

US Treasury Department Issues Notice of Proposed Rulemaking on Implementation of Outbound Investment: 5 Key Takeaways

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On June 21, 2024, the US Department of the Treasury (Treasury) issued a [Notice of Proposed Rulemaking \(89 Fed. Reg. 55846\)](#), to be codified at 31 C.F.R. Part 850 and also available on the Treasury Department [website](#) (NPRM) that would implement Executive Order 14105 ([88 Fed. Reg. 54867](#)) on “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern” (August 9, 2023) (the Order). The Order directed Treasury to issue regulations aimed at addressing the national security threat posed by certain US investments that may accelerate the development of sensitive technologies and products in “countries of concern.” The NPRM addresses public comments received to the Advance Notice of Proposed Rulemaking (88 Fed. Reg. 54961, to be codified at 31 C.F.R. Chapter VIII) (ANPRM), which Treasury published concurrently with the Order, and offers an opportunity for the public to provide comments to inform the development of the final regulations.

General Overview

Consistent with the Order and the ANPRM, the proposed regulations are expected to apply to US persons investing in a “country of concern” (currently, the People’s Republic of China, Hong Kong, or Macau) in three key sectors: semiconductors and microelectronics, quantum information technologies, and artificial intelligence (AI). US persons will be prohibited from engaging in certain transactions that present a “particularly acute” national security threat, while other transactions will require notification to Treasury within 30 days of the completion date. The obligations apply to a US person with “knowledge” of the relevant facts and circumstances related to a transaction. The Order and the draft implementing regulations focus on the “intangible benefits” that often accompany US investments and consequently Treasury proposes excepting certain types of transactions that would not generally raise such concerns. As expected, the NPRM does not establish a case-by-case review for outbound investment transactions, but it does include the penalty and disclosure framework for violations, which may be subject to civil and criminal penalties, as set forth in the International Emergency Economic Powers Act (IEEPA).

This article discusses five key takeaways from the NPRM and its associated Fact Sheet, [1] and highlights some key differences from the ANPRM.

Key Takeaways

The Proposed Regulations Impose Legal Obligations on US Persons with “Knowledge”

Consistent with the definition of “US person” in US sanctions programs implemented under IEEPA (and also consistent with the definition in the ANPRM and the Order), the NPRM defines a “US person” as a US citizen (wherever located), a lawful permanent resident (a so-called “green card holder”) (wherever located), an entity organized under the laws of the US (including a foreign branch), and persons (regardless of nationality) physically present in the US.

The US person definition does not include foreign subsidiaries of US entities, but the NPRM requires that US persons take “all reasonable steps to prohibit and prevent” transactions by their controlled foreign entities (as defined below) that would be a prohibited if engaged in by a US person. Similar to anti-“facilitation” provisions under most US sanctions programs, the proposed regulations prohibit US persons from “knowingly directing” transactions by non-US entities that would be prohibited if undertaken by US persons. The NPRM indicates that if a US person has decision-making authority over a non-US person and recuses themselves from an investment decision, the US person will

not be considered to have knowingly directed the transaction. Notably, Treasury explained that it is soliciting comments regarding this approach, particularly as to what stage of an investment the recusal carveout should apply, such as at the time of negotiation of a transaction, the decision to undertake the transaction, or overseeing the investment after the completion date.

The NPRM defines “controlled foreign entity” as a foreign entity of which a US person is a “parent,” which in turn is defined as (i) a person who directly or indirectly holds more than 50% of the outstanding voting interest or voting power of the board, (ii) the general partner, managing member, or equivalent, or (iii) the investment adviser in a pooled investment fund. In determining whether a US person took “all reasonable steps” to prevent a controlled foreign entity from engaging in a prohibited transaction, Treasury will consider factors that include agreements with respect to compliance with the proposed regulations, governance or shareholder rights by the US person with respect to the controlled foreign entity, training and internal reporting requirements, and internal policies, procedures, and guidelines.

Under the NPRM, the obligations on US persons with respect to prohibited and notifiable transactions will apply if a US person has knowledge of the relevant facts or circumstances at the time of the transaction. “Knowledge” is defined to mean:

- Actual knowledge that a fact or circumstance exists or is substantially certain to occur
- An awareness of a high probability of a fact or circumstance’s existence or future occurrence –or–
- Reason to know of a fact or circumstance’s existence

This definition is similar to the definition of “knowledge” found in the US Export Administration Regulations at 15 C.F.R. § 772.1.

In response to comments on the knowledge standard discussed in the ANPRM, the NPRM indicates that Treasury will determine whether a US person had knowledge of the relevant facts and circumstances at the time of the transaction based on information the US person had or could have had through “reasonable and diligent inquiry.” The NPRM identifies several factors that Treasury will consider relevant to a reasonable and diligent inquiry, including questions asked of the investment target or counterparty, contractual representations or warranties, efforts by the US person to review available public information and obtain available nonpublic information, whether the US person “purposefully avoided” learning information, and the use of public and commercial databases to identify and verify relevant information of an investment target or counterparty.

US persons should therefore conduct diligence prior to engaging in a transaction that may be prohibited or notifiable under the program, maintain records of such diligence for 10 years, and require certain contractual representations and warranties from the investment target or counterparty when appropriate. According to the NPRM, if a US person has undertaken a reasonable and diligent inquiry and still does not have knowledge of a fact or circumstance relevant to whether a transaction is a covered transaction, Treasury would generally not, absent other circumstances, attribute knowledge of that fact or circumstance to such US person.

The Proposed Rule Would Apply to Specific Categories of Covered Transactions That Involve a Covered Foreign Person

As previewed in the ANPRM, the proposed regulations apply to certain types of investments, each a “covered transaction,” involving certain entities, each of which is referred to as a “covered foreign person.”

Covered transactions are defined to include a US person’s direct or indirect:

- Acquisition of an equity interest or contingent equity interest in a covered foreign person
- Provision of a loan or debt to a covered foreign person, if such financing is convertible to equity or will afford the US person the right to make management decisions on behalf of the covered foreign person or to appoint members of the board of directors of the covered foreign person
- Conversion of a contingent equity interest or conversion of debt to an equity interest in a covered foreign person (including a lender’s foreclosure on collateral)
- Certain acquisitions, leases, or development of operations, land, property, or assets (“greenfield investment”) that result in the establishment of a covered foreign person or the engagement of a person of a country of concern in a “covered activity”
- Entrance into a joint venture with a person of a country of concern that will engage in a covered activity –or–
- Acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund (in each case where the fund is not a US person) that the US person knows likely will invest in a person of a country of concern that is in the semiconductors and microelectronics, quantum information technologies, or AI sectors, and such fund undertakes a transaction that would be a covered transaction if undertaken by a US person

Covered foreign persons are defined to include:

- a person of a country of concern that engages in a covered activity –or–
- a person that directly or indirectly holds a voting interest, board seat, equity interest, or power to direct the management or policies of a covered foreign person; if the person derives more than 50% of its revenue or net income from or incurs more than 50% of its capital expenditure or operating expenses through, the covered foreign person

A person of a country of concern that participates in a joint venture that is a covered transaction will be deemed to be a covered foreign person.

“Countries of concern” are listed in the Annex to the Order, and currently include only the People’s Republic of China and the Special Administrative Regions of Hong Kong and Macau, although additional countries may be added in the future. “Covered activity” includes any of the activities referred to in the definitions of notifiable transactions or prohibited transaction (as further discussed below).

Notably, Treasury explained why it declined to address several comments to the ANPRM, including:

- Setting a de minimis threshold below which a person of a country of concern’s activity involving a covered technology or product would not trigger the definition of covered activity, meaning the person would not be a covered foreign person. Treasury explains that a de minimis threshold based on the level of activity involving a covered technology or product would be challenging and would not effectively respond to the national security objectives of the Order –and–
- Publishing a list of covered foreign persons. Treasury explains that compiling a list of covered foreign persons would be challenging given that such list would likely be subject to frequent changes and underinclusive, which would undermine the national security goals of the Order. Treasury also notes that a list of covered foreign persons could result in attempts to evade the rule through corporate restructuring and would be overly burdensome to maintain

The NPRM indicates that whether a person is a covered foreign person should be determined based on the most recent available annual financial statement, or if that is not available, the most recent unaudited financial statement. Therefore, US persons should review the financial statements from the target company or counterparty to confirm whether an investment may be a covered transaction. The definition of covered foreign persons reflects the program’s broad application to entities that may not engage in covered activities themselves, but that are nevertheless significantly

connected to a covered activity. The NPRM indicates that Treasury will expect a US person to conduct a reasonable and diligent inquiry to determine whether a transaction is covered under the proposed rule, including whether any covered foreign person is involved.

Covered Transactions That Pose an Acute National Security Threat Will Be Prohibited; Those That May Contribute to a National Security Threat Will Require Notification

As directed by the Order, the NPRM targets “covered activities” relating to the development or production of “covered national security technologies and products” in three key sectors identified as posing a “particularly acute” national security threat due to their critical role in advancing the military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern:

- Semiconductors and microelectronics
- Quantum information technologies –and–
- AI

Prohibited Transactions

The NPRM proposes to prohibit covered transactions that involve covered foreign persons engaging in the following “covered activities”:

- Advanced integrated circuit design and equipment
 - The development or production of electronic design automation software for the design of integrated circuits or advanced packaging. “Advanced packaging” is defined as “to package integrated circuits in a manner that supports the two-and-one-half-dimensional (2.5D) or three-dimensional (3D) assembly of integrated circuits, such as by directly attaching one or more die or wafer using through-silicon vias, die or wafer bonding, heterogeneous integration, or other advanced methods and materials.”
 - The development or production of certain front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits, equipment for performing volume advanced packaging, or other items designed exclusively for use in or with extreme ultraviolet lithography fabrication equipment.
- Advanced integrated circuit design and production
 - Designing or fabricating integrated circuits that meet or exceed certain advanced technical thresholds identified by the Bureau of Industry and Security of the Department of Commerce (BIS), or integrated circuits designed for operation at or below 4.5 Kelvin.

- Packaging of integrated circuits using advanced packaging techniques.
- Supercomputers
 - The development, installation, selling, or production of any supercomputer enabled by advanced integrated circuits that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope.
- Quantum computers and components
- Development or production of a quantum computer or its critical components
- Quantum sensors
 - The development or production of any quantum sensing platform designed or intended for military, government intelligence, or mass surveillance end uses.
- Quantum networking and quantum communication systems
 - The development or production of quantum networks or communications systems designed or intended to be used for (1) networking to scale up the capabilities of quantum computers; (2) secure communications, such as quantum key distribution; or (3) other applications with a military, government intelligence, or mass surveillance end use.
- AI Systems
 - The development of AI systems designed to be exclusively used for, or intended to be used for, a military end use or government intelligence or mass surveillance end use.
 - The development of AI systems that are trained using certain quantities of computing power.

In addition to the covered activities identified above, the NPRM proposes prohibiting transactions involving a “covered foreign person,” even if the relevant covered activity would otherwise be a notifiable transaction, if the covered foreign person is:

- Included on the BIS Entity List (15 C.F.R. Part 744 Supplement No. 4) or Military End User List (15 C.F.R. Part 744 Supplement No. 7)
- A “Military Intelligence End-User” as defined by BIS in 15 C.F.R. § 744.22(f)(2)
- Included on Treasury’s list of Specially Designated Nationals and Blocked Persons [2] (SDN List) or owned 50% or more by one or more SDNs

- Included on Treasury's Non-SDN Chinese Military-Industrial Complex Companies List [3] –or–
- Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. § 1189

Notifiable Transactions

The NPRM does not propose to require notification of covered activities in the quantum information technologies sector. The following “covered activities” would be notifiable to Treasury no later than 30 days after completion of a covered transaction:

- Integrated circuit design and production
 - The design, fabrication, or packaging of integrated circuits that is not otherwise covered as a prohibited transaction.
- AI Systems
 - The development of an AI system that is not otherwise a prohibited transaction, and (i) is designed to be used for a military end use or government intelligence or mass surveillance end use, (ii) is intended to be used for cybersecurity applications, digital forensic tools, and penetration testing tools, or the control of robotic systems, or (iii) is trained using a certain threshold of computing power.

If a US person acquires knowledge of a “covered transaction” after the completion date, the US person must notify Treasury of the transaction within 30 days of the acquisition of such knowledge. When providing such notification, the US person will be required to describe any pre-transaction diligence undertaken and explain why the US person either did not possess or obtain such knowledge at the transaction’s completion date.

The NPRM indicates that notifications will be submitted electronically to Treasury and must include a certification by the US person and certain information, including:

- A description of the US person (including a post-closing organizational chart)
- The commercial purpose of the transaction
- The basis for determining that the transaction is a covered transaction
- Transaction information, such as current status, completion date, and value
- Aggregate equity interest, voting interest, and board seats being acquired by the US person
- Information regarding the covered foreign person –and–
- A description of the covered activities

After providing the notification, the US person will have a continuing obligation to supplement the notification if it subsequently learns of a material omission or inaccuracy. The US person must maintain a copy of the filed notification and supporting documentation for 10 years.

Similar to the review process by the Committee on Foreign Investment in the United States (CFIUS), Treasury reserves the right to submit questions or request additional information regarding the notification. However, unlike the CFIUS review process, Treasury will not “clear” or approve covered transactions.

Less Sensitive Transactions Will be Excluded from the Scope of the Program

Consistent with the ANPRM, the NPRM includes exceptions for certain covered transactions that Treasury believes are less likely to confer “intangible benefits” to a covered foreign person, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. These excepted transactions include the following:

- Investments in publicly traded securities (including securities traded on non-US exchanges) or securities issued by an investment company that is registered with the Securities and Exchange Commission or a business development company
- Certain passive investments made as a limited partner in a venture capital fund, private equity fund, fund of funds, or other pooled investment funds. Treasury is considering defining a passive investment as one with limited rights and where the committed capital is either less than 50% of the total assets of the fund or does not exceed \$1 million
- The acquisition of all of the interests in an entity held by one or more person of a country of concern such that the entity would no longer be considered a covered foreign person
- Intercompany transactions to support ongoing operations that would not be considered covered activities
- A transaction made pursuant to a binding capital commitment entered into prior to the date of the Order (August 9, 2023)
- The acquisition of an interest in a covered foreign person due to default on a debt financing made by a syndicate of banks, where the US person cannot initiate action vis-à-vis the debtor and does not have a lead role

Similar to the concept of “excepted investors” in the CFIUS regime, Treasury also proposes an exception for transactions with or involving persons of countries or territories outside the US that Treasury determines are addressing national

security concerns posed by outbound investment. Treasury has not yet identified countries or territories that will fall within this designation. Under the CFIUS rules, the excepted countries currently include the United Kingdom, Canada, Australia, and New Zealand.

The NPRM also indicates that a US person could seek an exemption from the restrictions on the basis that a covered transaction is in the national interest of the United States, and that such exemptions may be subject to binding conditions. Treasury anticipates that this exemption of a covered transaction would be granted by the Secretary of the Treasury (Secretary) only in “exceptional circumstances.”

Violations Will Be Subject to Penalties Under IEEPA and Treasury Will Have the Authority to Nullify, Void, or Otherwise Require Divestment of a Prohibited Transaction

The proposed regulations identify the following violations that could result in penalties:

- Engaging in a prohibited transaction
- Failing to timely submit the information required for a notifiable transaction
- Making materially false or misleading representations, statements, or certifications to Treasury, as well as falsifying or concealing any material facts –and–
- Taking action to evade or avoid or cause a violation of the program

The NPRM also describes the process for US persons to make a voluntary self-disclosure if they obtain knowledge of actual or potential violations. Such voluntary self-disclosures must be in writing and include sufficient detail to afford a complete understanding of the conduct that may constitute the violation. Consistent with voluntary self-disclosures made in connection with US sanctions and export controls violations, Treasury will consider a voluntary self-disclosure as a mitigating factor when determining the appropriate response to a violation.

Violations will be subject to the civil and criminal penalties set forth in IEEPA. The current statutory maximum civil penalty under IEEPA is approximately \$368,000 per violation or twice the amount of the transaction, whichever is greater. A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, a violation may be fined up to \$1 million or, if a natural person, imprisoned for up to 20 years (or both). Persons may also be subject to civil and criminal penalties under 18 U.S.C. § 1001 if they make fraudulent or false statements to the US government.

In addition to penalties, the Order provides authority for the Secretary, in consultation with the heads of relevant agencies, to nullify, void, or otherwise compel the divestment of a prohibited transaction after the effective date of the regulations. The NPRM notes that the Secretary will delegate all authority under the Order to the Assistant Secretary of the Treasury for Investment Security, who is also the Treasury official who oversees the CFIUS process.

Conclusion

The NPRM largely aligns with the ANPRM issued in August 2023, and further cements the US government’s new approach to outbound investment and the protection of US national security. US investors should establish appropriate diligence and compliance procedures and begin considering transaction structures and contractual terms that may be impacted by implementation of the outbound investment program.

Final regulations are expected to be in place by the end of the year. Notably, the Chairman of the House Financial Services Committee, Patrick McHenry, criticized the NPRM as a “multi-year process,” in contrast to the “existing, time-tested sanctions regime that can have an immediate impact.”[4]

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1. [https://home.treasury.gov/system/files/206/Treasury Outbound NPRM Fact Sheet FAQ - 6.21.2024.pdf](https://home.treasury.gov/system/files/206/Treasury%20Outbound%20NPRM%20Fact%20Sheet%20FAQ%20-%206.21.2024.pdf)
2. <https://sanctionslist.ofac.treas.gov/Home/SdnList>
3. <https://ofac.treasury.gov/sanctions-programs-and-country-information/chinese-military-companies-sanctions>
4. <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409303>

Catherine Hein, Counsel, Latham & Watkins LLP

Catherine Hein advises clients on national security matters, including related to the Committee on Foreign Investment in the United States (CFIUS) and the Office of Foreign Assets Control (OFAC).*

Catherine helps clients across industries to identify and strategically address potential issues that may implicate CFIUS authorities. She draws on significant experience in cross-border investments and US national security regulatory regimes.

Prior to joining Latham, she served as Acting Principal Deputy Assistant General Counsel for Enforcement & Intelligence at the US Department of the Treasury (Treasury), where she supported OFAC and the Financial Crimes Enforcement Network (FinCEN). She previously served as the CFIUS Managing Counsel at Treasury, where she led a team of more than 20 lawyers on foreign investment reviews by CFIUS.

In her public service, Catherine advised Treasury leadership and administration stakeholders on policy issues and legal authorities and requirements in connection with foreign investment reviews, economic sanctions, and other US national security matters. She worked extensively on all aspects of CFIUS cases, including non-notified transactions, negotiating complex mitigation agreements, and compliance and enforcement actions.

Catherine has worked for US government agencies on financing for international development and infrastructure projects. She began her career as a banking and finance attorney at an international law firm.

Ruchi G. Gill, Counsel, Latham & Watkins LLP

Ruchi Gill advises clients on all aspects of complex national security matters.

Ruchi counsels clients around the world on complex US national security regulatory issues involving the Committee on Foreign Investment in the United States (CFIUS), export controls, and economic sanctions.

She draws on extensive experience representing clients before CFIUS and related national security regulators, including negotiating significant agreements with the US government to protect national security interests while preserving shareholder and business interests.

Ruchi also advises clients on legal, policy, and enforcement issues that arise under:

- Sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC) and the State Department
- The State Department's International Traffic in Arms Regulations (ITAR)
- The Commerce Department's Export Administration Regulations (EAR)

Ruchi's US government executive and legislative branch experience allows her to provide clients with valuable insight into US national security and foreign relations issues.

Before joining Latham, Ruchi served as Deputy Chief Counsel for the US Senate Committee on Foreign Relations, where she advised on legal and oversight matters, legislative activity, and nominations related to US foreign policy and national security for the Committee's Democratic staff. She also managed a broad range of committee equities in larger legislation, including the US Innovation and Competition Act of 2021, the American Rescue Plan Act of 2021, and annual defense authorization and appropriations bills.

From 2007 to 2017, Ruchi served at the US State Department in various roles, including as an attorney-adviser and special assistant to the Legal Adviser, a foreign affairs officer in the Bureau of International Security and Nonproliferation, and as an economic officer in Guangzhou, China. She frequently participated in bilateral and multilateral consultations and negotiations, as well as advised on economic sanctions, export controls, foreign sovereign immunity, cyber activity, international arbitration, and treaty negotiation and interpretation. She received numerous State Department awards in recognition of her work.

Les P. Carnegie, Partner, Latham & Watkins LLP

Les Carnegie advises companies, financial institutions, and private equity funds, both in the US and globally, on their outbound and inbound business transactions. He helps clients navigate US export controls, sanctions, and foreign investment reviews by CFIUS. He co-leads Latham's Economic Sanctions & Export Controls Practice, and the CFIUS & US National Security Practice.

Les advises clients on legal, policy, and enforcement issues arising under:

- US trade and economic sanctions
- US export controls
- National security reviews of foreign investments in the US conducted by the Committee on Foreign Investment in the United States (CFIUS)

Les draws on strong working relationships with regulators and two decades of legal experience to help clients understand legal restrictions and requirements, secure licensing, make voluntary disclosures and respond to enforcement actions, as well as maintain compliance with various US legal regimes, including:

- National security reviews before CFIUS
- US Treasury Department's Office of Foreign Assets Control (OFAC)
- US Department of State's International Traffic in Arms Regulations (ITAR)
- US Department of Commerce's Export Administration Regulations (EAR), the Foreign Trade Regulations (FTR), and antiboycott regulations

He has developed particular insight on key strategic industries, including:

- Banking and financial services
 - Energy
 - Life Sciences/Biotechnology
 - Aerospace/Defense
 - Consumer/Retail goods
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- Hospitality/Entertainment
- Not-for-profit NGOs/Tax-exempt organizations

Les frequently writes and speaks on sanctions and CFIUS topics. He is regularly recognized by *Chambers USA and The Legal 500 US*, and was named a Top Advisor by *Foreign Investment Watch* in 2020, and a Compliance MVP by *Law360* in 2021. Clients describe him as “our first choice when tackling complex economic sanctions or export control compliance matters,” and “a tireless, engaging advocate and forward thinker,” whose “knowledge of US sanctions is excellent, as are his relationships with OFAC personnel.”

Les organized and edited the first Foreign Direct Investment Regimes app, covering investment from several global jurisdictions.

He clerked for Judge Gerald B. Tjoflat of the US Court of Appeals for the Eleventh Circuit.

Damara L. Chambers, Partner, Latham & Watkins LLP

Damara Chambers, a leading CFIUS and trade controls lawyer, advises clients on cross-border investment, international trade, and national security matters. She co-leads Latham’s CFIUS & US National Security Practice.

Damara advises foreign and domestic clients on complex US national security regulatory issues involving:

- Reviews conducted by the Committee on Foreign Investment in the United States (CFIUS)
- Facility security clearances and the mitigation of foreign ownership, control, or influence (FOCI)
- US export controls
- US economic sanctions

Damara has extensive experience representing clients in all aspects of national security reviews before CFIUS. She has represented clients in a variety of landmark CFIUS matters and brings experience in negotiating some of the most significant national security agreements with the US government.

In her national security practice, Damara also counsels clients on obtaining facility security clearances, adjudicating FOCI, and negotiating FOCI mitigation agreements with the Department of Defense’s Defense Counterintelligence and Security Agency (DCSA), the Department of Energy, and other cognizant security agencies under applicable national industrial security regulations. She also advises clients regarding negotiating, implementing, and complying with various types FOCI mitigation instruments.

In her export controls and sanctions practice, Damara advises companies on:

- Compliance with the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and nuclear export controls administered by the Department of Energy and the Nuclear Regulatory Commission (NRC)
- Economic sanctions administered by the Treasury Department’s Office of Foreign Assets Control (OFAC)
- Import and licensing requirements imposed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

She also frequently advises on export control and economic sanctions issues in mergers, acquisitions, and divestitures.

Damara frequently speaks and writes on CFIUS and trade controls topics.

Damara also represents clients in federal court litigation and maintains an active pro bono practice. Her work includes advising clients in victim compensation, interpleader actions, and immigration matters.

Damara has earned widespread recognition for both her commercial and pro bono work. She has consistently been ranked in *Chambers USA* and *Chambers Global* for her work on CFIUS and FOCI matters. Her honors also include being named a Top Advisor by *Foreign Investment Watch* in 2020 - 2022 and a 2015 Pro Bono Publico Award honoree by the Legal Aid Society.

Damara began her legal career as a law clerk to Judge Juan R. Torruella on the United States Court of Appeals for the First Circuit.

Prior to entering the practice of law, Damara served as a US Navy Officer in the Naval Nuclear Propulsion Program. She has held other positions within the federal government as well, including Special Assistant to the Secretary of Energy and Legislative Fellow with the US Senate Committee on Finance.

Damara currently serves as a member of Latham’s Women Enriching Business (WEB) Committee, which promotes women in business both inside and outside the firm.

James H. Barker, Partner, Lathams & Watkins LLP

James Barker, Chair of the firm’s Communications Industry Group, delivers business-oriented solutions backed by more than 30 years’ experience guiding telecommunications market leaders across all stages of their life cycles and advising global clients on complex CFIUS matters.

James leverages his sophisticated understanding of clients’ cutting-edge technologies, including AI, and trusted industry relationships, to help clients navigate the regulatory and legal issues involving:

- The Federal Communications Commission (FCC), “Team Telecom,” the Committee on Foreign Investment in the United States (CFIUS), and other executive branch agencies, particularly for strategic company, prominent venture capital and private equity firms, and blue chip investment banks and funding sources
- Current and emerging wireless communications technologies, including those that enable the Internet of Things (IOT) and connected vehicles and homes
- Cable, direct broadcast satellite, and other multichannel video programming distributors
- Telephone companies and other common carriers
- Communications controversy and litigation matters before state and federal courts, public utility commissions, and the US Courts of Appeal

James’s experience with spectrum auctions includes all aspects of their implementation for telecommunications clients since the FCC was first granted auction authority in 1993.

James also advises clients on complex telecommunications, content, and technology transactions and negotiates related commercial agreements. He also supports high-profile US and international finance and M&A engagements, including structuring advice related to ownership attribution and foreign investment, intracompany services agreements, licensing and security interest issues, regulatory characterization, US and international regulatory consents, and competition analysis.

A recognized leader at the firm, James is Chair of the firm's Retirement Committee and served as Deputy Office Managing Partner of the Washington, D.C. office.

James served as a law clerk to Judge Peter T. Fay of the US Court of Appeals for the Eleventh Circuit.

Zachary N. Eddington, Counsel, Latham & Watkins LLP

Zachary Eddington's practice focuses on national security reviews before the Committee on Foreign Investment in the United States (CFIUS) and complex commercial litigation.

In his CFIUS practice, Zachary has represented clients in several filed cases and has frequently advised clients on whether CFIUS has jurisdiction to review transactions and whether filings are required or advisable. He also has experience assisting clients with the negotiation and implementation of mitigation agreements and responses to inquiries regarding transactions for which filings were not made.

In his litigation practice, Zachary has drafted or contributed to numerous briefs about a range of constitutional, statutory, and administrative law issues. He also has experience with various aspects of discovery.

Zachary clerked for Judge Jerry Smith of the US Court of Appeals for the Fifth Circuit. Before law school, he served as an intelligence analyst for the US Department of Defense in Washington and Baghdad.

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