

MEMO# 32913

November 16, 2020

ICI Member Call on Executive Order on Addressing the Threat from Securities Investments That Finance Communist Chinese Military Companies: Thursday, November 19, 1:00 p.m. ET

[32913]

November 16, 2020 TO: AML Compliance Working Group
Chief Compliance Officer Committee
Chief Risk Officer Committee
Compliance Advisory Committee
ICI Global Investing Subcommittee
ICI Global Regulated Funds Committee
Operations Committee
Public Communications Committee
SEC Rules Committee RE: ICI Member Call on Executive Order on Addressing the Threat from Securities Investments That Finance Communist Chinese Military Companies:
Thursday, November 19, 1:00 p.m. ET

As we previously informed you,[\[1\]](#) on November 12, President Trump signed an Executive Order (EO) using his authority under the International Emergency Economic Powers Act (IEEPA) to prohibit by any US person “any transaction in publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities” of certain identified Chinese companies that have been tied to the People’s Liberation Army (PLA).[\[2\]](#)

We will hold an ICI Member call on Thursday, November 19, at 1:00 p.m. ET to discuss the EO and its implications for regulated funds. We will have as our guest speaker Darshak Dholakia, a partner at Dechert LLP, who will discuss the anticipated scope of the order and address member questions. The Zoom details for the meeting are found are below.

ICI Member Call - Thursday, November 19, 1:00 p.m. ET Join Zoom Meeting:
<https://ici-org.zoom.us/j/98415550764?pwd=OWV2NHljOWtRNE1ONFRQQ0NTZzd1dz09>
Meeting ID: 984 1555 0764 Passcode: 581792 Dial by your location: +1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York) Find your local number:

<https://ici-org.zoom.us/j/acaDgdGMV>

Summary of the EO

The EO prohibits by any US person “any transaction in publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities” of certain identified Chinese companies that have been tied to the PLA. The ban on such transactions takes effect at 9:30 a.m. on January 11, 2021. US persons, however, have until 11:59 a.m. on November 11, 2021, to divest any holdings in the identified companies that were held as of 9:30 a.m. on January 11, 2021. Any sales of those holdings would need to be to non-US persons, as US persons generally would be prohibited from purchasing such securities as of January 11. The EO does not explicitly require divestment but suggests that any US person continuing to hold securities after November 11, 2021, would subsequently be unable to divest those securities or conduct any new transactions involving those securities, effectively freezing the holding.

The first set of Chinese companies affected by this EO are 31 companies previously identified by the Department of Defense (DOD) as having ties to the PLA.^[3] The list is found at the bottom of this memorandum.

Additional companies may be determined by the Secretary of Defense and the Secretary of the Treasury to be Communist Chinese military companies and added to the list.

Restrictions on transactions for newly added companies will come into force 60 days after their designation, and divestments will be permitted for up to 365 days. The Secretary of the Treasury may issue rules or regulations pursuant to the EO establishing procedures to license transactions otherwise prohibited under the EO.

We have the following initial observations. We will continue to follow developments related to this EO and China sanctions more broadly.

- Many of the DOD-listed Chinese companies issue publicly traded securities that are held by US investors, including US regulated funds. Some of these securities may be included in indices tracked by US regulated funds and/or may be widely held by US regulated funds. China Mobile Communications Group and China Telecommunications Corp., for example, have securities traded on the New York Stock Exchange.
- Non-US regulated funds, such as UCITS, may also be impacted as the EO may prohibit US broker-dealers from engaging in transactions on US exchanges on behalf of both US and non-US investors.
- As noted above, the EO contemplates the addition of companies to the list. The Trump Administration over the past few months has attempted to restrict or sanction a number of Chinese companies, including ZTE, China Unicom Americas, and the Semiconductor Manufacturing International Company (SMIC). It is unclear whether the Trump Administration will find that these companies and/or others have ties to the PLA.
- President elect Biden’s transition team declined to comment on the EO and it is unclear what his Administration will do with the EO after he becomes President on January 20. On Capitol Hill, various efforts to restrict Chinese companies’ access to the US capital markets have received bipartisan support. As consensus develops in Washington that China poses a national security threat to the United States and its allies, it may prove difficult to substantially alter this EO.

The Chinese companies identified by DOD as linked to the PLA are the following:

1. Aviation Industry Corporation of China
2. China Aerospace Science and Technology Corporation
3. China Aerospace Science and Industry Corporation
4. China Electronics Technology Group Corporation
5. China South Industries Group Corporation
6. China Shipbuilding Industry Corporation
7. China State Shipbuilding Corporation
8. China North Industries Group Corporation (Norinco Group)
9. Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision)
10. Huawei
11. Inspur Group
12. Aero Engine Corporation of China
13. China Railway Construction Corporation
14. CRRC Corp.
15. Panda Electronics Group
16. Dawning Information Industry Co. (Sugon)
17. China Mobile Communications Group
18. China General Nuclear Power Corp.
19. China National Nuclear Corp.
20. China Telecommunications Corp.
21. China Communications Construction Company
22. China Academy of Launch Vehicle Technology
23. China Spacesat
24. China United Network Communications Group Co Ltd
25. China Electronics Corporation
26. China National Chemical Engineering Group Co., Ltd.
27. China National Chemical Corporation (ChemChina)
28. Sinochem Group Co Ltd
29. China State Construction Group Co., Ltd.
30. China Three Gorges Corporation Limited
31. China Nuclear Engineering & Construction Corporation

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] See ICI Memorandum 32912, dated November 13, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32912.

[2] The Executive Order is *available at*: <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-security-investments-finance-communist-chinese-military-companies/>.

[3] On June 24, 2020, DOD published a list of 20 Chinese companies with ties to the PLA. The list was originally requested in the 1999 National Defense Authorization Act, which requires the Secretary of Defense to create a list of “Communist Chinese military companies” operating “directly or indirectly” in the United States. On August 28, 2020,

DOD updated its list of Chinese companies with ties to the PLA operating directly or indirectly in the United States, adding 11 more.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.