Outbound Investment Security Program

Frequently Asked Questions

Updated December 23, 2025

These questions and answers issued by the U.S. Department of the Treasury (the Treasury Department) provide general information to assist the public in understanding and complying with 31 CFR part 850 (the Outbound Rules). The full regulatory text and supplementary information at 89 FR 90398 (https://www.federalregister.gov/documents/2024/11/15/2024-25422/provisions-pertaining-to-us-investments-in-certain-national-security-technologies-and-products-in) should be consulted when evaluating the applicability of the Outbound Rules to any particular transaction. These questions and answers include the date of release for reference, and where a substantive change is made, an updated date will be noted.

I. General

1. Why did the Treasury Department issue these regulations?

Answer: Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern," issued by President Biden on August 9, 2023 (the Outbound Order), directs the Secretary of the Treasury, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, to promulgate rules and regulations, including prescribing definitions of terms as necessary to implement the Outbound Order and administer the new program. The Outbound Rules include specific requirements for U.S. persons and reflect the Treasury Department's consideration of public comments received in response to its August 2023 advance notice of proposed rulemaking (ANPRM) and July 2024 notice of proposed rulemaking (NPRM).

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2. When do the Outbound Rules take effect?

Answer: January 2, 2025. Transactions with a completion date on or after January 2, 2025, are subject to the Outbound Rules, including the prohibition and the notification requirement, as applicable.

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3. What are the key differences between the NPRM and the Outbound Rules?

Answer: In evaluating public comments on the August 2023 ANPRM and the July 2024 NPRM, and considering feedback from stakeholders, allies and partners, and consulting

with relevant U.S. Government departments and agencies, the Treasury Department made certain changes intended to address feedback raised by commenters including with respect to the clarity of the regulations and compliance.

Key areas that have evolved since the NPRM include:

- The scope of coverage of transactions involving artificial intelligence (AI) systems;
- The knowledge standard (which describes the knowledge a U.S. person must have about certain facts and circumstances related to a transaction to trigger obligations under the Outbound Rules);
- The scope of the prohibition on U.S. persons "knowingly directing" certain transactions;
- The scope of LP investments that are covered transactions under the Outbound Rules and those that are excepted;
- The definition of covered foreign person with respect to persons holding an interest in a person of a country of concern;
- The treatment of certain debt and contingent equity transactions;
- The exception of derivative transactions;
- The exception of certain transactions between a U.S. person and its controlled foreign entity;
- The exception of employee compensation in the form of stock or stock options; and
- Confidential treatment of information submitted to the U.S. Government under the Outbound Rules.

The Federal Register notice implementing the Outbound Rules (89 FR 90398) should be reviewed for further details.

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4. How does a U.S. person file a notification?

Answer: Notifications are required to be submitted via electronic filing. The Treasury Department will post instructions on how to file on the Treasury Department's Outbound Investment Security Program website prior to the effective date of the Outbound Rules.

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5. Can U.S. persons still invest in a country of concern?

Answer: The Outbound Rules do not prohibit all investment activity in countries of concern. Consistent with the Outbound Order, the Outbound Rules are narrowly targeted at certain types of investments in country of concern entities and related to sensitive technologies and products critical for military, intelligence, surveillance, or cyber-enabled capabilities. The Outbound Rules focus on discrete categories of transactions involving sub-sets of technologies and products in an effort to protect national security, maximize compliance, and minimize unintended consequences. In addition, certain transactions are

excepted, including those in publicly traded securities and derivatives, certain limited partner (LP) investments, certain intracompany transactions between U.S. parents and their controlled foreign entities, and certain employee compensation in the form of stock or stock options.

The United States supports an open investment environment consistent with the protection of U.S. national security, and the Outbound Order and Outbound Rules are in line with this longstanding policy.

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6. Does this program set-up a screening process or case-by-case review of investments?

Answer: No. Consistent with the Outbound Order, U.S. persons are prohibited from undertaking certain transactions and are required to notify the Treasury Department of certain other transactions. The Treasury Department will not conduct a case-by-case review of transactions. The relevant U.S. person undertaking a transaction has an obligation to determine whether the given transaction is prohibited, permissible but subject to notification, or not covered by the Outbound Rules because either it is an excepted transaction or does not otherwise meet the Outbound Rules' definition of a "covered transaction."

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7. How will U.S. individuals and entities be expected to comply with this program?

Answer: The Outbound Rules place certain requirements on U.S. persons, including recordkeeping and notification requirements. The Outbound Rules also establish a prohibition on certain U.S. person transactions. A U.S. person's knowledge of certain facts or circumstances is generally a pre-requisite for obligations under the Outbound Rules to apply. The Treasury Department therefore anticipates that U.S. persons should be able to comply with the Outbound Rules through a reasonable and diligent transactional due diligence and compliance process. A U.S. person who fails to undertake a reasonable and diligent inquiry prior to a transaction may be responsible for knowledge it could have acquired had it undertaken such an inquiry.

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8. Are U.S. nationals working at foreign entities going to be impacted?

Answer: U.S. persons are prohibited from knowingly directing transactions by non-U.S. entities that the U.S. person knows at the time of the transaction would be prohibited if engaged in by a U.S. person. The Outbound Rules provide for a U.S. person's recusal from participation in certain activities to avoid violating this prohibition. The Outbound Rules do not restrict a U.S. person from working at any entity that receives investment that is

subject to the Outbound Rules, nor does it restrict a U.S. person from working at an entity making such an investment.

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9. Are technology licensing, consulting, or procurement contracts covered?

Answer: Covered transactions include certain transactions that involve the acquisition of equity or a contingent equity interest, conversion of a contingent equity interest, provision of debt financing that carries certain rights, greenfield investments or other corporate expansions, the entrance into joint ventures, and certain LP investments. Activities that do not meet the definition of a covered transaction are not subject to the program except where they are undertaken to evade or avoid the Outbound Rules.

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10. Will the Treasury Department publish a list of designated covered foreign persons under the Outbound Rules?

Answer: At this time, the Treasury Department does not intend to publish a list of entities identified as covered foreign persons. Instead, the Treasury Department expects a U.S. person to conduct a reasonable and diligent inquiry to determine whether a transaction is covered under the Outbound Rules, including whether any covered foreign persons are involved.

The Treasury Department notes, however, that a transaction that would otherwise be a notifiable transaction is instead a prohibited transaction if the relevant covered foreign person:

- Is included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);
- Is included on the Bureau of Industry and Security's Military End User List (15 CFR part 744, supplement no. 7);
- Meets the definition of "Military Intelligence End-User" established by the Bureau of Industry and Security in 15 CFR § 744.22(f)(2);
- Is included on the Treasury Department's list of Specially Designated Nationals and Blocked Persons (SDN List), or is an entity in which one or more individuals or entities included on the SDN List, individually or in the aggregate, directly or indirectly, own a 50 percent or greater interest;
- Is included on the Treasury Department's list of Non-SDN Chinese Military-Industrial Complex Companies; or
- Is designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189.

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11. What are the penalties for violations of the Outbound Rules?

Answer: The Outbound Order authorizes the Secretary of the Treasury to investigate violations of the regulations, including pursuing civil penalties available under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) and referring criminal violations to the Attorney General. The Secretary of the Treasury may also, as appropriate, take action authorized under IEEPA to nullify, void, or otherwise compel the divestment of any prohibited transaction. Under IEEPA, as of the date of issuance of the Outbound Rules, the maximum civil penalty for a violation is the greater of $368,136 or twice the value of the transaction that is the basis for the violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the maximum civil penalty will be adjusted annually for inflation and notice of the adjustment will be published in the Federal Register and on Treasury's Outbound Investment Security Program website.

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12. Is the Treasury Department working with U.S. allies and partners?

Answer: The Treasury Department, working with the U.S. Department of State and U.S. Department of Commerce, has engaged with U.S. allies and partners regarding the important national security goals of the Outbound Order. The Outbound Order and the scope of the program reflect discussions with the G7 and other ally and partner engagements. The Treasury Department is encouraged by the interest and attention given to this issue by allies and partners.

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13. If a transaction is subject to or would implicate jurisdiction of the Committee on Foreign Investment in the United States (CFIUS), sanctions or licenses administered by the Treasury Department's Office of Foreign Assets Control (OFAC) or the U.S. Department of State, export controls, or other U.S. Government programs or rules, can it also be subject to the Outbound Rules?

Answer: Yes, it can be. A U.S. person should ascertain the applicability of the Outbound Rules to a particular transaction independent of whether other U.S. Government programs do or do not apply, or the disposition of a particular review or adjudication under any such programs. Nothing in the Outbound Rules should be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, license, authorization, or review provided by any other provision of Federal law including IEEPA, or any other authority of the President or the Congress under the Constitution of the United States. No action taken pursuant to any other provision of law or regulation authorizes any transaction prohibited by the Outbound Rules or alters any other obligation under the Outbound Rules. Moreover, no action taken pursuant to the Outbound Rules relieves parties from complying with any other applicable laws or regulations.

For example, if a U.S. person makes an investment that it believes is covered by a General License issued by OFAC, the person would still be required to comply with any applicable provisions of the Outbound Rules. At the same time, the existence of an exception or the granting of an exemption under the Outbound Rules does not excuse a person from its obligations under any other applicable U.S. Government program.

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14. After a U.S. person submits a notification, will the Treasury Department contact the U.S. person submitter?

Answer: Under section 850.404(b), the Treasury Department may contact a U.S. person submitter who has filed a notification with questions or document requests related to the transaction or compliance with the Outbound Rules. However, apart from receiving an acknowledgment of receipt of a notification from the Treasury Department, a submitter should not expect to receive any confirmation from the Treasury Department with respect to the notification or its status.

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15. If a U.S. person investor entered into an investment agreement prior to the January 2, 2025 effective date of the Outbound Rules but the transaction will close on or after the effective date, is the transaction subject to the Outbound Rules?

Answer: Transactions with a completion date on or after the effective date of the Outbound Rules (January 2, 2025, or the "effective date") may be subject to the Outbound Rules regardless of whether an agreement was entered into prior to the effective date. In other words, the mere signing of a contract or term sheet prior to the effective date does not render a transaction outside the scope of the Outbound Rules if it otherwise meets the criteria of a covered transaction and the completion date is on or after January 2, 2025.

However, the Outbound Rules contain an exception for transactions made after the effective date but pursuant to a binding, uncalled capital commitment entered into prior to the effective date. This exception is limited to situations where the U.S. person has made a binding capital commitment to a fund or similar investment entity prior to January 2, 2025, and the capital is then called after the effective date, recognizing that often a fund's investment targets have yet to be determined at the time of the capital commitment. This is in contrast to other types of transactions where a U.S. person signs a binding agreement to undertake a transaction with or with respect to an investment target and the transaction has a completion date on or after the effective date.

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II. Defined Terms

1. What constitutes an "AI system" and what does it mean to "develop" such a system? Under the Outbound Rules, how should updated model versions or future adaptations of an AI system be assessed in relation to the original or prior AI system?

Answer: Section 850.202(a) defines AI systems as machine-based systems that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Section 850.202(a) also gives examples of what would fall under this definition, such as a system that uses model inference to make a classification, prediction, recommendation, or decision. Importantly, the Outbound Rules' requirements are triggered by transactions in which a relevant person "develops" an AI system that is designed for or that is intended by a covered foreign person to be used for certain end uses or was trained using computing power greater than a specified threshold. A person "develops" such a system when they engage in any stages prior to serial production, and section 850.211 provides examples of what it means to "develop." As applied, this would include designing an AI system or making substantive modifications with respect to a third-party AI model or machine-based system, such as removing security measures or safeguards of the third-party AI model.

For the purposes of assessing whether an AI system has any of the end-use applications set forth in sections 850.217(d) and 850.224(j), different versions of an AI system, including adaptations, derivatives, subsequent generations, or successor systems, should be assessed as distinct AI systems since the designed end-use or capabilities of a successor system could vary from a prior version.

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2. What are examples of what is and what is not:

- **A "person of a country of concern"?**

Answer: In addition to an entity that has its principal place of business in, has its headquarters in, or is incorporated in or otherwise organized under the laws of a country of concern, there are multiple scenarios where an entity that does not have any of those attributes may nevertheless be considered a "person of a country of concern" under the Outbound Rules.

Example 2.1: Company A is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. A ministry of the government of a country of concern controls Company A, including possessing the power to direct or cause the direction of Company A's management and policies. Company A is therefore a person of a country of concern under section 850.221(c).

Example 2.2: Company B is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. Each of six citizens of a country of concern, each of whom is not a U.S. citizen or U.S. permanent resident, is a voting director on the board of Company B. Company B has ten directors on its board, each with equal voting power. Company B is therefore a person of a country of concern under section 850.221(d), because 60 percent of the voting power of Company B's board is held in the aggregate by persons of a country of concern.

Example 2.3: Company C is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern. Company D, a person of a country of concern under section 850.221(b), holds 60 percent of the voting power of the board of Company C. Company C is therefore a person of a country of concern, because at least 50 percent of its outstanding voting interest is held by a person of a country of concern.

- **A "U.S. person"?**

Example 2.4: Company E, which is incorporated in the United States, has an unincorporated branch office in a country of concern. The unincorporated branch office of Company E is a U.S. person under section 850.229, because it is a foreign branch of an entity organized under the laws of the United States.

Example 2.5: Company F is a foreign subsidiary of a U.S. person company under section 850.227. Absent additional facts, Company F is not a U.S. person under section 850.229, because it is not an entity organized under the laws of the United States or any jurisdiction within the United States, nor is it a foreign branch of any such entity. Note that even though Company F is not a U.S. person, Company F meets the criteria of a controlled foreign entity, the U.S. person parent of which has certain responsibilities under the Outbound Rules, including under sections 850.302 and 850.402.

Example 2.6: Company G is an entity incorporated outside of the United States with an employee physically located in the United States who is not a U.S. citizen or permanent resident. The employee is a U.S. person under section 850.229, because such person is in the United States. Absent additional facts, Company G is not a U.S. person; the physical presence of an employee in the United States does not itself render Company G a U.S. person. The employee would be subject to the Outbound Rules, including prohibitions on "knowingly directing" transactions (if such employee has authority and exercises that authority pursuant to section 850.303).

Example 2.7: Company H is an entity organized outside the United States with a subsidiary incorporated in the United States. While the subsidiary is a U.S. person, absent additional facts, Company H is not a U.S. person; having a subsidiary that is a U.S. person does not itself render Company H a U.S. person.

- **"Knowingly directing an otherwise prohibited transaction"?**

Example 2.8: A U.S. person is a corporate officer at Company I, a non-U.S. person operating company incorporated in a foreign jurisdiction. The U.S. person's role includes substantial participation in investment decisions related to Company I's strategic acquisitions, including as a member of the investment committee that votes on whether to undertake potential investments. The U.S. person participates in deliberations among Company I's leadership about whether to undertake a share purchase in Company J, a privately-held covered foreign person that develops a quantum computer. Following these deliberations, the U.S. person votes in favor of the share purchase and knows at the time of the vote that the share purchase would be a prohibited transaction if undertaken by a U.S. person. The U.S. person has knowingly directed an otherwise prohibited transaction under section 850.303(a), because such person has authority to make or substantially participate in decisions as part of a group on behalf of Company I and has exercised that authority to direct a transaction that would be prohibited if engaged in by a U.S. person.

Example 2.9: A U.S. person is an accountant employed at Company K, a company that is not a U.S. person, and does not have the authority to make decisions on behalf of the company. Per instructions from Company K's management, the U.S. person accountant undertakes financial due diligence in support of a potential corporate investment into a covered foreign person that would be a prohibited transaction if engaged in by a U.S. person. Company K then makes the investment. Absent additional facts, the U.S. person employee has not knowingly directed an otherwise prohibited transaction under section 850.303(a), because the U.S. person employee did not have the authority to make decisions on behalf of Company K.

Example 2.10: A U.S. person serves on the management committee at a pooled investment fund that is not a U.S. person. The fund makes an investment into a covered foreign person that would be a prohibited transaction if performed by a U.S. person. While the management committee reviews and approves all investments made by the fund, the U.S. person recuses themself from the deliberations related to the particular investment, the decision-making, the work on relevant transaction documents, and negotiations with the investment target. Under section 850.303(b), absent additional facts, the U.S. person has not knowingly directed an otherwise prohibited transaction.

- **A "covered foreign person"?**

Example 2.11: Company L is an entity incorporated outside of a country of concern and is not itself engaged in any covered activity. Company M is incorporated in a country of concern and engages in a covered activity and is therefore a covered foreign person. Company L holds a small equity interest in Company M, and more than 50 percent of Company L's capital expenditures are attributable to Company M for the most recent year for which audited financial statements are available at the time of a relevant investment by a U.S. person in Company L. Because Company L holds an equity interest in Company M and more than 50 percent of Company L's capital

expenditures are attributable to Company M, Company L is a covered foreign person under section 850.209(a)(2).

Example 2.12: Company N holds a 10 percent equity interest in Company O, a covered foreign person, and income from Company O comprises 30 percent of Company N's net income, and such income from Company O is above $50,000 for the most recent year for which audited financial statements for Company N are available. In addition, Company N holds a 10 percent equity interest in Company P, a covered foreign person, and income from Company P comprises 21 percent of Company N's net income, and such income from Company P is above $50,000 for the most recent year for which audited financial statements for Company N are available. Company N is a covered foreign person under section 850.209(a)(2), because Company O and Company P are each a covered foreign person in which Company N holds an equity interest, income for Company N derived from each of Company O and Company P is at least $50,000, and in the aggregate, the income from Company O and Company P comprises 51 percent of the net income of Company N for the most recent year for which audited financial statements are available.

Example 2.13: Assume the same facts as in Example 2.12, except that none of Company N's net income is attributable to Company O, and instead, 30 percent of Company N's capital expenditures are attributable to Company O for the most recent year for which audited financial statements for Company O are available. Absent additional facts, Company N is not a covered foreign person under section 850.209(a)(2), because the percentage of capital expenditures attributable to Company O and the percentage of net income attributable to Company P are not aggregated (because they are different financial metrics), and neither the percentage of Company N's capital expenditures attributable to Company O, nor the percentage of Company N's net income attributable to Company P is more than 50 percent.

Example 2.14: Company Q is incorporated and headquartered outside of a country of concern and its principal place of business is outside of a country of concern, but 50 percent of its equity is held by a person of a country of concern. Company Q engages in a covered activity. Company Q therefore is a person of a country of concern pursuant to section 850.221(d), and because it is a person of a country of concern that engages in a covered activity, Company Q is also a covered foreign person pursuant to section 850.209(a)(1).

Example 2.15: Company R is incorporated in a country of concern but is not engaged in a covered activity. Company R is wholly owned by Company S, which is incorporated in a country of concern and is engaged in a covered activity. Even though Company R is a person of a country of concern and is wholly owned by a covered foreign person, absent additional facts, Company R is not a covered foreign person.

3. **What does "engages in" mean in the definition of a covered foreign person? Would the purchase of an item listed in sections 850.217 and 850.224 render a person as one that engages in the relevant activity?**

Answer: Section 850.209(a)(1) defines a covered foreign person as a person of a country of concern that "engages in" a covered activity. "Engages in" functions as a link between a person of a country of concern and the covered activities enumerated in detail in sections 850.217 and 850.224 (defining notifiable transaction and prohibited transaction, respectively). In other words, "engages in" should be understood as succinctly capturing the activities described in sections 850.217 and 850.224, such as designs, fabricates, packages, develops, and produces, among other things.

Therefore, when determining whether an action by a person of a country of concern constitutes "engaging in" a covered activity, a U.S. person should assess whether the person of a country of concern is undertaking any of the activities specifically described in sections 850.217 and 850.224. Absent other facts, the purchase of an item or service does not, on its own, constitute engaging in a covered activity.

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III. Covered Transaction

1. **What are examples of what is and what is not:**

   - **A "covered transaction"?**

Example 1.1: A U.S. person acquires an entity comprising an existing manufacturing facility in a country of concern that does not, at the time of the acquisition, engage in a covered activity. Prior to the transaction, the U.S. person extensively researches the feasibility of retrofitting the facility to undertake a covered activity and secures financing on the basis of future cash flows from the facility's undertaking of such covered activity. The acquisition is therefore a covered transaction under section 850.210(a)(4)(ii) because it is the acquisition of operations in a country of concern that the U.S. person at the time of the acquisition plans to result in the engagement of a person of a country of concern in a covered activity.

Example 1.2: A U.S. person invests as an LP in Fund A, a pooled investment fund that is not a U.S. person. At the time of the U.S. person's investment, Fund A has not undertaken any investments. Fund A's prospectus states that Fund A will invest in entities that are leading AI technology advancements including those in a country of concern. One year following the conclusion of fundraising, Fund A undertakes a transaction that would be a covered transaction if undertaken by a U.S. person. The U.S. person's investment as an LP is therefore a covered transaction under section 850.210(a)(6), because the U.S. person had reason to know (and therefore, "knew") that Fund A was likely to invest in a person of a country of concern engaged in one of the sectors enumerated in section 850.210(a)(6), and Fund A subsequently undertook a

transaction that would be a covered transaction if undertaken by a U.S. person. More specifically, if Fund A's transaction would be a prohibited transaction if undertaken by a U.S. person, then the U.S. person's investment as an LP into Fund A is a prohibited transaction; if Fund A's transaction would be a notifiable transaction if undertaken by a U.S. person, then the U.S. person's investment as an LP into Fund A is a notifiable transaction.

Example 1.3: A U.S. person investment bank provides underwriting services for an initial public offering of an entity it knows is a covered foreign person. Absent additional facts, the provision of the underwriting services is not a covered transaction unless the investment bank itself acquires an equity interest in the covered foreign person as part of its underwriting activities, in which case the acquisition of equity would be a covered transaction under section 850.210(a)(1).

Example 1.4: A U.S. person obtains convertible debt in an entity it knows is a covered foreign person. The acquisition of convertible debt is a covered transaction under section 850.210(a)(1). Based on the covered activity undertaken by the covered foreign person, the transaction is a notifiable transaction under section 850.217. The U.S. person duly submits a notification to the Treasury Department of the acquisition of the contingent interest. The convertible debt later converts to equity; at the time of the conversion, the covered foreign person engages in the same covered activity. The conversion of the contingent equity interest into equity is a covered transaction under section 850.210(a)(3) that is a separate notifiable transaction, and the U.S. person lender must timely submit another notification to the Treasury Department under section 850.217.

- **An "indirect" covered transaction?**

Example 1.5: A U.S. person purchases shares in a special purpose vehicle established in order to acquire an equity interest in a covered foreign person, and the special purpose vehicle acquires such equity interest following the U.S. person's investment. Absent other relevant facts, this transaction is an "indirect" covered transaction under section 850.210(a), because the U.S. person has used an intermediary to engage in a transaction that would be a covered transaction if engaged in directly by the U.S. person.

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2. How are a U.S. person's "plans" assessed for the purposes of section 850.210(a)(4) in the case of greenfield or other investments?

Answer: Whether a transaction is a covered transaction under section 850.210(a)(4) depends on whether the U.S person knows at the time of its acquisition, leasing, or other development that it will result in, or that the U.S. person plans for it to result in, the establishment of a covered foreign person, or the engagement of a person of a country of concern in a covered activity. Indicators relevant to what the U.S. person "plans" include,

for example, correspondence with the investment target or relevant government, business plans, board presentations, and presentations to potential investors.

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3. What if an investment target was not engaged in a covered activity at the time of a U.S. person's investment but later pivots into a covered activity?

Answer: The Outbound Rules apply to U.S. person transactions involving an investment target that engages in activities at the time of the transaction of which a U.S. person has knowledge (which includes "reason to know" following a "reasonable and diligent inquiry"). The Outbound Rules are not intended to create an ongoing obligation for a U.S. person to monitor or prevent post-transaction changes to an investment target's activities.

As to corporate pivots into covered activity that occur after the completion date of the relevant transaction, there are two main considerations with respect to the application of the Final Rule: first, whether the U.S. person had knowledge at the time of the transaction regarding the later corporate pivot into a covered activity, including whether the U.S. person had or should have had an awareness of a high probability of a fact or circumstance's existence or future occurrence (in which case the transaction would be a notifiable transaction or a prohibited transaction in the first instance under Subpart C or Subpart D, as applicable).

In addition, under section 850.403, if following a transaction a U.S. person later acquires "actual knowledge" of a fact or circumstance that, if known to the U.S. person at the time of the transaction, would have resulted in a notifiable transaction or a prohibited transaction, the U.S. person will be required to submit a notification within 30 days of acquiring such knowledge. Section 850.403 requires "actual knowledge" of a fact or circumstance and does not include "reason to know," as the intention is not to create a requirement to conduct continuing diligence or actively monitor the activities of the target of the transaction after the completion date for purposes of section 850.403, assuming that a "reasonable and diligent inquiry" had been conducted at the time of the transaction.

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4. What types of indirect transactions by a U.S. person may be "covered transactions"?

Answer: The Outbound Rules cover both direct and indirect transactions by a U.S. person. An indirect covered transaction includes a U.S. person's use of an intermediary to engage in a transaction that would be a covered transaction if engaged in directly by a U.S. person. This includes a transaction where the U.S. person knows (inclusive of having reason to know, *see* section 850.104) at the time of the transaction that the transaction is indirectly with or involving a covered foreign person (and the transaction otherwise meets the definition of a covered transaction). Therefore, if a U.S. person engages in a transaction where it knows at the time of the transaction that its investment is intended for a

downstream covered foreign person, the investment would be an indirect covered transaction, if such transaction otherwise meets the definition of a covered transaction. In such a case, a U.S. person's investment that is indirect is a covered transaction regardless of the number of intermediaries involved in such transaction. Knowledge (which includes "reason to know") that a U.S. person's investment is intended for a covered foreign person via an intermediary may be evinced, for example, by such U.S. person's knowledge of the intermediary's plan or purpose to use the U.S. person's investment to fund a covered foreign person.

By contrast, absent additional facts, where a U.S. person has, for example, previously invested in a non-U.S. person entity, and later and unrelated to the original transaction by the U.S. person (*e.g.*, the U.S. person did not know at the time of the transaction that their investment would flow to a covered foreign person), that non-U.S. person entity invests in a covered foreign person, that later transaction will generally not cause the U.S. person's original investment to be an indirect covered transaction, subject to sections 850.210(a)(6), 850.303, and 850.604.

Similarly, absent additional facts, a U.S. person's investment into an operating company or other entity, where the U.S. person has no knowledge at the time of the transaction that the investment is intended for a covered foreign person, would not be an indirect covered transaction, subject to sections 850.210(a)(6), 850.303, and 850.604. This is the case even if the operating company or other entity has an existing relationship with a covered foreign person, *e.g.*, has a subsidiary that is a covered foreign person. (However, if the operating company or other entity's relationship to a covered foreign person meets a threshold in section 850.209(a)(2), then the operating company or other entity would itself be a covered foreign person, making the U.S. person's investment a covered transaction.)

With respect to a transaction involving a U.S. person's acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund, Note 1 to section 850.210 clarifies that *for purposes of section 850.210(a)(1)*, a U.S. person is not considered to have acquired an indirect equity interest or contingent equity interest in a covered foreign person when the U.S. person acquires a limited partner or equivalent interest in a pooled investment fund and that fund then acquires an equity interest or contingent equity interest in a covered foreign person. However, a U.S. person's acquisition of a limited partner or equivalent interest in a non-U.S. pooled investment fund may be a covered transaction under *section 850.210(a)(6)*. Accordingly, a transaction could be an indirect covered transaction under section 850.210(a)(6) if, for example, the U.S. person uses an intermediary to invest into the fund (and the transaction otherwise meets the elements of section 850.210(a)(6)).

Example 4.1: A U.S. person purchases shares in a special purpose vehicle established in order to acquire an equity interest in a covered foreign person, and the special purpose vehicle acquires such equity interest following the U.S. person's investment. Absent additional facts, this transaction is an "indirect" covered transaction under section 850.210(a), because the U.S. person has used an intermediary to engage in a transaction that would be a covered transaction if engaged in directly by the U.S. person.

Example 4.2: A U.S. person acquires an equity interest in Company A, an operating company that is not a person of a country of concern. None of Company A's revenue, operating income, capital expenditure, or operating expenses are attributable to a covered foreign person or persons at or above 50 percent for the most recent year for which an audited financial statement is available, and therefore, Company A is not a covered foreign person under section 850.209(a)(2). Among Company A's subsidiaries are persons of a country of concern engaged in covered activities. The U.S. person conducts a reasonable and diligent inquiry into its investment in Company A and knows about Company A's ownership of and financial exposure to covered foreign persons. However, the U.S. person has no reason to know that its investment is intended for a covered foreign person. Absent additional facts, this transaction is not an indirect covered transaction because the U.S. person did not know at the time of the transaction that Company A intended to use the U.S. person's investment for covered foreign persons.

Example 4.3: Same facts as Example 4.2 above, except at the time of the transaction, Company A's prospectus stated that it was raising money to, among other things, fund its subsidiaries that are covered foreign persons. This transaction is an indirect covered transaction because the U.S. person knew at the time of the transaction that its investment would be used to fund a covered foreign person via an intermediary and the transaction otherwise meets the elements of a covered transaction.

Released on January 17, 2025

5. In the context of a covered transaction under section 850.210(a)(4)(ii), what constitutes "result[ing] in … the engagement of a person of a country of concern in a covered activity"? Does this include engagement in covered activities in which a person of a country of concern was previously engaged?

Answer: Under section 850.210(a)(4)(ii), a covered transaction includes the acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern that the U.S. person knows at the time of such acquisition, leasing, or other development will result in, or that the U.S. person plans to result in, the engagement of a person of a country of concern in a covered activity. This provision applies when a U.S. person knows that its acquisition, leasing, or other development of operations will result in, or plans for such actions to result in, the engagement of a person of a country of concern in a covered activity, regardless of whether the relevant person of a country of concern was previously or currently engaged in such activity. Note however that certain transactions between a U.S. person and its controlled foreign entity to support ongoing covered activities in which an entity was engaged prior to January 2, 2025, may be an excepted transaction under section 850.501(c).

A U.S. person's "plans" are sufficient for a transaction to be a covered transaction under section 850.210(a)(4)(ii). This is the case because a U.S. person may not know at the time of the transaction that the investment will in fact result in a person of a country of concern engaging in a covered activity, yet the Treasury Department nevertheless seeks to address activities intended to result in a person of a country of concern's engagement in a covered

activity, since such a situation is likely to convey intangible benefits from the U.S. person to a covered foreign person. That a transaction ultimately results in a covered foreign person engaging in a covered activity is not necessary for the transaction to be a covered transaction.

Example 5.1: Company B is incorporated in a country of concern and fabricates integrated circuits manufactured from a gallium-based compound semiconductor. As part of developing a relationship with Company B, an unrelated U.S. person acquires land in a country of concern so that Company B can fabricate more such integrated circuits at a lower cost. This acquisition is a covered transaction under section 850.210(a)(4)(ii), because this transaction results in the engagement of a person of a country of concern in a covered activity.

Released on January 17, 2025

6. Would a U.S. person acting as a depository bank for or a custodian of reference shares of a covered foreign person in support of an American Depositary Receipt (ADR) program constitute engaging in a covered transaction under section 850.210?

Answer: Under section 850.210(a)(1), a covered transaction includes the direct or indirect acquisition of an "equity interest" in a covered foreign person.

Some entities, however, administer or support ADR programs in which they do not obtain an equity interest in the reference shares of a foreign company. For example, where the U.S depositary bank or custodian holds the shares of the covered foreign person solely for the benefit of holders, beneficial owners, or purchasers of ADRs; has no right to buy or sell the shares for its own account; has no right to vote the shares without instruction from the holder of the related ADR; has no right to future ownership of the shares; and receives income only through customary fees for administrative services provided in connection with the issuance of the ADRs rather than from dividends or other income associated with the shares, the U.S. depositary bank or custodian would not, absent additional facts, be considered to have "acquired an interest" in the covered foreign person under section 850.210(a)(1).

Under such circumstances, a U.S. person acting as a depositary bank for or a custodian of reference shares of a covered foreign person for purposes of issuing ADRs would not, absent additional facts, be engaging in a covered transaction. Where the facts and circumstances differ from the above-described program, however, the results may differ.

Released on May 23, 2025

7. Would a U.S. person bank that transfers funds as part of a covered transaction undertaken by another person be itself engaging in a covered transaction?

Answer: Company C, a U.S. person, undertakes a covered transaction and Company D, an unrelated U.S. person bank, transfers funds in order to effectuate the transaction by

Company C. Company D is not itself undertaking a covered transaction under section 850.210 even if Company D had knowledge that the transaction was a covered transaction because, absent additional facts, the mere transfer of funds by a bank does not meet the criteria of a covered transaction enumerated under section 850.210(a)(1) through (a)(6).

In addition, absent additional facts, a U.S. person bank that transfers funds in order to effectuate a transaction by a non-U.S. person that would be a covered transaction if engaged in by a U.S. person is also not liable for "knowingly directing" such a transaction because the bank does not have authority to make or substantially participate in decisions on behalf of the non-U.S. person, and therefore could not exercise that authority to direct, order, decide upon, or approve such transaction.

Nothing in this response relieves a bank of its obligation to comply with any other provision of applicable law or regulation.

Released on May 23, 2025

IV. Notifiable and Prohibited Transactions

1. How are computation thresholds for an AI system calculated for the purpose of determining whether a transaction is a notifiable transaction, a prohibited transaction, or neither?

Answer: The computation thresholds for AI systems should be calculated by aggregating the quantity of computing power measured in computational operations (for example, integer or floating-point operations) required to train a given AI system. For instance, the computational operations required to train an AI system that is a combination of smaller, pre-trained AI models would be the summation of the computational operations required to train each component model of the AI system. Similarly, developing an AI model based on the transfer of knowledge from one model to another would include the computational operations required to train both models.

Released on December 13, 2024

2. How can a U.S. person evaluate whether an investment target or other transaction counterparty "intends" for an AI system to be used for the end uses enumerated in section 850.224(j)?

Answer: The Treasury Department expects that U.S. persons may be able to evaluate whether a covered foreign person intends for an AI system to be used for certain end uses based on, among other things, pre-transaction discussions and meetings with counterparties where such a result is considered—these situations may confer "knowledge," as defined in section 850.216, including "reason to know."

Released on December 13, 2024

3. **Does "government" in section 850.217(d)(1) and section 850.224(j)(2) modify "mass-surveillance" in addition to "intelligence"?**

   Answer: No. In section 850.217(d)(1) and section 850.224(j)(2), "government" modifies only "intelligence;" "government" does not modify "mass-surveillance" (in other words, such mass-surveillance could be on behalf of a government or not).

   Released on January 17, 2025

V. U.S. Person Due Diligence

1. **What does "all reasonable steps" mean regarding a U.S. person prohibiting and preventing a controlled foreign entity from engaging in a transaction that would be a prohibited transaction if engaged in by a U.S. person**?

   Answer: Pursuant to section 850.302, a U.S. person is required to take "all reasonable steps" to prohibit and prevent any transaction by its controlled foreign entity that would be a prohibited transaction if engaged in by a U.S. person. The Treasury Department expects that a U.S. person will exercise its rights as a parent to prevent a controlled foreign entity from engaging in a transaction that would be prohibited if undertaken directly by the U.S. person. If a controlled foreign entity undertakes a transaction that would be a prohibited transaction if engaged in by a U.S. person, the Treasury Department will consider, among other factors, any of the following with respect to a U.S. person and its controlled foreign entity in determining whether the U.S. person took "all reasonable steps" for purposes of assessing compliance with the Outbound Rules: (1) the execution of agreements with respect to compliance with the Outbound Rules between the U.S. person and its controlled foreign entity; (2) the existence and exercise of governance or shareholder rights by the U.S. person with respect to the controlled foreign entity, where applicable; (3) the existence and implementation of periodic training and internal reporting requirements by the U.S. person and its controlled foreign entity with respect to compliance with the Outbound Rules; (4) the implementation of appropriate and documented internal controls, including internal policies, procedures, or guidelines that are periodically reviewed internally, by the U.S. person and its controlled foreign entity; and (5) implementation of a documented testing and/or auditing process of internal policies, procedures, or guidelines.

   In evaluating whether "all reasonable steps" were taken, the Treasury Department will consider the totality of the relevant facts and circumstances, including whether steps were reasonable in light of the relevant facts and circumstances and whether steps were taken earnestly and in good faith, *e.g.*, were intended to be effective and (as applicable) were adequately resourced and empowered to function effectively.

   Released on December 13, 2024

2. What constitutes a "reasonable and diligent inquiry," as described in the discussion of the knowledge standard in 850.104?

Answer: A "reasonable and diligent inquiry" refers to a U.S. person's efforts to obtain relevant information about a transaction as part of a reasonable pre-transaction due diligence process, given that whether a transaction is a "covered transaction" depends, in part, on the knowledge a U.S. person had or could have had at the time of the transaction. Because each transaction is different, the Treasury Department will consider the totality of relevant facts and circumstances in assessing whether such an inquiry has been undertaken. Such assessment will consider, among other things, the specific factors set forth in section 850.104(c):

> (1) The inquiry a U.S. person has made regarding an investment target or other relevant transaction counterparty (such as a joint venture partner), including questions asked of the investment target or relevant counterparty, as of the time of the transaction;
>
> (2) The contractual representations or warranties the U.S. person has obtained or attempted to obtain from the investment target or other relevant transaction counterparty (such as a joint venture partner) with respect to the determination of a transaction's status as a covered transaction and status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;
>
> (3) The efforts by the U.S. person as of the time of the transaction to obtain and consider available non-public information relevant to the determination of a transaction's status as a covered transaction and the status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;
>
> (4) Available public information, the efforts undertaken by the U.S. person to obtain and consider such information, and the degree to which other information available to the U.S. person as of the time of the transaction is consistent or inconsistent with such publicly available information;
>
> (5) Whether the U.S. person purposefully avoided learning or seeking relevant information;
>
> (6) The presence or absence of warning signs, which may include evasive responses or non-responses from an investment target or other relevant transaction counterparty (such as a joint venture partner) to questions or a refusal to provide information, contractual representations, or warranties; and
>
> (7) The use of available public and commercial databases to identify and verify relevant information of an investment target or other relevant transaction counterparty (such as a joint venture partner).

The "reasonable and diligent inquiry" framework is intended to apply to a variety of transactions rather than creating a prescriptive, one-size-fits-all requirement. Under this framework, a U.S. person can, following a "reasonable and diligent inquiry," proceed with a transaction if at the time it does not have knowledge of relevant facts that would render the transaction a covered transaction. This would be true even if, for example, the investment target had been engaged in a covered activity at the time of the relevant transaction, but the U.S. person lacked knowledge or a reason to know about that covered activity following a "reasonable and diligent inquiry."

Released on December 13, 2024

3. What should a U.S. person do when information required to determine the applicability of the Outbound Rules is only within the possession of the investment target? What if a U.S. person is unable to obtain answers to diligence questions?

Answer: The Treasury Department expects a U.S. person to make efforts to ascertain relevant information about a transaction as part of a reasonable pre-transaction due diligence process. The Treasury Department acknowledges that in certain instances, information required to assess whether a transaction is a covered transaction may be difficult to ascertain. In such circumstances, a U.S. person may wish to obtain representations or warranties from the relevant transaction counterparty regarding pertinent information such as the investment target or counterparty's ownership, investments, and activities. While receipt of contractual representations or warranties—such as with respect to a transaction's status as a covered transaction and the status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person—does not confer a safe harbor, such representations and warranties can provide, in the absence of other relevant information available to a U.S. person as part of a "reasonable and diligent inquiry" and the absence of warning signs, an indication that a U.S. person lacked a "reason to know" of such facts or circumstances.

Released on December 13, 2024

4. What are the expectations for a U.S. person investor in terms of doing diligence to determine whether entities downstream of an investment target are themselves covered foreign persons such that section 850.209(a)(2) may apply and the investment target may also be a covered foreign person?

Answer: For a transaction to be a covered transaction as defined in section 850.210, the U.S. person must know at the time of the transaction that such transaction is with or involving a covered foreign person. The Treasury Department's expectations of a "reasonable and diligent inquiry" therefore relate to whether an investment target or other relevant counterparty meets the definition of a covered foreign person. Depending on applicable facts and circumstances, part of such a "reasonable and diligent inquiry" may include, among other things, making inquiries of an investment target or relevant counterparty as to whether any entity or entities in which the target has an interest specified

in section 850.209(a)(2) are a covered foreign person and if so, whether such entity or entities contribute to the investment target's overall finances in a way that could make the target a covered foreign person under section 850.209(a)(2).

Certain information necessary to ascertain the applicability of section 850.209(a)(2) may be exclusively within the possession of the investment target. In accordance with section 850.104(c), in assessing whether a U.S. person has undertaken a "reasonable and diligent inquiry," the Treasury Department may consider, among other things, whether the relevant information was sought from the investment target and whether there were warning signs indicating that an investment target's answers may be incomplete, inaccurate, or untruthful. A U.S. person is also expected to use, among other resources, available public and commercial databases to attempt to identify relevant information or verify relevant information provided by an investment target. However, this expectation does not necessarily give rise to an expectation of an individualized "reasonable and diligent inquiry" to be conducted with respect to each entity in which an investment target has or may have an interest.

Released on December 13, 2024

VI. Knowledge Standard and Knowingly Directing

1. Does a U.S. person's participation in an advisory board or advisory committee of a pooled investment fund constitute "knowingly directing" in the context of what would be a prohibited transaction (if undertaken by a U.S. person)?

Answer: In situations where an advisory board or committee has the authority to approve or disapprove certain transactions, such as those where conflicts of interest are present, the advisory board or committee would have the authority to "make or substantially participate in decisions" of the pooled investment fund. In cases where an advisory board or committee approves a transaction that would be a covered transaction if undertaken by a U.S. person, a U.S. person that participates in the advisory board or committee would be liable for "knowingly directing" such a transaction unless they recuse themself in the manner specified in section 850.303(b).

Released on December 13, 2024

2. How does the knowledge standard work as applied to a U.S. person who may be "knowingly directing" a transaction?

Answer: Under section 850.303, a U.S. person is prohibited from knowingly directing a transaction by a non-U.S. person that the U.S. person "knows at the time of the transaction would be a prohibited transaction if engaged in by a U.S. person." Because the knowledge standard applies to the U.S. person, and not the non-U.S. person entity, the relevant consideration is whether the U.S. person knew (which includes having "reason to know") of the transaction's status at the time it is undertaken. As such, the Treasury Department expects a U.S. person to undertake a reasonable and diligent inquiry regarding a transaction

where such U.S. person has the potential to meet the criteria under section 850.303. As noted at section 850.104(d), an assessment of whether a U.S. person has undertaken a reasonable and diligent inquiry is based on a consideration of the totality of relevant facts and circumstances.

In cases where the relevant non-U.S. person entity undertakes transaction diligence, the U.S. person is expected to carefully consider any red flags, contradictory information, or warning signs that may arise in connection with such diligence. The U.S. person must evaluate whether the diligence conducted by the non-U.S. person entity is sufficient to meet the standard of a "reasonable and diligent inquiry" and there may be instances where the U.S. person should not solely rely on the non-U.S. person entity's diligence work.

Released on January 17, 2025

3. If a U.S. person at a non-U.S. fund starts negotiating a potential investment only to determine during the negotiation that the investment would be a prohibited transaction if engaged in by a U.S. person and immediately recuses from further involvement in the transaction, would the U.S. person still be liable under section 850.303(a) for "knowingly directing" the transaction?

Answer: Absent additional facts, a U.S. person at a non-U.S. fund who begins negotiating a potential investment in a person of a country of concern, but learns that the investment would constitute a prohibited transaction if engaged in by a U.S. person and immediately ceases involvement with the transaction prior to the non-U.S. fund approving and engaging in the transaction, would not be liable under section 850.303(a) for "knowingly directing" the transaction, given they did not knowingly order, direct, decide upon, or approve a prohibited transaction.

Example 3.1: A U.S. person serves on the investment committee at a pooled investment fund that is not a U.S. person; through participation on the investment committee, the U.S. person has the authority to make investment decisions on behalf of the fund. The U.S. person begins negotiating a potential investment into Company A, a person of a country of concern. Subsequently, the U.S. person obtains knowledge that Company A is engaged in a covered activity such that the transaction would be a prohibited transaction if undertaken by a U.S. person. The U.S. person immediately ceases to engage in negotiations and does not participate in any further actions or decisions related to the transaction. The transaction is ultimately undertaken. Absent additional facts, the U.S. person would not be liable under section 850.303(a) because they did not knowingly order, direct, decide upon, or approve the prohibited transaction.

Released on January 17, 2025

4. Does section 850.303 apply to notifiable transactions?

Answer: No, it does not. Section 850.303 does not prohibit a U.S. person from knowingly directing a transaction by a non-U.S. person that the U.S. person knows at the time of the

transaction would be a notifiable transaction if engaged in by a U.S. person. Because section 850.303 does not apply to notifiable transactions, a U.S. person who knowingly directs such a transaction is not required to submit a notification in connection with the transaction.

Released on January 17, 2025

5. Does section 850.303 apply to both U.S. person individuals (natural persons) and entities (legal persons)?

Answer: Section 850.303(a) prohibits U.S. persons, defined in section 850.229 to include both individuals (citizens and lawful permanent residents) and entities organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, or any person in the United States, from knowingly directing a transaction by a non-U.S. person that the U.S. person knows at the time of the transaction would be a prohibited transaction if engaged in by a U.S. person.

Released on January 17, 2025

6. Does section 850.303 apply to non-U.S. persons temporarily in the United States?

Answer: Yes, section 850.303 applies to non-U.S. persons temporarily in the United States, because section 850.229 defines a U.S. person to include any person located in the United States, and section 850.220 defines a person to mean any individual or entity.

Example 6.1: Company B is an entity incorporated outside of the United States with an employee who is not a U.S. citizen or permanent resident and is temporarily traveling to the United States. The employee is a U.S. person under section 850.229 during that person's stay in the United States, because such person is physically present in the United States. Absent additional facts, Company B is not a U.S. person; the physical presence of an employee in the United States does not itself render Company B a U.S. person. The employee would be subject to the Outbound Rules while the employee is in the United States, including prohibitions on "knowingly directing" transactions (if such employee has authority and exercises that authority pursuant to section 850.303).

Released on January 17, 2025

7. Does section 850.303 prohibit a U.S. person from providing legal and compliance advice on the Outbound Rules at the decision-making stage?

Answer: No, it does not. Section 850.303 states that a U.S. person "knowingly directs" a transaction when the U.S. person has authority, individually or as part of a group, to make or substantially participate in decisions on behalf of a non-U.S. person, and exercises that authority to direct, order, decide upon, or approve a transaction. Such authority exists when a U.S. person is an officer, director, or otherwise possesses executive responsibilities at a non-U.S. person entity. Absent additional facts, section 850.303 does not prohibit a U.S.

person from providing legal and compliance advice on the Outbound Rules, including at the decision-making stage.

Example 7.1: A U.S. person is an attorney employed in the legal department of Company C, a company that is not a U.S. person, and the U.S. person attorney does not have the authority to make decisions on behalf of Company C. Per instructions from Company C's management, the U.S. person attorney engages in a legal analysis and advises the company on the tax implications of the potential investment. Company C then makes the investment. Absent additional facts, the U.S. person attorney has not knowingly directed an otherwise prohibited transaction under section 850.303(a), because the U.S. person attorney did not have the authority to make decisions on behalf of Company C and did not order, direct, decide upon, or approve the transaction.

Released on January 17, 2025

VII. Excepted Transaction

1. What is an example of an intracompany transaction that is an excepted transaction?

Example 1.1: Company A, a U.S. person, has a controlled foreign entity, Company B, that has operations in a country of concern. Company B engages in various business lines, and has since prior to January 2, 2025, including one that involves a covered activity, therefore Company B is a covered foreign person. After January 2, 2025, Company A acquires an additional equity interest in Company B to enable Company B to further develop a new business line that does not involve a covered activity. Absent additional facts, this is an excepted transaction under section 850.501(c), because the U.S. person undertook a transaction with its controlled foreign entity, which would otherwise be a covered transaction, to support new operations that are not covered activities.

Example 1.2: Assume the same facts as Example 1.1, except Company A also provides debt financing to Company B to bridge market challenges impacting the sale of goods related to the covered activity. The debt financing is structured so as to afford Company A an interest in Company B's profits. Absent additional facts, this is an excepted transaction under section 850.501(c), because the transaction is between a U.S. person and its controlled foreign entity, which would otherwise be a covered transaction, that maintains the covered activity that the controlled foreign entity was engaged in prior to January 2, 2025.

Released on December 13, 2024

2. What is an example of a syndicated debt financing that is an excepted transaction?

Example 2.1: Companies C, D, and E are non-U.S. person banks and Company F is a U.S. person bank. Companies C, D, E, and F enter into a syndication agreement to provide a loan to a covered foreign person. Company C is the syndication agent, and no company but Company C can initiate any action vis-à-vis the covered foreign person debtor. The

credit agreement for the loan provides the syndicate banks with a voting interest upon default. Six months later, the covered foreign person debtor defaults on the loan, resulting in the syndicate's acquisition of a voting interest in the covered foreign person. Absent additional facts, this is an excepted transaction for Company F under section 850.501(e). While the U.S. person bank is a lender in a syndicate that provided a loan to a covered foreign person that, upon default, provided the U.S. person bank with a voting interest, in this example such U.S. person bank cannot on its own initiate any action vis-à-vis the debtor and is not the syndication agent.

Released on December 13, 2024

3. Would a U.S. person's acquisition of an ADR representing ownership in shares of a covered foreign person constitute a covered transaction under section 850.210?

Answer: An ADR is a "security" as defined in section 3(a)(10) of the Securities Exchange Act of 1934, as amended, at 15 U.S.C. 78c(a)(10). If such a security trades on a securities exchange or through the method of trading that is commonly referred to as "over-the-counter," then such a security would be considered a "publicly traded security" and therefore a U.S. person's acquisition of such ADR would be an excepted transaction under section 850.501(a)(1)(i).

Released on May 23, 2025

VIII. National Interest Exemption

1. How is a national interest exemption granted, who can request such an exemption, and what materials need to be submitted to be considered for such an exemption?

Answer: The Secretary of the Treasury, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may determine that a covered transaction is in the national interest of the United States and therefore is exempt from applicable provisions in Subparts C and D of part 850 (excluding sections 850.406, 850.603, and 850.604). Such a determination may be made following a request by a U.S. person on its own behalf or on behalf of its controlled foreign entity. Any such determination will be based on consideration of the totality of the relevant facts and circumstances. The Treasury Department anticipates that this exemption of a covered transaction will be granted by the Secretary of the Treasury only in exceptional circumstances.

Similar to the submission of a notification, the required certification for a national interest exemption must be signed by a duly authorized designee of the person submitting the request to ensure the provision of accurate and complete information to the Treasury Department.

Additional information on the national interest exemption is available at https://home.treasury.gov/system/files/206/Consideration_Guidelines_Related_Request_Under-850502a.pdf.

Released on December 13, 2024

IX. Operational Considerations

1. Can parties to a notifiable transaction submit a joint notification or should each party submit its own notification?

Answer: Each U.S. person relevant to a transaction under sections 850.401, 850.402, or 850.403, is required to submit a separate notification. Only U.S. persons are subject to the notification requirement. A U.S. person must certify to the accuracy of submitted information pursuant to section 850.203, including with respect to any information provided by a covered foreign person or other recipient of financing that the U.S. person includes in the submission.

Released on January 17, 2025

X. Publicly Traded Securities

1. If a U.S. person acquires a security that has been issued as part of a follow-on offering where the security is of the same class as an existing publicly traded security, would that transaction meet the criteria of an excepted transaction under section 850.501(a)(1)(i)? What about a U.S. financial institution's acquisition of securities in connection with underwriting services it provides in support of the follow-on offering?

Answer: Where an issuer's securities are already publicly traded, and that issuer makes a follow-on offering of securities that are of the same class as the securities that are already publicly traded and, upon issuance, will be fungible with such publicly traded securities (*e.g.*, will have the same identification number upon issuance, provides identical material rights and privileges—such as with respect to voting and dividends), a security issued in such follow-on offering falls under the description of a "publicly traded security" under section 850.501(a)(1)(i) of the Outbound Rules. Accordingly, the acquisition by a U.S. person of such a security would be an excepted transaction under section 850.501(a)(1)(i), so long as it does not afford the U.S. person rights beyond standard minority shareholder protections with respect to the covered foreign person as described in section 850.501(a)(2).

Similarly, a security acquired by a U.S. financial institution in connection with providing underwriting services for such a follow-on offering would also fall under the description of a publicly traded security under section 850.501(a)(1)(i) and hence such an acquisition would be an excepted transaction, so long as it does not afford the U.S. person rights

beyond standard minority shareholder protections with respect to the covered foreign person as described in section 850.501(a)(2).

Released on December 23, 2025

2. **If a U.S. person acquires a financial interest that is convertible into, or provides the right to acquire, a publicly traded security, would that transaction be an excepted transaction under section 850.501(a)(1)(i)?**

Answer: For purposes of the Outbound Rules, a U.S. person's acquisition of a contingent equity interest (as defined in section 850.205 of the Outbound Rules) that is convertible into, or provides the right to acquire, only a publicly traded security is considered an investment in such publicly traded security and is therefore an "excepted transaction" under section 850.501(a)(1)(i), so long as it does not afford the U.S. person rights beyond standard minority shareholder protections with respect to the covered foreign person as described in section 850.501(a)(2). For clarification, the acquisition of a contingent equity interest that is convertible into, or provides the right to acquire, a publicly traded security *and* cash or another form of consideration that is not covered by the Outbound Rules would still be an "excepted transaction" so long as the criteria in 850.501(a)(1)(i) and (a)(2) are met.

Note that any conversion of a contingent equity interest must be analyzed separately. See sections 850.210(a)(3) and 850.210(c).

Example 2.1: A U.S. Person acquires a convertible note issued by an entity (Company A), which the U.S Person knows is a covered foreign person. The convertible note provides that, upon certain triggering events, the debt interest may be converted exclusively to Class A shares of Company A, which are publicly traded securities. Absent additional facts, the U.S. Person's initial acquisition of the convertible note is not a covered transaction, assuming that the convertible note does not afford the U.S. Person rights beyond standard minority shareholder protections with respect to Company A as described in section 850.501(a)(2).

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3. **Would a U.S. financial institution that assists with an initial public offering (IPO) for a covered foreign person, where such assistance does not include the financial institution's acquisition of any non-publicly traded shares in the covered foreign person, be engaging in a covered transaction?**

Answer: As stated in the preamble to the Outbound Rules, "services ancillary to IPOs that do not include the acquisition of an equity interest (or other interests set forth in the definition of a "covered transaction"), including underwriting services that do not entail acquiring such an interest, are not a covered transaction." Absent additional facts, this activity would not constitute a covered transaction.

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4. Would the acquisition of a publicly traded security by a U.S. person following the occurrence of a public listing and pursuant to a subscription agreement (or other agreement such as a standby underwriting agreement) entered into prior to such listing be engaging in a covered transaction?

Answer: As noted in section 850.501(a)(1)(i) of the Outbound Rules, an excepted transaction includes an investment in a "publicly traded security." Absent additional facts, when a U.S. person acquires an equity interest in a covered foreign person, and at the time of such acquisition the equity interest is publicly traded, such security falls under the description of a "publicly traded security" in section 850.501(a)(1)(i), regardless of when an agreement is entered into.

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5. Is a shareholder's right to nominate an entity's directors considered a standard minority shareholder protection as described in section 850.501(a)(2)?

Answer: A shareholder's right to nominate (that is, *propose* for election) an entity's directors would be considered a standard minority shareholder protection as described in section 850.501(a)(2) if that right is generally available to similarly situated shareholders of that entity solely by virtue of their minority shareholding. Therefore, an investment that affords a U.S. person such a right is not precluded from being an excepted transaction under section 850.501(a)(2) simply by virtue of the U.S. person being afforded such a right.

In the preamble to the Outbound Rules, the Treasury Department responded to a question from a commenter regarding a PRC statute that grants certain proposal rights to shareholders and noted that it did not consider such rights to be standard minority protection rights. Following publication of the Outbound Rules, the Treasury Department received additional information on this issue, including that the PRC statute has been updated from what was discussed in the public comment submitted during the rulemaking process. Upon further consideration, the Treasury Department has determined that proposal rights generally available to similarly situated shareholders (such as shareholders meeting a certain low ownership threshold set in PRC statute) would qualify as standard minority shareholder protections. In contrast, the right to appoint a director, regardless of whether such a right is accorded to similarly situated shareholders, does not constitute a minority shareholder protection.

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XI. COINS Act

1. What is the Comprehensive Outbound Investment National Security Act of 2025 (COINS Act)?

Answer: The COINS Act was passed by the U.S. Congress and became law on December 18, 2025, as part of the National Defense Authorization Act for Fiscal Year 2026. Among other things, it directs the Secretary of the Treasury to issue regulations restricting United States outbound investments in countries of concern involving certain technologies.

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2. How does the passage of the COINS Act impact the Outbound Rules that became effective on January 2, 2025?

Answer: The Outbound Rules that became effective on January 2, 2025, and the obligations they set out, remain in effect until the Treasury Department issues regulations pursuant to the COINS Act.

The COINS Act instructs the Secretary of the Treasury to issue regulations within 450 days of its enactment to carry out the relevant provisions set forth therein. In the meantime, parties should continue to act in full compliance with the Treasury Department's current regulations at 31 CFR part 850 (including submitting notification of any notifiable transactions and refraining from engaging in any prohibited transactions).

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