

IMPACT OF NEW **EXECUTIVE ORDER** ON US OUTBOUND INVESTMENTS

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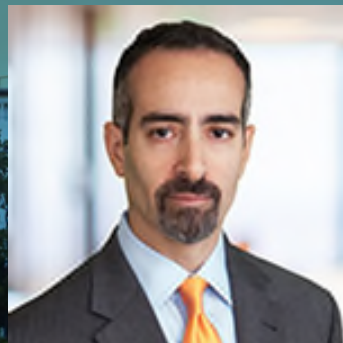
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Agenda

- Overview of Executive Order (E.O.) and Advance Notice of Proposed Rulemaking (ANPRM)
- Discussion of Key Questions

Executive Order 14105

- Implemented by Treasury, in consultation with Commerce and other departments.
- Outlines and authorizes new regulatory regime for outbound investment to address national security threat to US posed by “countries of concern.”
- Focused on sensitive or advanced technologies and products critical for military, intelligence, surveillance and cyber-enabled capabilities.
- EO is not self-executing, and requires implementing regulations with no specific deadline.
- Assessment within one year of adoption of regulations.
- Regulations will not be retroactive, but ANPRM reserves right to inquire about transactions entered into after August 9, 2023.
- Treasury did not publish proposed or interim regulations, but rather published an ANPRM, which requests public comments on 83 questions by September 28, 2023.

Executive Order 14105

- In EO Annex, President identified People's Republic of China (PRC), Special Administrative Region of Hong Kong, and Special Region of Macau as country of concern.
- US already prohibits or restricts export to PRC of many of the technologies and products under consideration for the new program.
 - New program would prevent certain US investments from helping accelerate the indigenization of these technologies in PRC.
- EO would add to the existing restrictions on investment by US persons in certain publicly traded PRC companies that are viewed as being part of PRC military industrial complex.

Executive Order 14105

- EO would:
 - Require US persons to notify Treasury of certain transactions; and
 - Prohibit US persons from undertaking certain transactions.
- EO identified three categories of national security technologies:
 - Semiconductors and microelectronics;
 - Quantum information technologies; and
 - Certain artificial intelligence systems.
- EO also provides Treasury with authority to investigate violations of EO and regulations, and to pursue penalties for violations

ANPRM

- ANPRM does not itself implement the EO and is not draft regulatory text.
- ANPRM is a means for Treasury to solicit public comments, to allow early stakeholder participation in the rulemaking process.
- Draft regulations will be proposed at later unspecified date.
- ANPRM reflects framework that Treasury anticipates proposing, and includes some limited proposed regulatory language for comment.

ANPRM

- US Persons — Program will apply to US persons using a standard broad definition. May also apply to certain foreign entities where US person knowingly directs transaction by the non-US person.
- Covered Transactions — Program will apply to certain types of transactions that convey tangible benefits: acquisition of equity interests (e.g., via mergers and acquisitions, private equity, venture capital and other arrangements; greenfield investments, joint ventures, and certain convertible debt financings).
- Foreign Persons — Covered transactions will include countries of concern; and entities that are organized in the country of concern, have principal place of business in country of concern, or are majority-owned by country of concern individuals or entities.
- Exceptions — Treasury is considering excepting from the program's coverage certain US investment into publicly-traded securities, index funds, mutual funds, exchange-traded funds, certain investments made as a limited partner, committed but uncalled capital investments, and intracompany transfers of funds a US parent company to a subsidiary.

ANPRM

- Semiconductors and Microelectronics — May prohibit the development of electronic design automation software or semiconductor manufacturing equipment; the design, fabrication or packaging of advanced integrated circuits ;and the installation or sale of supercomputers. May require notification of design, fabrication and packaging of less advanced integrated circuits.
- Quantum Information Technologies — May prohibit production of quantum computers and certain components; the development of certain quantum sensors; and the development of quantum networking and quantum communications systems. No notification requirement currently being considered.
- Certain Artificial Intelligence Systems — Treasury is soliciting guidance on how to narrowly define a prohibition on certain activities related to software that incorporates an AI system and is designed for particular end uses with national security implications (e.g., military surveillance end use). Treasury is considering a broader notification requirement.

Key Questions

- What does the ANPRM reveal about the challenges of implementing an outbound investment program, and what questions remain unresolved?
- How broadly will the three covered technologies likely be scoped? What is the process for adding additional technologies?
- Are companies and investors outside the three covered technologies safe from the new regulations?
- What exceptions will there likely be, and how will the exceptions be important to investors?
- Why has Treasury said there will be no case-by-case review/advisory opinion process; and how can investors protect themselves against a subsequent challenge by the USG?

Key Questions

- How do the EO and ANPRM compare with the recent Senate Amendment to the NDAA, and how may the EO and ANPRM affect the pending legislation?
- What has China's reaction been to the EO and ANPRM?
- Will US allies adopt a similar outbound investment regime?
- What should investors be doing now to prepare for new regulations, including by influencing the rulemaking process?

Biography



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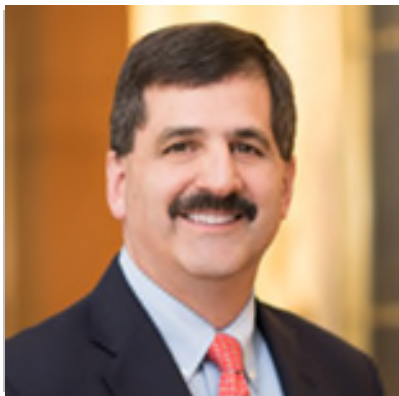
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Giovanna M. Cinelli is the Firm's global leader of the International Trade and National Security practice. As a practitioner for more than 35 years, she counsels clients in the defense and high-technology sectors on a broad range of issues affecting national security and export controls, including complex export compliance matters, audits, cross-border due diligence, and export enforcement, both classified and unclassified.

She handles complex civil and criminal export-related investigations and advises on transactional due diligence for regulatory requirements involving government contracts, export policy, and compliance, as well as settlement of export enforcement actions before the US Departments of State, Commerce, Treasury, and Defense, and related agencies. She is a member of three Federal Advisory Committees at State, Commerce and Defense, where she advises on matters related to national security and defense trade. She has conducted some of the most impactful export investigations of the last 30 years and has negotiated six consent agreements before the Department of State. She advises clients on matters before the Committee on Foreign Investment in the United States (CFIUS), and addresses mitigation requirements that may apply as part of CFIUS clearances for cross-border transactions. Giovanna is a member of the Morgan Lewis CFIUS working group and a former US Naval Intelligence Officer. She is considered a subject matter expert by Congress, the Department of Defense, and various think tanks, including the Center for Strategic and International Studies. She has testified before Congress on issues related to CFIUS, emerging technologies and export controls, as well as before the US-China Economic and Security Review Commission on emerging technologies and foreign investments.

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Ken Nunnenkamp represents clients in international trade and national security matters before United States federal courts and government agencies, including the US departments of State, Commerce, Homeland Security, Defense, and Treasury. His practice involves internal investigations and disclosures, including voluntary disclosures and responding to government demands, as well as federal court defense against government actions. He also advises on compliance counseling and training, transactional due diligence—including both domestic and cross-border transactions—and statutory submissions to US government agencies.

With more than 30 years of litigation and investigation experience, including time as a JAG Officer in the US Marine Corps, Ken routinely conducts internal investigations for clients, including investigations into actual or potential compliance issues arising under the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Controls Regulations, US Customs Regulations, and Foreign Trade Regulations. Additionally, Ken works with clients to understand each business's scope and needs in establishing and improving trade and sanctions compliance programs, including the creation and auditing of company export management systems of all sizes.

Biography



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David Plotinsky, the former acting chief of the US Department of Justice's Foreign Investment Review Section, represents clients such as venture capital, private equity, and infrastructure firms. In particular, he steers clients through government national security review processes for foreign investment, including by the Committee on Foreign Investment in the United States (CFIUS) and Team Telecom. In addition, David focuses on trade, information communications technology and services, and critical and emerging technology. He maintains a security clearance and advises clients on their most sensitive matters.

David has been named to the Foreign Investment Watch Top Advisors 2023 list, which recognizes leading legal, financial, compliance, and communications professionals who provide advice concerning national security review of foreign investments in the United States and overseas.

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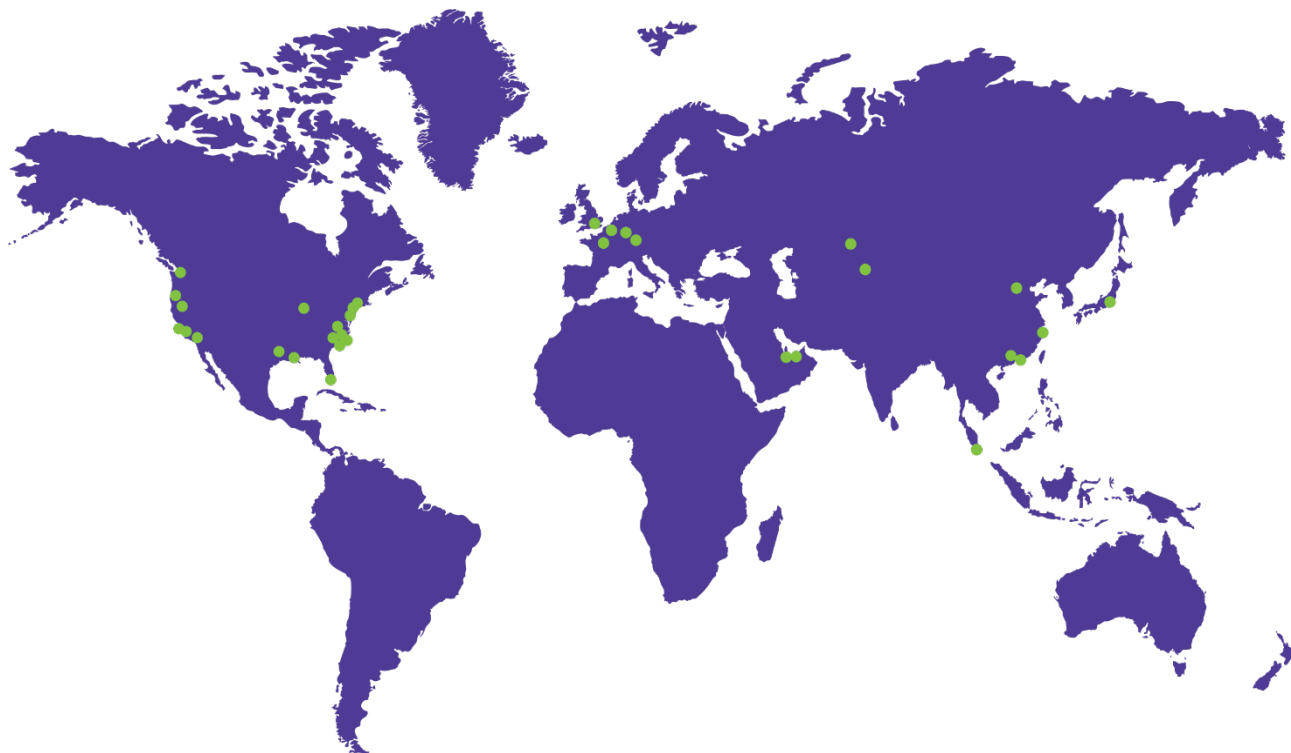
Carl Valenstein focuses his practice on domestic and international corporate and securities matters, mergers and acquisitions, project development, and transactional finance. He counsels extensively in the life science, telecom/electronics, and maritime industries, and has worked broadly in Latin America, the Caribbean, Europe, Africa, Asia, and the Middle East. He previously served as co-chair of the International Section of the Boston Bar Association and co-chairs the firm's environmental, social, and governance (ESG) and sustainable business and Cuba initiatives. Carl is the leader of the Boston office corporate and business transactions practice.

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