

# President Biden Amends Chinese Military Companies Sanctions

June 4, 2021

On June 3, 2021, President Biden modified U.S. capital market restrictions on U.S. person investments in Chinese military and surveillance companies by issuing an [“Executive Order on Addressing the Threat from Securities Investments that Finance Certain Companies of the People’s Republic of China”](#) (the “New Order”). The New Order essentially replaces and supersedes Executive Order 13959 of November 12, 2020 and revokes Executive Order 13974 of January 13, 2021, both of which had been issued in the waning days of the Trump Administration. The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) concurrently removed or replaced all of its previously issued Frequently Asked Questions (“FAQs”) related to E.O. 13959, issued a number of new FAQs and replaced and superseded entirely its list of designated Chinese companies.

The New Order and new FAQs revise the Trump Administration restrictions on so-called Communist Chinese Military Companies (“CCMCs”) in a number of ways.

- *First*, the New Order contains an Annex with a list of sanctioned companies, which are now termed Chinese Military-Industrial Complex Companies (“CMICs”). This list of companies, which we have included as an appendix hereto, varies from the prior CCMC list. The investment restrictions with respect to securities issued by these entities become effective on August 2, 2021.
- *Second*, by substantively replacing E.O. 13959 and the former OFAC FAQs, the restrictions that had been in place with respect to securities issued by previously designated CCMCs have been eliminated. That is, all trading restrictions on these companies’ securities are now eliminated until August 2, when restrictions on the newly listed CMICs will become effective.
- *Third*, the New Order eliminates some of the most vexing issues under E.O. 13959. For example, the New Order eliminates the question of whether entities with names that “closely match” the name of a designated entity are captured by the sanctions restrictions – no such requirements exist, and only companies named will be subject to these U.S. capital markets sanctions. In addition, the New Order no longer

prohibits mere “possession” of securities issued by CMICs; thus, there is no requirement that U.S. persons divest their holdings of covered securities of CMICs.

- *Fourth*, the New Order expands on the previous E.O. 13959 in some respects, including providing additional designation authorities for the imposition of U.S. investment restrictions. These changes reflect President Biden’s expansion of the scope of the national emergency originally declared in E.O. 13959 to encompass the threat posed by the use of Chinese surveillance technology outside the People’s Republic of China (the “PRC”) and the development or use of Chinese surveillance technology to facilitate alleged repression or serious human rights abuse.

We review the New Order and its changes in greater detail below.

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## What Changes Were Made to the Designation Authorities of E.O. 13959?

Under the New Order, the authority to designate companies is now delegated to the U.S. Treasury Department, in consultation with the State and Defense Departments, instead of being delegated to both the Defense and Treasury Departments. Designation authorities in the New Order have also been expanded to include any company determined:

- to operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC; or
- to own or control, or to be owned or controlled by, directly or indirectly, a person who operates or has operated in any sector described in the clause above, or a person who is listed in the Annex to the New Order or who has otherwise been determined to be subject to the investment prohibitions of the New Order.

OFAC indicates in new [FAQ 900](#) that it expects to use these designation authorities to target primarily those supporting either surveillance that is occurring outside of the PRC by Chinese technology companies or Chinese surveillance technology related to the surveillance of religious or ethnic minorities or the facilitation of alleged repression or serious human rights abuses.

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## What Entities Are Subject to the New Order?

Companies designated under the New Order are now referred to by OFAC as Chinese Military-Industrial Complex Companies or CMICs. Accordingly, OFAC’s new list of

entities subject to prohibitions is the [Non-SDN Chinese Military-Industrial Complex Companies List](#) (“NS-CMIC List”), which replaces and supersedes entirely OFAC’s former Non-SDN Communist Chinese Military Companies List (“NS-CCMC List”).

Fifty-nine entities are designated initially in the Annex to the New Order and considered CMICs. These entities include companies that were not previously designated as CCMCs, but also exclude other entities previously designated as CCMCs. The names of these entities are listed in the appendix.

In [FAQ 899](#), OFAC provides that the New Order’s prohibitions apply only to entities whose names “exactly match” the names of entities on the NS-CMIC List. For subsidiaries of CMICs, OFAC further expressly provides that the New Order’s restrictions apply only to subsidiaries listed on the NS-CMIC List. This guidance resolves the significant confusion that had surrounded the application of the prior E.O. 13959’s restrictions to entities with similar names to CCMCs.

OFAC is also clear in [FAQ 857](#) that OFAC’s 50 Percent Rule, which extends blocking and other sanctions to entities owned 50% or more by sanctioned persons, does not apply to entities listed solely pursuant to the New Order.

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## What Are the Restrictions Under the New Order?

Prohibitions under the New Order continue to apply to the purchase or sale of publicly traded securities as well as “publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities.” The New Order expressly provides that the restrictions vis-à-vis derivative securities apply also only to publicly traded securities; this had been the case previously but had not been stated as explicitly in the E.O.’s language.

A significant change is the removal of the prohibition on U.S. persons’ possession of covered securities after the relevant wind-down period. Although the New Order continues to provide a wind-down period during which purchases or sales of covered securities made solely to effect divestment are permitted, the New Order (unlike the Trump E.O.s) now does not require full divestiture by U.S. persons of covered securities by the end of the wind-down period. OFAC has accordingly removed all of its previous FAQs addressing the required divestment of covered securities by U.S. persons.

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## What Are the Relevant Dates Under the New Order?

For entities listed in the Annex to the New Order, prohibitions take effect on August 2, 2021, at 12:01 am eastern time.

For future entities designated as CMICs, prohibitions will continue to become effective 60 days after the entities' listing on the NS-CMIC List. As before, the New Order provides for a wind-down period of 365 days after an entity is designated as a CMIC, during which time all purchases or sales of covered securities of the CMIC by U.S. persons, solely to divest of such securities, are permitted.

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## What Other Guidance Has OFAC Issued Under the New Order?

OFAC has removed or replaced all of its old FAQs and issued new FAQs. The new and revised FAQs provide helpful guidance on several issues that have created confusion for securities market participants.

### Investment Funds

Pursuant to [FAQ 865](#), U.S. persons continue to be able to engage in purchases or sales involving investment funds that are seeking to divest from covered securities during the relevant wind-down period.

To determine whether a purchase or sale is permissible under the New Order, new [FAQ 901](#) provides that U.S. persons may rely upon information "available to them in the ordinary course of business." This is consistent with OFAC's approach in FAQ 650, issued in the Venezuela sanctions context, as well as previous oral guidance provided by OFAC to industry members.

Additional new guidance by OFAC in [FAQ 902](#) and [FAQ 903](#) further provides that U.S. persons may engage in a range of activities for or on behalf of non-U.S. persons, including funds, that are purchasing or selling covered securities. Specifically, U.S. persons and entities, including individual fund managers of non-U.S. investment funds or U.S. entities acting as investment advisers or investment manager for a non-U.S. investment fund, may provide investment advisory, investment management or similar services to non-U.S. persons, entities or funds that purchase or sell a covered security. Thus, U.S. persons generally may advise on, authorize, direct or approve purchases or sales of covered securities by non-U.S. investment funds. Additionally, U.S. persons employed by non-U.S. entities are permitted to be involved in or otherwise facilitate

their non-U.S. employer's purchase or sale of covered securities if such activity is in the "ordinary course of their employment" and does not otherwise violate the New Order.

### **Market Makers**

OFAC has clarified in [FAQ 904](#) that market makers, among other market intermediaries, are generally permitted to facilitate divestiture transactions or transactions not otherwise prohibited under the New Order. This includes effecting the conversion of American depositary receipts of a CMIC into securities of the CMIC on the foreign exchange where the underlying securities are listed.

### **Securities Exchanges**

[FAQ 871](#) now incorporates the language of former General License 2, which has now been revoked, and continues to generally permit transactions and activities by securities exchanges operated by U.S. persons involving the purchase or sale of covered securities.

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We continue to monitor these developments closely. Please feel free to contact us with any questions.

**Entities Listed in the Annex to Executive Order on Addressing the  
Threat from Securities Investments That Finance Certain  
Companies of the People's Republic of China**

Defense and Related Materiel Sector of the Economy of the PRC:

- Aero Engine Corporation of China
- Aerospace CH UAV Co., Ltd
- Aerospace Communications Holdings Group Company Limited
- Aerosun Corporation
- Anhui Greatwall Military Industry Company Limited
- Aviation Industry Corporation of China, Ltd.
- AVIC Aviation High-Technology Company Limited
- AVIC Heavy Machinery Company Limited
- AVIC Jonhon Optronics Technology Co., Ltd.; AVIC Shenyang Aircraft Company Limited
- AVIC Xi'An Aircraft Industry Group Company Ltd.
- Changsha Jingjia Microelectronics Company Limited
- China Academy of Launch Vehicle Technology
- China Aerospace Science and Industry Corporation Limited
- China Aerospace Science and Technology Corporation
- China Aerospace Times Electronics Co., Ltd
- China Avionics Systems Company Limited
- China Communications Construction Company Limited
- China Electronics Technology Group Corporation
- China General Nuclear Power Corporation
- China Marine Information Electronics Company Limited
- China Mobile Communications Group Co., Ltd.
- China National Nuclear Corporation
- China National Offshore Oil Corporation
- China North Industries Group Corporation Limited
- China Nuclear Engineering Corporation Limited
- China Railway Construction Corporation Limited
- China Satellite Communications Co., Ltd.
- China Shipbuilding Industry Company Limited
- China Shipbuilding Industry Group Power Company Limited
- China South Industries Group Corporation
- China Spacesat Co., Ltd.
- China State Shipbuilding Corporation Limited
- China Telecommunications Corporation
- China United Network Communications Group Co., Ltd.
- Costar Group Co., Ltd.

- CSSC Offshore & Marine Engineering (Group) Company Limited
- Fujian Torch Electron Technology Co., Ltd.
- Guizhou Space Appliance Co., Ltd
- Hangzhou Hikvision Digital Technology Co., Ltd.
- Huawei Technologies Co., Ltd.
- Inner Mongolia First Machinery Group Co., Ltd.
- Inspur Group Co., Ltd.
- Jiangxi Hongdu Aviation Industry Co., Ltd.
- Nanjing Panda Electronics Company Limited
- North Navigation Control Technology Co., Ltd.
- Panda Electronics Group Co., Ltd.
- Semiconductor Manufacturing International Corporation
- Shaanxi Zhongtian Rocket Technology Company Limited
- Zhonghang Electronic Measuring Instruments Company Limited.

Surveillance Technology Sector of the Economy of the PRC:

- Hangzhou Hikvision Digital Technology Co., Ltd.
- Huawei Technologies Co., Ltd.

Own or Control, or Owned or Controlled by, Directly or Indirectly, a Person Who Operates or Has Operated in at Least One of These Two Sectors of the PRC Economy, or a Person Who Is Listed in the Annex to the E.O.:

- China Communications Construction Group (Limited)
- China Electronics Corporation
- China Mobile Limited
- China Telecom Corporation Limited
- China Unicom (Hong Kong) Limited
- CNOOC Limited
- Huawei Investment & Holding Co., Ltd.
- Panda Electronics Group Co., Ltd.
- Proven Glory Capital Limited
- Proven Honour Capital Limited

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