The Outbound Investment Rule: Guidance on Publicly Traded Securities

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On December 23, 2025, the U.S. Treasury Department ("Treasury") issued new guidance that meaningfully expands the scope of an exception under the Outbound Investment Security Program ("OISP") for certain publicly traded securities (the "publicly traded securities exception" or "PTSE").

As a brief refresher, the OISP requires notice or outright prohibits the acquisition of certain interests in China-related technology companies by U.S. persons.[1] The OISP also excepts certain types of transactions, provided they do not afford rights beyond standard minority protections. One exception from the OISP's requirements involves the acquisition of publicly traded securities, and Treasury's new guidance, in the form of FAQs, addresses several questions regarding the scope and application of the PTSE with which industry participants and practitioners had wrestled.

- *IPO Subscriptions and Similar Agreements*. Under the OISP, the PTSE applies to the post-IPO acquisition of publicly traded equity securities. The new FAQs clarify that the exception also applies to a U.S. investor entering into a binding subscription agreement prior to an IPO, so long as the shares are acquired by the investor at a time when the shares are publicly traded. Treasury further notes that the PTSE applies to similar agreements, such as a standby underwriting agreement. However, the guidance does not alter Treasury's position that a U.S. underwriter or investor that receives shares prior to their public trading may be engaged in a covered transaction that triggers the requirements of the OISP.[2]

- *Follow-On Offerings*. Treasury's new FAQs clarify that the PTSE applies to the acquisition of shares in a follow-on issuance, so long as the newly issued securities

[1] For our overview of the OISP, see here. In December 2025, we also covered the Comprehensive Outbound Investment National Security ("COINS") Act, adopted as part of the Fiscal Year 2026 National Defense Authorization Act; see here.

[2] That noted, we expect the PTSE to apply to underwriting activities eventually—as discussed in our coverage of the COINS Act, Treasury is now directed to implement an exception to the OISP for "ancillary transactions" by financial institutions, including the temporary acquisition of equity interests for the sole purpose of facilitating underwriting services. However, Treasury has been given 450 days to implement the COINS Act, which means that the exception may not be adopted until 2027.

are fungible with the securities already trading (including sharing the same identifier and having identical material rights, such as voting and dividend rights). Further, in the context of such a follow-on offering, any U.S. underwriter involved in the issuance may also rely on the publicly traded securities exception.

- *IPO Ancillary Services*. In a new FAQ, Treasury has republished earlier guidance from the preamble to the final rule implementing the OISP that "services ancillary to IPOs that do not include the acquisition of an equity interest . . . , including underwriting services that do not entail acquiring such an interest, are not a covered transaction." By repeating this guidance, Treasury appears to be emphasizing that its compliance focus in the IPO context will be on those U.S. persons that actually acquire equity securities, whether as investor or underwriter, and not on other U.S. persons providing only support or other ancillary services that do not involve acquiring the securities.

- *Contingent Equity Interests*. A "contingent equity interest" is defined broadly under the OISP to capture any financial interest that provides a right to acquire an equity interest, and Treasury's regulations direct that acquiring a contingent equity interest and converting the same are two separate transactions under the OISP and should be analyzed separately. This treatment implied that acquiring a non-traded contingent equity interest would not qualify for the PTSE, even if the contingent interest were convertible into publicly traded shares and the conversion itself would qualify for the exception. In a new FAQ, Treasury has now advised that the PTSE also applies to a contingent equity interest that is convertible into a publicly traded security, even if the contingent interest is not itself publicly traded.

  This position may have other implications. For example, Treasury's new guidance suggests to us that an option to acquire a publicly traded security—although it would not qualify for the OISP's derivatives-related exception (because the option is convertible into equity)—may nonetheless qualify for the PTSE, even if the option is not itself publicly traded, on the argument that the option is a contingent equity interest.

- *Director Nominations as Minority Shareholder Protections*. As noted, the exception for publicly traded securities does not apply if the acquirer also obtains rights in or over the issuer that go beyond standard minority protections. In the preamble to the final OISP rule, Treasury indicated that it did not consider a right to nominate directors of an issuer to be a standard minority right, including in the context of certain automatic nomination rights under Chinese securities laws potentially afforded to even 1% investors in relevant public securities.

> Treasury has now apparently reversed its position and states in the new guidance that a right to nominate a director can be a "standard minority shareholder protection," provided that the right is generally available to similarly situated shareholders solely because they are minority holders. If so, holding such a nomination right with respect to publicly traded shares (as may be afforded under Chinese law to investors meeting a low statutory ownership threshold) would not by itself prevent an investment from being an excepted transaction under the PTSE. By contrast, a right to *appoint* a director is not a minority shareholder protection, even if similarly situated shareholders also receive that right.

This new guidance from Treasury is a welcome and long-awaited development. To the extent that U.S. persons were avoiding investments in publicly traded securities subject to Chinese securities laws because of a concern about automatic nomination rights, those investment restrictions may now be reviewed and generally lifted, consistent with the updated guidance. In addition, U.S. persons may be able to participate more freely in IPOs, follow-on offerings and similar capital markets transactions involving equity securities based on the clarification and expansion of the PTSE.

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