

AMENDED SANCTIONS BY THE U.S. REGARDING INVESTMENTS IN CERTAIN COMPANIES IN CHINA

Posted on July 26, 2021

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The Executive Order issued by U.S. President Biden which prohibits U.S. persons from purchasing securities of any issuer identified as a Chinese Military-Industrial Complex Company (“**CMIC**”) will become effective around the corner, on August 2, 2021.

Executive Order 14032, titled “*Addressing the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China*” (the “**Order**”), rescinds and supersedes Executive Order 13959 issued by the Trump administration on November 12, 2020 and revokes its amendments in Executive Order 13974. The Order maintains the previously introduced sanctions and framework while also providing welcome clarity on the scope and implementation of the sanctions, along with an amended list of CMICs.

The Order focuses on companies governed by regulation in the People’s Republic of China (“**PRC**”) that directly support communist military, intelligence, and security activities. It intends to counter the threats posed by the military-industrial complex of the PRC and “the use of Chinese surveillance technology outside the PRC and the development or use of Chinese surveillance technology to facilitate repression or serious human rights abuse”.

Prohibitions

Pursuant to the Order, U.S. persons are prohibited from engaging in any transaction of any publicly traded securities^[1], involving:

- trading securities of companies identified as CMICs;
- trading related derivatives (e.g., futures, options or swaps) of CMICs;
- any securities that are designed to provide investment exposure to the CMICs; or
- any activity that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate the Order.

U.S. persons required to comply with the Order include any U.S. citizen, permanent resident, entity organized under the laws of the U.S. or any jurisdiction within the U.S. (including foreign branches), or any person in the

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U.S. branches of foreign entities, offshore funds with U.S. managers, or foreign funds where a majority of investment interests are held by U.S. persons, could potentially be deemed “U.S. persons” depending upon a fact driven analysis of its touchpoints with the U.S.

The restrictions apply to any foreign or U.S. fund, regardless of the percentage of the underlying fund that the CMIC accounts for.

Financial instruments covered by the Order include exchange-traded funds (ETFs), index funds, mutual funds, warrants, American depository receipts, and global depository receipts.

Sanctioned CMIC List

The U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) maintains the list of entities identified as CMICs which is published on [its website](#), titled the *Non-SDN Chinese Military-Industrial Complex Companies List* (the “**NS-CMIC List**”). To date, 59 companies have been designated as CMICs, the securities of which are subject to the Order. The prohibitions do not apply to subsidiaries or related parties of CMICs unless such entity is specifically listed.

Timeline

Beginning August 2, 2021, the purchase of publicly traded securities of the 59 identified CMICs by U.S. persons is prohibited. U.S. persons are only permitted to buy and sell securities of CMICs between August 2, 2021 and June 3, 2022 if the transactions are made solely to divest, in whole or in part, from such securities.

The deadline for U.S. persons to divest any securities of CMICs listed in the original NS-CMIC List is June 3, 2022.

For companies added to the NS-CMIC List in the future, sanctions will take effect after 60 days of such entity being added to the NS-CMIC List and divestment is permitted for a period of 365 days.

Compliance

Investment funds and fund managers with strong connections to the U.S. which may be considered U.S. persons should carefully consider their investments and whether divestiture of any sanctioned CMIC securities in accordance with the prescribed timelines must occur. Particular attention should be paid to funds that invest in other funds, in terms of ensuring any exposure, or potential exposure, to CMIC securities are in compliance with the new measures.

Additionally, systems and compliance measures should be implemented to ensure that securities of CMICs are not acquired for U.S. persons and to provide real-time awareness of future updates to the NS-CMIC List.

According to the [Frequently Asked Questions](#) published by OFAC, U.S. persons are not prohibited from providing investment advisory, investment management or similar services, (in compliance with applicable local laws) to a non-U.S. person, in connection with the non-U.S. person's purchase or sale of a CMIC, provided that it is not for the ultimate benefit of a U.S. person and does not otherwise violate the Order.

If you have any questions regarding the Order, we encourage you to contact any one of the members of McMillan's Investment Funds and Asset Management Group who would be pleased to speak with you at your convenience. We also have very strong relationships with a number of professional advisors in the U.S. if needed.

[1] Under the U.S. *Securities Exchange Act of 1934*, the term "security" is as defined as "any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing".

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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