in an actual transaction to ask whether that transaction is prohibited (but not whether it is notifiable). Treasury could decline to respond, issue confidential written feedback, or publish anonymized guidance, and could limit its answer to particular questions, such as whether a target is a covered foreign person. The feedback would not bind Treasury, other agencies, or courts, but Treasury could consider whether a party sought and reasonably acted consistently with the feedback when responding to a potential violation. Information also could come from a public database of covered foreign persons. Treasury stated in the NPRM FAQs that it does not intend to create that database at this time, but the NPRM states that Treasury is actively considering one. If Treasury lists an entity in that database, a U.S. person investing in that entity arguably would have at least "reason to know" of its status as a covered foreign person. Finally, Treasury acknowledged that diligence may be more limited in certain secondary market transactions and reiterated that whether a U.S. person has conducted a reasonable and diligent inquiry depends on the totality of the circumstances.

Notifications. The NPRM keeps the OISP's 30-day deadline to submit a notification to Treasury, but notifications would need to include items that Treasury states typically have been part of its follow-up requests under the OISP, a change intended to streamline the Treasury review process for notifications. Many of the new items focus on the investor's relationship with the target, such as the U.S. person's planned involvement in the target's operations, any employee secondments, how the U.S. person learned of the investment opportunity, and other commercial arrangements with the target. Others focus on the target's business, including its customers, suppliers, and finances. The NPRM also requires that notifications include all transaction documents. As a result, U.S. persons likely would need to collect more information from targets before filing but may face fewer follow-up questions.

Enforcement. If Treasury identifies a violation, it could impose only civil penalties under the NPRM, which omits the OISP's criminal penalties because

the COINS Act does not provide for them. The NPRM keeps the OISP's civil penalty amounts (up to the greater of an inflation-adjusted $250,000 or twice the transaction value) and its divestment authority for prohibited transactions. Treasury already has used its penalty authority. On October 7, 2026, it announced its first OISP penalty: $200,000 against a U.S. company that did not notify Treasury of a $92,478 investment by its controlled foreign entity in a Chinese AI and robotics company.[10] Under the NPRM, the same investment likely would be a prohibited transaction rather than a notifiable transaction if the target develops an AI system.

A U.S. person also could seek to mitigate a penalty through a voluntary self-disclosure. The OISP allows Treasury to weigh a voluntary self-disclosure (and its timeliness) as a mitigating factor but does not prescribe the disclosure's contents. The NPRM specifies the required contents, including a proposal for mitigation, such as divestment or voluntary disgorgement of profits.

VI. Next Steps

The COINS Act requires Treasury to issue final regulations within 450 days of enactment, or by March 13, 2027. Until the final rule takes effect, the OISP continues to govern, and the NPRM imposes no new obligations. Investors may wish to revisit prior analyses of existing portfolio companies and prospective targets to plan follow-on and future investments, and to consider submitting comments by December 7.

Cleary Gottlieb's Foreign Investment and National Security team continues to monitor developments related to the OISP and the implementation of the COINS Act and is available to provide guidance on managing the evolving regulatory landscape.

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[10] We discussed Treasury's imposition of the first penalty under the OISP in our prior blog post here.