

August 15, 2023

New Executive Order Directs Establishment of Outbound Investment Regime

Accompanying Advance Notice of Proposed Rulemaking Provides Important Signals of the Biden Administration's Intent for Outbound Investment Restrictions, Expected To Be Effective in 2024

SUMMARY

On August 9, 2023, President Biden issued an “Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern” (the “Executive Order”).¹ The Executive Order does not establish an immediately effective outbound investment regime; rather, it directs the Secretary of the Treasury, in consultation with other Executive Branch agencies, to issue regulations that will require U.S. persons to report certain outbound investment transactions and will prohibit U.S. persons from engaging in certain outbound investment transactions that involve “person[s] of countries of concern” engaged in activities involving “covered national security technologies and products.”

As issued, the Executive Order identifies only one “country of concern” – the People’s Republic of China (including the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau). The policy underlying the Executive Order is that countries of concern are exploiting or have the ability to exploit certain U.S. outbound investments, including certain intangible benefits that often accompany U.S. investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing, in sensitive technologies and products critical for the military, intelligence, surveillance or cyber-enabled capabilities of such countries. The Executive Order thus focuses on transactions involving “covered national security technologies and products,” which initially includes sensitive technologies and products in the (i) semiconductors and microelectronics, (ii) quantum information technologies and (iii) artificial intelligence sectors, in each case that are critical for the military, intelligence,

surveillance or cyber-enabled capabilities of a country of concern, but may be modified by the implementing regulations.

Also on August 9, the Department of the Treasury issued an associated Advance Notice of Proposed Rulemaking (the “ANPRM”), which provides an important signal of the Treasury Department’s intent for outbound investment restrictions. The ANPRM fleshes out a framework for how the new program ultimately may be implemented, but also asks a total of 83 pointed questions that highlight how many details of this new program will be determined during the notice and comment rulemaking process. As an initial matter, comments to the ANPRM are due on September 28, 2023; after that, presumably, the Treasury Department will review all comments received and eventually will issue a proposed rule, which will also be subject to public notice and comment, as the Executive Order directs. The timing of any final rules is uncertain, but likely will not be before 2024. At the same time, Congress continues to weigh legislative proposals on outbound investment review that may overlap with, or supplement, the rulemaking pursuant to this Executive Order. The details of any outbound investment regime, therefore, as well as its ultimate impact on the investing activities of U.S. persons, whether directly or through investment funds, are still to be determined.

I. THE EXECUTIVE ORDER

A. POLICY OBJECTIVES

The idea of an outbound investment review system in the United States has been considered by various policymakers over the past several years, in various forms and with various policy justifications in support of such a system. The Executive Order, however, settles on a specific policy objective in finding that “advancement by countries of concern in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the United States,” and that advancement is being fueled, or is capable of being fueled, by certain U.S. outbound investments, including certain intangible benefits that often accompany U.S. investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. The danger identified by the Executive Order, therefore, is that certain U.S. outbound investments may accelerate and increase the success of the development of sensitive technologies and products in countries that develop them to counter United States and allied capabilities. The Executive Order declares a national emergency to deal with this threat.

The Executive Order thus takes an approach that is more targeted than some have previously proposed. The scope is limited to investments involving “countries of concern” — which the Executive Order defines solely as the People’s Republic of China (including the Special Administrative Regions of Hong Kong and Macau). It is also limited to transactions involving “covered national security technologies and products” –

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those that might advance development of sensitive technologies that are critical to the military, intelligence, surveillance or cyber-enabled capabilities of countries of concern. A Fact Sheet issued by the Department of the Treasury on the same day as the Executive Order makes clear that the new regime is intended to be complementary of existing tools and to fill important gaps; specifically, although the United States “already prohibits or restricts the export to the [People’s Republic of China] of many of the technologies and products under consideration for the new program,” the Executive Order seeks to “prevent U.S. investments from helping accelerate the indigenization of these technologies” in the PRC, as such investments undermine the effectiveness of existing export controls and inbound investment screening.²

Importantly, the Executive Order reaffirms the “commitment of the United States to open investment” as “a cornerstone of our economic policy [that] provides the United States with substantial benefits.” The Administration recognized that “cross-border investment flows have long contributed to U.S. economic vitality” and stated that the Executive Order is a “narrowly targeted action to protect national security while maintaining our longstanding commitment to open investment.”³

B. SUBSTANTIVE REQUIREMENTS

The Executive Order does not establish an immediately effective outbound investment regime. Rather, it directs the Secretary of the Treasury, in consultation with the Secretary of Commerce and the heads of other relevant executive departments and agencies as appropriate, to issue regulations that will require U.S. persons to provide notification related to certain transactions involving covered foreign persons (“notifiable transactions”) and that prohibit U.S. persons from engaging in certain other transactions involving covered foreign persons (“prohibited transactions”).

Critical definitions and indeed the substance of the program – including what constitutes covered “transactions” – are left to be determined by regulation. The Executive Order establishes a broad stroke framework with a few key scoping definitions:

- A covered “United States person” is 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.
- A “covered foreign person” is a “person of a country of concern who or that is engaged in activities, as identified in the regulations issued under [the Executive Order],” involving one or more “covered national security technologies and products.” As noted above, the Executive Order identifies the PRC, the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau as the only “countries of concern,” although this list could be expanded in the future.
- The regulations must identify categories of notifiable and prohibited transactions that involve “covered national security technologies,” which are defined simply as “sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and

artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern.”

The Executive Order also contains certain common evasion and avoidance prohibitions – including provisions (i) prohibiting the formation of a “conspiracy” to violate any regulation issued under the Executive Order and evading or avoiding the prohibitions of the Executive Order or its accompanying regulations; (ii) permitting the Secretary of the Treasury to prohibit U.S. persons from “knowingly directing transactions” that would be prohibited if engaged in by a U.S. person; (iii) permitting the Secretary of the Treasury to require U.S. persons to provide notification to the Treasury Department if a foreign entity controlled by the U.S. person engages in a transaction that would be a notifiable transaction if engaged in by a U.S. person; and (iv) authorizing the Secretary of the Treasury to take “all reasonable steps to prohibit and prevent” a transaction by a foreign entity controlled by a U.S. person that would be a prohibited transaction if engaged in by a U.S. person.

II. ADVANCE NOTICE OF PROPOSED RULEMAKING

An initial step in fleshing out the general framework established by the Executive Order was provided by the ANPRM, which outlines the initial framework of the Treasury Department for implementing the Executive Order, and seeks public comment on a large number of fundamental aspects of the proposal.⁴ The following are the major topics outlined in the ANPRM:

Applicable to Covered Transactions of a United States Person. The Treasury Department expects to propose a definition of “United States person” that defines the set of persons who must comply with the new regime in a manner consistent with the Executive Order and with how that term is commonly used in economic sanctions programs of the United States. As proposed, a “United States person” would be “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.” The Treasury Department expects that the regulations would apply to U.S. persons, wherever located.

The ANPRM notes the authorities provided in the Executive Order to prohibit U.S. persons from “knowingly directing transactions” that would be prohibited transactions if engaged in by a U.S. person, and to require U.S. persons to “take all reasonable steps to prohibit and prevent any transaction by a foreign entity controlled by such United States person that would be a prohibited transaction if engaged in by a United States person.” The ANPRM requests comment on these scoping matters. By way of illustration of how the Treasury Department may scope the rules, the ANPRM indicates that the Treasury Department expects that the rules would prohibit, among other things, a U.S. person general partner that manages a foreign fund from undertaking a transaction for the foreign fund, or a U.S. person senior officer of a non-U.S. fund from directing the foreign fund’s transaction, if, in each case, the transaction would be prohibited for U.S.

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persons to directly undertake. The ANPRM recognizes that recusal policies may be appropriate compliance devices for U.S. persons serving with non-U.S. funds.

Applicable to Covered Transactions with a Covered Foreign Person. As noted above, the Executive Order establishes only one “country of concern” – the PRC, including the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau. The Treasury Department is considering defining the set of “covered foreign persons” with whom transacting would be restricted to include “(1) a person of a country of concern that is engaged in, or a person of a country of concern 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.”

The Treasury Department is also considering defining the term a “person of a country of concern” to mean “(1) any individual that is not a U.S. citizen or lawful permanent resident of the United States and is a citizen or permanent resident of a country of concern; (2) an entity with a principal place of business in, or an entity incorporated in or otherwise organized under the laws of a country of concern; (3) the government of a country of concern, including any political subdivision, political party, agency, or instrumentality thereof, or any person owned, controlled, or directed by, or acting for or on behalf of the government of such country of concern; or (4) any entity in which a person or persons identified in items (1) through (3) holds individually or in the aggregate, directly or indirectly, an ownership interest equal to or greater than 50 percent.”

The ANPRM indicates that these definitions taken together are intended to “provide clarity and predictability” while “avoiding major loopholes and unintended consequences,” by, for example, capturing parent companies whose subsidiaries and branches engage in activities related to a covered national security technology or product, and to capture entities located outside a country of concern that are majority-owned by persons of a country of concern.

Among other targeted questions, the Treasury Department asks for comment about potential unintended consequences if these definitions are adopted; whether the 50 percent revenue, income, capital expenditure or operating expense test is an appropriate measure; and what analysis or due diligence a U.S. person would need to undertake in order to ascertain whether they are investing in a covered foreign person.

What Are “Covered Transactions”? The Executive Order does not define the types of transactions that should be covered by the regulations to be adopted. Thus, scoping will be left to the regulations, and the Treasury Department expects to define a “covered transaction” as “a U.S. person’s direct or indirect (1) acquisition of an equity interest or contingent equity interest in a covered foreign person; (2) provision of debt financing to a covered foreign person where such debt financing is convertible to an equity interest; (3) greenfield investment that could result in the establishment of a covered foreign person; or (4)

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establishment of a joint venture, wherever located, that is formed with a covered foreign person or could result in the establishment of a covered foreign person.”⁵

This very broad definition has the potential to cover a wide range of investing activity. But rather than define the set of covered transactions more narrowly, the Treasury Department expects to establish a range of “excepted transactions” that, although covered, will not be notifiable or prohibited transactions because of an express exception provided by the rules. These exceptions would be for certain transactions that “present a lower likelihood of concern” as assessed against the policy goals of the Executive Order. The Treasury Department is considering including the following exceptions where an investment is unlikely to involve the transfer of both capital and additional benefits to a covered foreign person: (i) investments in publicly traded securities;⁶ (ii) investments in index funds, mutual funds, exchange-traded funds, or similar instruments offered by a private investment fund or an investment company defined in Section 3(a)(1) of the Investment Company Act of 1940; and (iii) investments made as a limited partner into a venture capital or private equity fund, a fund of funds, or other pooled investment fund, so long as the limited partner’s investment is passive and below “a *de minimis* threshold” to be determined.^{7,8} The breadth of these illustrative exceptions illustrates the potentially wide range of conduct that would otherwise be covered by the proposal that the Treasury Department is considering.

The Treasury Department is also considering other technical exceptions, including the acquisition of all interests of a covered foreign person in an entity or assets outside a country of concern (in other words, a buyout of country of concern ownership, so no ongoing relationship with the person from a country of concern would remain), and intracompany transfers of funds from a U.S. parent to a non-U.S. subsidiary located in a country of concern.⁹

The ANPRM indicates that the Treasury Department does not expect to apply the rules retroactively, and that it would not expect to cover transactions and the fulfillment of uncalled, binding capital commitments with cancellation consequences made prior to the issuance of the Executive Order. The ANPRM, however, notes that the Treasury Department may, after the effective date of the regulations, request information about transactions by U.S. persons that were completed or agreed to after the date of the issuance of the Executive Order to better inform the development and implementation of the program.

The Treasury Department also notes it is considering including “indirect” transactions as covered transactions in order to close loopholes that would otherwise result and to clarify that attempts to evade prohibitions on certain transactions cannot find safe harbor in the use of intermediary entities that are not “U.S. persons” or “covered foreign persons,” as defined. As an example, the ANPRM highlights the situation where a U.S. person knowingly invests in a third-country entity that will use the investment to undertake a transaction with a covered foreign person that would be subject to the program if engaged in by a U.S. person directly.

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Covered National Security Technologies and Products. The last element of the regime being contemplated by the Treasury Department is that, for a transaction to be covered, it will need to “include certain covered national security technologies or products” in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence (“AI”) sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern. Within these three areas, the Treasury Department is considering various prohibitions and/or notification requirements, as follows:

- *Semiconductors and microelectronics.* The Treasury Department is considering prohibitions and notification requirements with regard to investments in this area generally. The ANPRM indicates that the Treasury Department is considering *prohibiting* covered transactions involving a covered foreign person engaged in activities involving (i) technologies that enable advanced integration circuits – the development or production of (a) electronic design automation software designed to be exclusively used for integrated circuit design; and (b) front-end semiconductor fabrication equipment designed to be exclusively used for the volume fabrication of integrated circuits; (ii) advanced integrated circuit design and production, namely (a) the design of integrated circuits that exceed the thresholds in Export Control Classification Number (ECCN) 3A090 in supplement No. 1 to 15 CFR part 774 of the Export Administration Regulations (EAR), or integrated circuits designed for operation at or below 4.5 Kelvin; (b) the fabrication of integrated circuits¹⁰ that meet any of certain criteria;¹¹ and (c) the packaging of integrated circuits¹² that support the three-dimensional integration of integrated circuits, using silicon vias or through mold vias; and (iii) the installation or sale to third-party customers of a supercomputer, which is enabled by advanced integrated circuits, that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope. Treasury is considering a *notification* requirement for covered transactions involving a covered foreign person engaged in activities involving integrated circuit design, integrated circuit fabrication and integrated circuit packaging, in each case, where the transaction would not be prohibited.
- *Quantum information technologies.* The Treasury Department is considering *prohibiting* covered transactions involving a covered foreign person engaged in activities involving (i) quantum computers and components, namely the production of a quantum computer,¹³ dilution refrigerator or two-stage pulse tube cryocooler; (ii) quantum sensors, namely the development of a quantum sensing platform designed to be exclusively used for military end uses, government intelligence or mass-surveillance end uses; and (iii) quantum networking and quantum communication systems, namely the development of a quantum network or quantum communication system designed to be exclusively used for secure communications, such as quantum key distribution. The Treasury Department is *not* considering a notification requirement for covered transactions relating to quantum information technologies.

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- *AI systems.* The ANPRM indicates that the Treasury Department is considering defining an “AI system” as “an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.” The Treasury Department is considering a *notification* requirement, and a potential *prohibition*. The *notification* requirement being considered would be for transactions with a covered foreign person engaged in the development of software that incorporates an artificial intelligence system and is designed to be “exclusively” (or, potentially, “primarily”) used for cybersecurity applications, digital forensics tools, and penetration testing tools; the control of robotic systems; surreptitious listening devices that can intercept live conversations without the consent of the parties involved; non-cooperative location tracking (including international mobile subscriber identity (IMSI) Catchers and automatic license plate readers); or facial recognition. If the Treasury Department were to pursue a prohibition in this category, it has said that it would consider a potential approach focused on U.S. investments into covered foreign persons engaged in the development of software that incorporates an AI system and is designed to be “exclusively” (or, potentially, “primarily”) used for military, government intelligence or mass-surveillance end uses.

Regarding each of these categories, the Treasury Department poses 23 questions asking for ways to better clarify and define the technologies to be covered, and the ANPRM specifically notes that AI is a “fast changing technology area with novel aspects.”

The Treasury Department’s proposal raises a significant compliance question regarding how investors will be able to tell that a covered foreign person with which they may engage in a covered transaction is engaged in activities involving certain covered national security technologies or products in the semiconductors and microelectronics, quantum information technologies and AI sectors so as to fall within the applicable prohibition or notification requirements. The ANPRM indicates that the Treasury Department is considering conditioning a U.S. person’s obligations on that person’s knowledge of relevant circumstances, e.g., where the U.S. person has actual or constructive knowledge that the covered foreign person is engaged in, or will foreseeably be engaged in, certain activity regarding the technology or product. This would mean that to be covered by the regulations, a U.S. person would need to know, or reasonably should know based on publicly available information and other information available through a reasonable and appropriate amount of due diligence, that it is undertaking a transaction involving a covered foreign person and that the transaction is a covered transaction. This knowledge standard would also apply to end uses as applicable to some of the definitions of covered national security technologies and products. The ANPRM asks about the practicalities of complying with this standard, and what, if any, changes to the way that U.S. persons undertake due diligence in a country of concern would be required because of this standard.

III. NEXT STEPS

Comments on the ANPRM are due on September 28, 2023; after such date, it is expected that the Treasury Department will review all comments received and eventually will issue a proposed rule, also for public notice and comment, as the Executive Order directs. The timing of any final rules is uncertain, but likely will not be before 2024.

At the same time, Congress continues to weigh legislative proposals on outbound investment review that may overlap with, or supplement, the rulemaking pursuant to this Executive Order.

In July, the U.S. Senate voted overwhelmingly (91-6) in favor of an amendment to the Fiscal Year 2024 National Defense Authorization Act (the “NDAA”) that would impose similar notification requirements (but no prohibitions) with respect to a broader category of investments and into a larger universe of technologies.¹⁴ This legislation remains pending. Following the issuance of the Executive Order and the ANPRM, congressional leaders of both parties issued statements supporting the Administration’s proposed program but providing certain criticisms, including a call for the program to go further than the ANPRM suggests that the Treasury Department is considering. For example, the Republican Chairman of the United States House Select Committee on Strategic Competition between the United States and the Chinese Communist Party, Congressman Mike Gallagher, called the Executive Order a “small step in the right direction,” but criticized its “loopholes” and noted it does not address “passive flows of U.S. money into malign CCP-affiliated companies,” while calling for additional congressional action to restrict U.S. investment in the PRC.¹⁵ The Ranking Member of the United States House Committee on Financial Services, Congresswoman Maxine Waters, also issued a statement welcoming the Executive Order but stating “more needs to be done,” including addressing passive investments and retroactively evaluating past investments.¹⁶ Other congressional leaders have issued similar statements.¹⁷

If the NDAA is passed in a version that contains the U.S. Senate’s amendment, or if other legislative efforts to regulate outbound investment move forward to enactment, it is possible that the Treasury Department may be placed in a situation where it would need to determine how to implement both the Executive Order and the requirements of any new legislation, which would further complicate the build out of any outbound investment screening regime.

It is important to note that the Biden Administration has made clear that, in developing the Executive Order and the ANPRM, the Administration was engaged with U.S. allies and partners regarding its important national security goals, and will continue coordinating closely with them to advance these goals.¹⁸ The Executive Order and ANPRM were said to reflect discussions with the G7 and other ally and partner engagements, indicating that other jurisdictions are considering or are in various stages of implementing similar frameworks.

ENDNOTES

- 1 “Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern” (Aug. 9, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/09/executive-order-on-addressing-united-states-investments-in-certain-national-security-technologies-and-products-in-countries-of-concern/>.
- 2 “FACT SHEET: President Biden Issues Executive Order Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern; Treasury Department Issues Advance Notice of Proposed Rulemaking to Enhance Transparency and Clarity and Solicit Comments on Scope of New Program,” U.S. Dep’t of Treas. Office of Public Affairs (Aug. 9, 2023), <https://home.treasury.gov/system/files/206/Outbound-Fact-Sheet.pdf>.
- 3 *Id.*
- 4 Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (Aug. 9, 2023), <https://public-inspection.federalregister.gov/2023-17164.pdf>.
- 5 The Treasury Department stated that it does not intend the definition of “covered transaction” to apply to the following activities, so long as they do not involve any of the definitional elements of a “covered transaction” and are not undertaken as part of an effort to evade these rules: university-to-university research collaborations; contractual arrangements or the procurement of material inputs for any of the covered national security technologies or products (such as raw materials); intellectual property licensing arrangements; bank lending; the processing, clearing or sending of payments by a bank; underwriting services; debt rating services; prime brokerage; global custody; equity research or analysis; or other services secondary to a transaction.
- 6 The ANPRM indicates that “security” for purposes of assessing the scope of this exception would have the definition set forth in section 3(a)(10) of the Securities Exchange Act of 1934.
- 7 The Treasury Department contemplates that any investment that affords a U.S. person rights beyond those reasonably considered to be standard minority shareholder protections will not be considered an “excepted transaction,” and the ANPRM identifies rights that would be expected to defeat the passivity needed to qualify for an exception, including (i) membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or an equivalent governing body of the covered foreign person; or (ii) any other involvement, beyond the voting of shares, in substantive business decisions, management or strategy of the covered foreign person.
- 8 The ANPRM suggests that the *de minimis* threshold would be assessed at the limited partner’s stake in the fund, but notes that the Treasury Department is also considering alternative or additional factors. The ANPRM states that the goal of the *de minimis* qualifier “is to exclude from the ‘excepted transaction’ carveout those transactions in excess of a set threshold, which would be set at a high level, where there is a greater likelihood of additional benefits being conveyed, and the U.S. limited partner knows or should have known that the venture capital fund, private equity fund, fund of funds, or other pooled investment fund into which the U.S. person is investing as a limited partner, itself invests in one or more covered foreign persons.” To this end, the ANPRM notes that the Treasury Department is considering defining the *de minimis* threshold with respect to “one or more factors” including not only the size of the U.S. limited partner’s investment in the fund but also, or alternatively, the total assets under management of the U.S. limited partner. The ANPRM emphasizes that “[t]he concern is the enhanced standing and prominence that may be

associated with the size of the transaction or the investor, and increased likelihood of the conveyance of intangible benefits to the covered foreign person.”

9 The ANPRM notes that the Executive Order provides authority for a “national interest exemption,” whereby individual transactions that may be otherwise notified or prohibited may be permitted because they provide an “extraordinary benefit to U.S. national security” or an “extraordinary benefit” to another U.S. national interest that “overwhelmingly outweighs” relevant national security concerns. The Treasury Department is considering utilizing this authority but indicates that it would likely require a case-by-case determination based on the facts and circumstances of the individual transaction.

10 The ANPRM indicates that “fabrication of integrated circuits” would be defined as the process of forming devices such as transistors, poly capacitors, non-metal resistors and diodes on a wafer of semiconductor material.

11 The specific criteria indicated are (i) logic integrated circuits using a non-planar transistor architecture or with a technology node of 16/14 nanometers or less, including but not limited to fully depleted silicon-on-insulator (FDSOI) integrated circuits; (ii) NOT-AND (NAND) memory integrated circuits with 128 layers or more; (iii) dynamic random-access memory (DRAM) integrated circuits using a technology node of 18 nanometer half-pitch or less; (iv) integrated circuits manufactured from a gallium-based compound semiconductor; (v) integrated circuits using graphene transistors or carbon nanotubes; and (vi) integrated circuits designed for operation at or below 4.5 Kelvin.

12 The ANPRM indicates that “packaging of integrated circuits” is to be defined as the assembly of various components, such as the integrated circuit die, lead frames, interconnects, and substrate materials, to form a complete package that safeguards the semiconductor device and provides electrical connections between different parts of the die.

13 The ANPRM indicates that “quantum computer” is to be defined as a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference or entanglement.

14 S.Amdt.931 to S.Amdt.935, S.2226 — National Defense Authorization Act for Fiscal Year 2024, 118th Cong. (as passed by Senate, July 25, 2023).

15 Press Release, Chairman Mike Gallagher, Gallagher Issues Statement on President Biden’s Executive Order to Curb U.S. Investment in China, United States House Select Committee on Strategic Competition between the United States and the Chinese Communist Party (Aug. 10, 2023), <https://selectcommitteeontheccp.house.gov/media/press-releases/gallagher-issues-statement-president-bidens-executive-order-curb-us-investment>.

16 Press Release, Ranking Member Maxine Waters, Ranking Member Waters’ Statement Following the Biden Administration’s Executive Order on Outbound Investments, United States House Committee on Financial Services Democrats (Aug. 11, 2023), <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410726>.

17 See, e.g., Press Release, Chairman Michael McCaul, McCaul on Executive Order Curbing US Tech Investment in China, United States House Foreign Affairs Committee (Aug. 9, 2023), <https://foreignaffairs.house.gov/press-release/mccaul-on-executive-order-curbing-us-tech-investment-in-china/>; and Press Release, Senator Marco Rubio, Rubio Blasts Biden Investment Restrictions as ‘Almost Laughable’ (Aug. 9, 2023), <https://www.rubio.senate.gov/rubio-blasts-biden-investment-restrictions-as-almost-laughable/>.

18 “FACT SHEET: President Biden Issues Executive Order Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern; Treasury Department Issues Advance Notice of Proposed Rulemaking to Enhance Transparency and Clarity and Solicit Comments on Scope of New Program,” *supra* note 2.

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