

# OFAC Issues Guidance Regarding Restrictions on Transactions in Securities Issued by Communist Chinese Military Companies

December 30, 2020

On December 28, 2020, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") published five [Frequently Asked Questions](#) ("FAQs") regarding E.O. 13959, which restricts certain investment activities by U.S. persons in securities issued by "Communist Chinese Military Companies" ("CCMCs").<sup>1</sup> OFAC also published a [list](#) of the entities "identified in or pursuant to E.O. 13959" as CCMCs, along with additional identifying information for each entity (*i.e.*, alternative names of the CCMCs, issuer names and equity ticker symbols).

The FAQs address some, but not all, of the questions related to E.O. 13959 about which industry members have sought guidance from OFAC. Importantly, the OFAC FAQs provide the following guidance:

- CCMC Subsidiaries. E.O. 13959 applies to any CCMC subsidiary, but only after such CCMC subsidiary is publicly listed by OFAC (with restrictions becoming effective 60 days after the subsidiary's listing by OFAC). OFAC further indicates that it intends to publicly list any subsidiaries of CCMCs that issue publicly traded securities and are either 50% or more owned or controlled by a CCMC. ([FAQ # 857](#)).
- "Publicly Traded Securities" Definition. OFAC interprets the Executive Order's restrictions on transactions in CCMC "publicly traded securities" to apply to securities that trade on a securities exchange or in over-the-counter markets, in any jurisdiction. In this regard, OFAC, in its list of entities identified as CCMCs, expressly indicates debt securities are subject to the Executive Order's prohibitions. ([FAQ # 859](#)).
- Other Restricted Securities. E.O. 13959 prohibits U.S. persons from trading in securities "that are derivative of, or are designed to provide investment exposure to" CCMC publicly traded securities. OFAC provides a non-exhaustive list of examples of such securities, including: derivatives (*e.g.*, futures, options and swaps), warrants,

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<sup>1</sup> For further discussion of E.O. 13959, please see our earlier client update [here](#).

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American depositary receipts, global depositary receipts, exchange-traded funds (“ETFs”), index funds and mutual funds. ([FAQ # 860](#)).

- Exposure Through Funds. OFAC indicates that the Executive Order applies to any ETFs, mutual funds and other securities that “are designed to provide investment exposure to” CCMC publicly traded securities “regardless of such securities’ share of the underlying index fund, ETF, or derivative thereof.” ([FAQ # 861](#)).

As a result, beginning January 11, 2021, although funds may continue to hold shares of CCMC securities that they have already acquired without running afoul of the Executive Order’s prohibitions, it appears that U.S. persons may be unable to invest in, or acquire additional shares of, funds that have not divested completely of CCMC securities.

It is unclear at this point whether further guidance may be forthcoming before restrictions under the Executive Order become effective on January 11, 2021. News reports suggest U.S. agencies internally disagreed about the scope of the Executive Order’s application, with the U.S. State Department’s more expansive views on the Executive Order’s prohibitions ultimately winning out over the U.S. Treasury Department’s narrower interpretation. The State Department, in an unusual move, concurrently issued a [statement](#) addressing OFAC’s guidance, which statement is not entirely consistent with OFAC’s FAQs and could be read as an indication of the State Department’s view that the Executive Order’s restrictions should be applied even further beyond OFAC’s guidance.

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We will continue monitoring developments related to E.O. 13959. Please do not hesitate to contact us with any questions.



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