Outbound enforcement has started; Treasury contacting U.S. investors

MAY 17, 2025

Even though the Trump administration is reviewing the outbound foreign investment review regime, enforcement has begun. We've now heard multiple reports that the Treasury Department is reaching out to U.S. venture capital and private equity firms, inquiring about investments that might be covered transactions.

WHAT HAPPENED

Venture capital and private equity firms have begun hearing from representatives of the Treasury Department regarding the Outbound Investment Security Program.

Cooley partner Annie Froehlich says transaction parties should pay close attention to political developments, as the Trump administration is currently reviewing the Outbound Investment Security Program. "The relevant market should monitor the landscape closely for regulatory developments, which are expected in part to expand investment restrictions to more industry sectors."

According to experts who spoke to Foreign Investment Watch, Treasury has not only been monitoring investments for "covered transactions" that might be implicated in the outbound regime, but has begun outreach to U.S. investors about those deals.

"I can confirm that Treasury is reaching out with comments and questions on notifications that U.S. investors have voluntarily submitted," said Laura Black, a partner at White & Case who previously served at CFIUS, "in a manner similar to Treasury's approach with respect to CFIUS filings."

"Yes, I understand inquiries are being made [by Treasury]," added another member of the CFIUS bar, "although my clients haven't been contacted so can't comment on what the actual inquiries look like."

"While I have no firsthand knowledge that the Office of Global Transactions is conducting outreach," said StoneTurn partner David Holley, "I do understand from others it is happening."

Silicon Valley venture capital firm Benchmark, for example, was reportedly contacted by Treasury regarding an investment in Manus AI, which is headquartered in Beijing. Benchmark led a $75 million funding round at Manus last month; the company had already received an investment from China's TenCent, and from HSG, which — as we reported first in 2023 and again in 2024 — was spun out of Sequoia amid scrutiny from the China Select Committee.

King & Spalding partner Phil Ludvigson, who recently served as acting Deputy Assistant Secretary for Investment Security at Treasury, said the enforcement activity was expected. “At its outbound conference six months ago, Treasury officials telegraphed that they would begin enforcing the new regulations as written, even in the face of future changes.”

Cooley partner Annie Froehlich was not surprised by the enforcement activity. “As a general matter,” she said, “national security regimes — to include CFIUS, sanctions, and export controls — are enforced vigorously. We would expect the same enforcement posture in connection with the OISP, notwithstanding anticipated changes to the current regulations.”

QUICK CONTEXT

As we’ve covered extensively, the Treasury Department’s rule restricting U.S. outbound investment in certain Critical and Emerging Technologies in China became effective on Jan. 2, 2025. Some of those investments in Chinese CET — such as semiconductors, quantum computing and AI — are now either prohibited or require notification to Treasury.

The Treasury Department has been ramping up for the program. The Department launched its own website and submission process, and has published a Frequently Asked Questions document, as well as considerations and guidelines related to requests for a national security exemption. Treasury also hosted an outbound investment security conference in December.

David Shogren is Director of the Treasury Department’s new Office of Global Transactions, which administers the outbound program

Last year, David Shogren — previously the Director of Monitoring and Enforcement for CFIUS — was named the Director of the Treasury Department’s new Office of Global Transactions, which administers the outbound program.

In February, the Trump administration released its America First memorandum, which — among other things — required that the Treasury Secretary review whether the Outbound Investment Security Program “should be modified or rescinded and replaced.”

At the time, experts told us they were not surprised by the review of the outbound program, and most experts told us the Trump administration was more likely to strengthen the program than eliminate it.

Experts say that, despite the ongoing review, enforcement of the existing program was anticipated. “It is not surprising that there is now OISP enforcement activity,” said Wilson Sonsini partner Stephen Heifetz. According to Heifetz, the outbound program is politically popular among both political parties, “so from a political standpoint, enforcing this regime is all up-side.”

In fact Olga Torres at Torres Trade Law expects enforcement to increase. "Based on what we are seeing so far," she says, "we expect news about OISP investigations and enforcement to ramp up in the coming months as OISP personnel settle into their roles and enforcement priorities are solidified."

DETAILS ON THE INQUIRIES

According to experts who spoke with Foreign Investment Watch, the Office of Global Transactions at Treasury has been reaching out to venture capital firms and private equity firms to discuss particular transactions. The conversations involve questions aimed at helping Treasury determine whether the investment was a covered transaction, and whether the investors considered the outbound regime before deploying capital.

"I can't provide details, but there were a series of questions on the deal, including questions about whether and how OISP was considered during diligence," said one individual familiar with Treasury's communications.

David Holley at StoneTurn has heard the same. "It's my understanding that Global Transactions is looking to understand the process by which it was determined that the transaction was permissible under OISP."

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This is also aligned with the insights of Cooley partner Annie Froehlich and her peers, who recently wrote that investors are being asked to "describe how the applicability of [the OISP regime] was considered during the diligence process of the investment."

According to Froehlich and her peers, the OISP regulations require parties to conduct appropriate diligence up front, to determine whether potential investment is either "notifiable" or "prohibited" under the new rule. "[T]he parties should be prepared to answer this question in advance of any OISP post-closing outreach," they say.

Holley at StoneTurn agrees. "It is imperative that U.S. persons undertake focused due diligence to understand why OISP does not apply to the transaction and document the steps taken to reach that conclusion," he says. "It would appear that Global Transactions, for now, is taking a very black-and-white approach to enforcement, due to the lack of what Treasury Secretary Scott Bessent called 'a yellow zone' or grey area."

Laura Black at White & Case notes that, if there are multiple U.S. investors in a funding round and the notification requirements are triggered, each party must make a filing. "While each investor must ensure the accuracy of the information they submit," says Black, "I would recommend coordination on the portions of the notification relating to the target to ensure consistency and to reduce follow-up questions."

"Companies who may have committed a violation of the outbound regulations should seriously consider the timing and merits of a voluntary self-disclosure," adds Ludvigson at

King & Spalding.

Olga Torres notes that inquiries from Treasury may come even after agreements have been signed, so it is important for parties proactively to assess whether a transaction falls under the outbound investment rules as part of pre-closing due diligence. “Conducting a risk assessment under the outbound investment rules early on is key to ensuring proper compliance with the new program and can prevent potential roadblocks later if OISP inquiries are in fact received,” she says.

Froehlich at Cooley adds that transaction parties should pay close attention to political developments, as the Trump administration is actively reviewing the OISP. “The relevant market should monitor the landscape closely for regulatory developments, which are expected in part to expand investment restrictions to more industry sectors.”

We’re trying to get our hands on a copy of the actual communications from Treasury, and will post that as soon as possible.

MORE INFORMATION

See our extensive coverage of the outbound regime.

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