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BRIEFING

Proposed Regulations Would Bring Significant Expansion of the U.S. Outbound Investment Security Program

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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**") setting forth proposed regulations to implement Subtitle C of the Comprehensive Outbound Investment National Security ("**COINS**") Act, enacted last December as part of the Fiscal Year 2026 National Defense Authorization Act. The U.S. Outbound Investment Security Program ("**OISP**") has been in effect since January 2, 2025, implementing Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern." The COINS Act codified the OISP into law and requires Treasury to issue implementing regulations by March 13, 2027. The Proposed Rule would replace the existing OISP regulations and introduce amendments thereto, while retaining the core existing structure that prohibits certain investments by U.S. persons and requires notification to Treasury of others involving a company or other person tied to countries of concern and engaged in certain sensitive technology activities. Notably, the Proposed Rule contemplates a number of key changes to the existing OISP, including most significantly newly prohibiting certain U.S. investments in the biotechnology space and much more broadly prohibiting AI-related investments. The Proposed Rule also expands the application of "covered foreign entities" in a manner that would increase compliance obligations and program requirements as knowledge of the covered foreign entity would be included in what a U.S. person knows, or should know, in terms of whether it is engaging in OISP-subject activities.

Treasury has also published a Fact Sheet and FAQs on the Proposed Rule, and public comments are due by December 7, 2026. Until the effective date of the final regulations, the current OISP regulations remain in effect.

KEY PROPOSED CHANGES TO THE CURRENT OISP

The Proposed Rule would make several significant changes to the current OISP. Key proposed changes include:

- **Expanding the list of "countries of concern"** to add Cuba, Iran, North Korea, and Russia. Given the current restrictions imposed by U.S. sanctions on transactions with these countries, application of the OISP in practice is likely to continue to focus primarily on transactions involving China, including Hong Kong and Macau.
- Expanding the definition of "covered foreign persons" to include entities "subject to the direction or control" of specified persons connected with a government, individual, or entity tied to a country of concern. The Proposed Rule also broadens the "principal place of business" concept for covered foreign persons. Together, these changes would **expand OISP jurisdiction relating to investment targets**.
- **Expanding the covered technology sectors to include activities in the biotechnology, high performance computing and supercomputing, and hypersonic systems sectors.** Biotechnology is a particularly notable expansion as it was added by Treasury under its own discretionary authority and the Proposed Rule defines this category broadly and with covered transactions entirely prohibited.
- **Expanding the types of covered technology currently included** in the semiconductor and microelectronics, quantum information technologies, and AI systems sectors under the current OISP regulations.
- **Narrowing which technologies remain only notifiable and significantly expanding what is prohibited**. Most notably, the Proposed Rule replaces "AI systems" with the term "super intelligence systems" (or "**SI systems**"), and rather than focusing on computing power used for training or end uses as in the current regulations, it would **broadly prohibit covered transactions involving a covered foreign person engaged in "development" of *any* SI system** unless a third-party SI system is applied strictly for internal, non-commercial use. This change would eliminate the current middle ground under which many AI system transactions are permitted subject only to notification or would not be subject to the OISP at all.
- **Adding new, or otherwise codifying prior guidance on, excepted transactions**, i.e., transactions that are not covered national security transactions subject to the OISP. These include exceptions for *de minimis* amounts of US$50,000 in aggregate across the preceding 12 months, transactions secondary to a covered national security transaction (e.g., bank lending, payments processing, and underwriting services, including involving the temporary acquisition of an equity interest for the purpose of facilitating underwriting), ordinary or administrative business transactions, and any ancillary transaction undertaken by a "financial institution" as defined under 31 U.S.C. 5312.

- **Narrowing the existing derivatives exception** to apply only to derivatives in publicly traded securities, securities issued by an investment company, or limited partner ("**LP**") investments.
- **Adding a new mechanism for eligible persons to request non-binding feedback from Treasury regarding whether a transaction is a prohibited transaction**, and a process by which any person may submit evidence on a confidential basis with respect to whether a foreign person is a covered foreign person engaged in a prohibited technology or notifiable technology.
- Retaining only civil penalties (per violation, the greater of US$250,000, adjusted for inflation, or twice the transaction value) and the Treasury Secretary's divestment authority for prohibited transactions, but **eliminating criminal penalties** provided in the current OISP regulations.

The Proposed Rule's modification to the existing OISP regulations, if adopted, will not only expand the technology covered under the regime and prohibited transactions, but will also create new compliance considerations, including for internal policy development, transactional diligence, and notification requirements. Treasury specifically seeks feedback on the Proposed Rule, including on the breadth of biotechnology coverage, including pharmaceutical compounds, biofuels, and equipment parameters; the scope of the SI-system definition; and the relationship between ordinary or administrative business transactions and other exceptions. Companies, particularly those operating in or interested in investing in the sensitive technology sectors, may consider submitting comments to Treasury regarding the Proposed Rule.

The following table summarizes in more detail the key changes contemplated by the Proposed Rule.

Issue	Current OISP (31 C.F.R. Part 850)	Proposed Rule
Countries of Concern	Only China (including Hong Kong and Macau).	Adds Cuba, Iran, North Korea, Russia. Treasury notes that Venezuela under the regime of Nicolás Maduro Moros, which was listed in the COINS Act, no longer exists as of March 2026, following U.S. recognition of Delcy Rodríguez as head of state.
Covered Foreign Person	The current regulations use this term to have a nexus between both a country of concern and relevant technology activity. The more analogous term in the current regulations to the concept in the Proposed Rule is a "person of a country of concern," which includes: Citizens or permanent residents of a country of concern (who are not U.S. citizens or permanent residents). Entities with a principal place of business in, headquartered in, or incorporated in a country of concern. Governments of a country of concern, including political subdivisions, political parties, agencies and instrumentalities, and persons acting for or on behalf of such governments. Entities in which citizens, entities, or governments of a country of concern, directly or indirectly, hold 50% or more of the outstanding voting interest, voting power of the board, or equity interest. Entities in which the persons listed above, directly or indirectly, hold 50% or more of the outstanding voting interest, voting power of the board, or equity interest. The current covered foreign person definition also includes a person with a board seat, voting or equity interest, or contractual control in relevant country-of-concern persons engaged in covered activities, where more than 50% of any one of its annual revenue, net income, capital expenditure, or operating expenses is attributable to those persons,	Adds individuals who are members of the Central Committee of the Chinese Communist Party or members of political leadership of a country of concern. Expands to entities "subject to the direction or control" of specified covered foreign persons, and includes reference to such covered foreign persons among the majority ownership criteria.

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	subject to the aggregation rules and applicable US$50,000 per-person thresholds.	
Notifiable and Prohibited Technology	**Three** sectors: (1) semiconductors and microelectronics, (2) artificial intelligence (AI) systems, and (3) quantum information technologies.	Expands to **six** sectors: (1) semiconductor technology and microelectronics; (2) super intelligence (SI) systems (replacing AI systems terminology); (3) quantum information technologies; (4) high-performance computing and supercomputing; (5) hypersonic systems; and (6) biotechnology. **Semiconductor Technology and Microelectronics** retains the existing framework with certain notification requirements and prohibitions, with some adjustments and additions: • maintains prohibited activities under the current OISP (with some technical revisions); • maintains the notification requirement for any IC-related activity not otherwise prohibited; • expands prohibited activities to include development or production of certain radiation-hardened ICs, photonic ICs, high-bandwidth memory (HBM), and additional categories of advanced ICs; and • expands notifiable activities to development or production of IC design, fabrication, or packaging equipment not subject to prohibition. **SI Systems** move entirely out of the notifiable category. The Proposed Rule expands the existing prohibition to cover all investments in covered foreign persons (i.e., country-of-concern entities) that "develop" any SI system—including those that enhance or extend the capability of third-party SI systems, such as by developing an agentic harness layer. This is subject to exceptions for customizing third-party SI systems solely for internal, non-commercial use. The "develop" standard replaces the compute power and end-use standards in the current

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		regulations for covered AI systems, adopting a much broader approach to technology in this category. **Quantum Information Technologies** remain entirely within the prohibited category. The Proposed Rule: • maintains the existing prohibition on development of quantum computers and critical components, and development or production of certain quantum sensing platforms and quantum networks/communications systems; and • expands the prohibition to include the development of any algorithms and applications for quantum information science technologies. **High-Performance Computing and Supercomputing** is a new category that: • maintains the existing prohibition regarding development, installation, sale, or production of certain supercomputers and expands it to include components designed to enable such supercomputer capabilities; and • adds a notifiable category for development or production of high-bandwidth, low-latency interconnects for high performance computing. **Hypersonic Systems** is a newly added sector that: • adds prohibitions covering the development or production of any hypersonic system or propulsion system capable of enabling hypersonic flight, as well as certain materials designed or intended for hypersonic systems, development or operation of hypersonic-testing facilities, and development of certain digital technologies related to hypersonic systems; and • adds notification requirements covering development or production of sensors, navigation or control equipment/systems, certain software, and certain materials

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		capable of use in or for hypersonic systems and their components. **Biotechnology** is a new sector and only subject to prohibitions, specifically in relation to: • development, engineering or use of a biological system in relation to various activities and materials, including producing pharmaceutical compounds; • development or production of brain-computer interfaces; • development, construction, or production of biomanufacturing equipment; and • development or production of certain biotechnology or equipment used in biological sequencing, analysis, testing, and related activities.
Excepted Transactions	Current excepted transactions include: • Publicly traded securities • SEC-registered securities issued by an investment company (including business development companies) • Limited partner investments meeting certain requirements • Derivatives that do not confer right to acquire or which are associated with equity • Full buyouts • Certain intracompany transactions • Transactions after January 2, 2025, pursuant to pre-existing binding, uncalled capital commitments • Syndicated loan defaults • Employment compensation (e.g., stock options) • Transactions in the national interest	**New or expanded** • Transactions secondary to a covered national security transaction (e.g., contractual arrangements, materials procurement, bank lending, payment processing/clearing, notably including underwriting services (including the temporary acquisition of an equity interest for the sole purpose of facilitating such services), debt rating services, prime brokerage, global custody, equity research) • US$50,000 de minimis exception for transactions that would otherwise be notifiable (aggregated over the preceding 12 months; does not extend to transactions that would be prohibited) • Ordinary or administrative business transactions • Ancillary transactions for financial institutions • A buyout expressly covering interests in an entity or assets outside a country of concern (requiring acquisition of all

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		interests held by all covered foreign persons and that the entity cease to be a covered foreign person) **Narrowed** • The derivatives exception is limited to derivatives of eligible publicly traded securities, SEC-registered investment company securities, or qualifying LP interests. **Removed** • Securities issued by a company that has elected to be regulated, or is regulated, as a business development company under section 54 of the Investment Company Act of 1940.
Principal place of business	Defined as the primary location where management directs, controls, or coordinates the entity's activities, or the equivalent location for an investment fund.	Expressly permits more than one principal place of business, including headquarters and where the entity conducts its main business activities, which can capture covered foreign persons more broadly within OISP jurisdiction.
Knowledge of controlled foreign entities	Only U.S. persons must notify qualifying controlled-foreign-entity transactions; the post-transaction knowledge provision refers to knowledge acquired by the U.S. person.	Expressly extends the knowledge framework to controlled foreign entities (e.g., subsidiaries of U.S. persons) for notification and post-transaction knowledge. Notification of a controlled foreign entity's transaction can be triggered by either that entity's or the U.S. person's knowledge; later-acquired actual knowledge by either can also trigger notification. The filing duty remains with the U.S. person.
Knowingly directing an otherwise prohibited transaction / covered national security transaction definition	§ 850.303 prohibits a U.S. person from knowingly directing a foreign person's transaction that would be prohibited if undertaken by a U.S. person.	Proposed § 851.209(a)(6) incorporates direction into the "covered national security transaction" definition and extends the knowingly directed standard to otherwise-notifiable transactions. Maintains the ability for U.S. persons to recuse themselves from involvement in the transaction.

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Listings, designations, and affiliate connections	Otherwise notifiable covered transactions involving covered foreign persons on specified U.S. lists, or meeting specified designations, are prohibited, including the Entity List, Military End User List, Military-Intelligence End-user Category, Specially Designated Nationals and Blocked Persons ("**SDN**") List, Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) List, and foreign-terrorist-organization designation. The SDN limb includes entities owned at least 50% by listed persons.	Adds the section 1260H Chinese military companies list and the Office of Management and Budget's BIOSECURE Act list of biotechnology companies of concern and expands the prohibition to where the covered foreign person's affiliates or subsidiaries are subject to any of the listings or designations.
Information required in notifications	Requires party identification, ownership charts, a brief commercial rationale, transaction details and value, target management information, covered activities, and relevant end uses and users. Supporting transaction documents must be retained and made available on request.	Adds or expands information required on all principal places of business; citizenship and relevant personnel; and foreign beneficial owners holding more than 5% of voting or economic interests in the U.S. person. Requires a fuller explanation of the transaction's commercial rationale, including the U.S. investor's planned involvement in the target's operations, expected drivers and timing of returns, planned employee transfers or secondments, how the opportunity arose, and the timeline of investment consideration and negotiations. Also requires copies of transaction documentation, including side agreements; descriptions of past, current or future commercial arrangements between the U.S. person and the investment target; and expanded information about the target's products, finances, customers, operating markets and key suppliers.
Mechanism for submitting confidential information regarding covered foreign persons	Not included.	The Proposed Rule creates a confidential channel through which any person may provide evidence to help Treasury determine whether a foreign person is a covered foreign person engaged in prohibited or notifiable technology.

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Mechanism for non-binding feedback	Not included.	A party with a direct financial interest in an actual transaction may request non-binding feedback, or anonymized public guidance, on whether the transaction would be a prohibited transaction. The Proposed Rule does not provide for such a process regarding whether a given transaction is notifiable.
Penalties and enforcement	Exposes willful violators to both civil penalties and criminal penalties (up to $1 million and 20 years' imprisonment). The Treasury Secretary may compel the divestment of a prohibited transaction.	Criminal penalties are omitted.

NEXT STEPS

Comments on the Proposed Rule are due by December 7, 2026. Treasury will consider the comments before issuing a final rule. The COINS Act requires implementing regulations within 450 days of enactment, i.e., by March 13, 2027. That issuance deadline is not an effective date; the final rule will specify when the new regulations take effect.

CONCLUSION

Investors should continue to monitor developments and assess compliance and diligence requirements for transactions, particularly with respect to the contemplated new and expanded sensitive technology categories, the shifting boundary between notifiable and prohibited transactions, and the scope of compliance obligations implicating controlled foreign entities and affiliates. Investors may also consider submitting comments on the Proposed Rule. While Treasury develops the final rule implementing the COINS Act, companies and investors engaged in the sensitive technology sectors may benefit from reviewing their pipeline transactions and their current assets and relationships under the Proposed Rule to begin to assess how the final regulations may impact their operations and business model going forward.



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