

## Biden Executive Order Strengthens and Expands U.S. Sanctions on Chinese Military Companies

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July 14, 2021

President Biden has signed an Executive Order effective August 2, 2021, affirming and expanding U.S. policy restricting the purchase and sale of publicly traded securities of listed Chinese companies with a nexus to China's defense and surveillance technology sectors. E.O. 14032: Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China (E.O. 14032) (the "Order"), expands the scope of the national emergency declared in E.O. 13959, which instituted the initial ban on U.S.-based investors from purchasing, selling or holding certain listed Chinese company securities. U.S. investors holding securities in the listed Chinese companies should carefully review the Order to develop or amend any existing hold or divestment strategy to ensure compliance.

The Order intends to counter "the threat posed by the military-industrial complex of the People's Republic of China" and restrict proliferation of Chinese surveillance technology that "facilitate(s) repression or serious human rights abuse (s)." The Order replaces and supersedes most of E.O. 13959 and entirely revokes E.O. 13974, and provides for a New-CMIC List (defined below), which will be managed by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC"). Our previous alerts covering prior sanctions on Communist Chinese Military Companies in E.O. 13959 and E.O. 13974 are available [here](#) and [here](#).

*Prohibitions:* The Order prohibits any U.S. person from purchasing or selling publicly traded securities, derivatives or investments designed to provide exposure to such securities issued by companies (i) determined to operate in China's defense and related material or surveillance technology sectors, or (ii) that directly or indirectly own or control, or are owned or controlled by, companies operating in those sectors that are identified in the annex to the Order (the "Annex"), or are otherwise designated by the Secretary of the Treasury on the New-CMIC List. Publicly traded securities are broadly defined in the Order as any security "denominated in any currency" that "trades on a securities exchange" or "over the counter" in any jurisdiction.

*Timing:* The Order's prohibitions take effect on August 2, 2021, for companies listed in the Annex. Purchases or sales of covered securities of the companies listed in the Annex "made solely to effect the divestment, in whole or in part, of such securities" are permitted prior to June 3, 2022. For later designated companies not listed in the Annex, the Order takes effect sixty (60) days after designation, and divestment may occur up to 365 days after the date of designation.

*The Annex:* The Annex replaces in its entirety the annex to E.O. 13959 and contains an expanded list of fifty-nine (59) companies.

Departing from E.O. 13959, the Order removes the prohibition against a U.S. person holding covered securities after the divestment period, decreasing the likelihood that a license will be required for continued possession of the covered securities after the divestment period. A license, however, will likely be required for a U.S. person to sell covered securities after the divestment period, and we currently expect that OFAC will issue guidance as to license requirements. The Order further deviates from E.O. 13959 by (i) expanding the criteria by which Chinese companies are subject to the sanctions, (ii) expanding the Chinese companies listed in the Annex, and (iii) supplanting the Replaced-CCMC List (defined below) with New-CMIC List.

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### **New - Chinese Military-Industrial Complex Companies List**

Pursuant to the Order, OFAC's Non-SDN Chinese Military-Industrial Complex Companies List ("New-CMIC List") replaces the Non-SDN Communist Chinese Military Companies List ("Replaced-CCMC List") in its entirety.

Contemporaneous with the Order, OFAC issued two Frequently Asked Questions: Frequently Asked Question ("FAQ") No. 899 clarifying that only companies "whose names exactly match" the names of the companies on the New-CMIC List are subject to the Order's prohibitions, and FAQ No. 897 confirming that companies included in the New-CMIC List may file a request for removal.

The New-CMIC List serves as a reference tool for identifying the companies subject to the Order's investment prohibitions, including both the names of the fifty-nine (59) companies contained in the Annex, and additional identifying information relating to the listed companies such as "a.k.a."s (also known as), "f.k.a."s (formerly known as), issuer names (names that exactly or closely match the names of identified companies), equity tickers, addresses, entity type, and the applicable investment prohibition and divestment deadlines.

The New-CMIC List may be updated from time to time by OFAC, and the most recent updates were made on June 16, 2021. As a result of the June 16 updates, the New-CMIC List contains 189 total entity names, including the fifty-nine (59) entities listed in the Annex and 130 "a.k.a." and "f.k.a." names for those entities. Future updates of the New-CMIC List are expected to include additional subsidiaries of designated companies and companies subsequently designated after the issuance of the Order. The New-CMIC List as updated is available **here**.

### **Updated and New OFAC FAQs**

In connection with the Order and the New-CMIC List, OFAC updated seven prior FAQs relating to E.O. 13959 and issued eight new FAQs, clarifying OFAC's interpretation of the investment restrictions of the Order. These FAQs taken together explain the circumstances when investment services by U.S. persons for non-U.S. persons who purchase or sell covered securities are permitted, and provide further clarification as to: (i) the scope of the Order, (ii) when U.S. persons who work at non-U.S. companies may facilitate purchase or sales of covered securities, and (iii) when U.S. persons are prohibited from investing in foreign funds that contain covered securities.

Through the Order and the New-CMIC List, the Biden Administration continues to solidify and strengthen the United States policy position against China's military-civil fusion strategy and development and dispersion of surveillance technology. To ensure investment activities continue to comply with the Order, U.S. investors holding securities in the listed Chinese companies should familiarize themselves with the Order, the Annex, the OFAC guidance, and the New-CMIC List, checking routinely for additions and revisions.

Please contact one of the authors of this alert or your Miller Canfield attorney should you have any questions as to the applicability or restrictions of the Order, the Annex, the New-CMIC List, or the OFAC FAQs.