

MEMO# 35801

August 5, 2024

ICI Response to Treasury NPRM on Implementation of the US Outbound Investment Framework

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TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: ICI Response to Treasury NPRM on Implementation of the US Outbound Investment Framework

On August 2, ICI submitted a response to the U.S. Department of Treasury's Notice of Proposed Rulemaking (NPRM) on the Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern. The proposed rule, press release, and fact sheet can be found at - <https://home.treasury.gov/policy-issues/international/outbound-investment-program>. The NPRM will be followed by final implementing regulations.

In our response, we express that careful calibration is essential for the adoption of a program that prescribes actionable requirements for U.S. investors to achieve Treasury's goals, while also seeking to maintain the United States' longstanding commitment to open investment that has served the U.S. capital markets well for decades.

Similar to the feedback we provided on Treasury's earlier Advance Notice of Proposed Rulemaking, our response to the NPRM primarily focuses on the rulemaking's application to U.S. asset managers and the funds and other products that they manage. It addresses areas that would benefit from further clarity and precision to enable U.S. persons, including ICI's members, to implement a workable and effective compliance program that is consistent with the goals of the U.S. government regarding the U.S. outbound investment program.

The key points raised in our response are:

- ICI supports efforts to maintain U.S. national security. A thoughtful and carefully calibrated U.S. outbound investment program will prescribe actionable requirements for U.S. persons that achieve Treasury's goals while mitigating unintended consequences.
- We strongly support the proposed exception for investments in publicly traded securities. When finalizing the rule, we recommend that Treasury clarify that the exception also includes rights, warrants, and derivative contracts with publicly traded

security reference assets, as well as futures on broad-based indexes.

- We strongly support the proposed exception for registered investment companies and business development companies. We recommend that the language for this exception be amended to also clearly include common and collective investment funds that are exempt from registration under the Investment Company Act of 1940 (1940 Act) pursuant to Section 3(c)(3) or Section 3(c)(11) thereof (CITs). Treasury has appropriately recognized that certain types of collective investment vehicles are highly unlikely to present the risks that the Executive Order aims to address, and this revision would help ensure that this important exception achieves its intended purpose without creating unintended ambiguity.
- We further recommend that the proposed rule be clarified in certain areas, as specified in the letter, to improve the effectiveness of the program and assist U.S. persons in its operationalization.
- While we understand that Treasury is not inclined to adopt a government-issued, list-based approach for identifying covered foreign persons under this program, we continue to urge consideration of such an approach in order to achieve the U.S. government's intended goals in a manner that is better suited for broad implementation.

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