

**Council of Institutional Investors  
National Association of State Retirement Administrators  
National Conference on Public Employee Retirement Systems  
National Council on Teacher Retirement**

September 28, 2023

Via Electronic Submission

U.S. Department of the Treasury  
Attention: Meena R. Sharma, Acting Director  
Office of Investment Security Policy and International Relations  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**RE: Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern**

Dear Ms. Sharma,

On behalf of the national associations listed above, whose memberships include long-term institutional investors in every U.S. State, with cumulative assets of over \$5 trillion invested domestically and globally, we are writing with regard to the Department of the Treasury's Advanced Notice of Proposed Rule Making (ANPRM) addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern. There has long been an endorsement, both collectively and individually within our organizations, of federal efforts to ensure entities that pose national security threats are denied access to all U.S. investors and the capital marketplace. To that end, we wish to convey our strong support for the policy objectives of the ANPRM as well as our appreciation for the opportunity to provide comments and feedback. While we outline below some of the more notable and common thoughts shared by our members, we respectfully request the opportunity to discuss further the new program and its implications with the appropriate U.S. Government officials at your earliest convenience.

By way of background, the Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of more than \$5 trillion. The National Association of State Retirement Administrators (NASRA) is a nonpartisan, nonprofit association whose members are the executive directors of the nation's state, territorial, and largest statewide public retirement systems that hold roughly \$5 trillion in trust on behalf of more than twenty million working and retired employees of state and local governments. The National Conference on Public Employee Retirement Systems (NCPERS) represents approximately 500 public retirement plans, plan sponsors, and other stakeholders throughout the United States and Canada who collectively oversee approximately \$4 trillion in retirement assets. The National Council on Teacher Retirement (NCTR) membership includes 63 state, territorial, and local pension systems

that serve active and retired teachers, non-teaching personnel, and other public employees, and have combined assets of more than \$2 trillion in their trust funds.

In general, we support the intent of provisions in the program aimed at ensuring successful implementation of the new regime by U.S. institutional investors and better information to federal officials regarding outbound investments that may not already be captured as part of existing federal sanctions or restrictions. We believe that the program's exceptions for certain U.S. investments into publicly traded securities, index funds, mutual funds, and exchange-traded funds; certain investments made as a limited partner; and the non-retroactive application of the proposed program; would greatly assist in this regard. However, additional clarifications and guidance are needed concerning the details of such exceptions as well as non-retroactivity to best ensure investors are able to fully comply with the proposed and final rules.

Specifically, there is universal concern among our memberships regarding a potential *de minimis* threshold that would exclude from excepted transactions certain passive limited partner investments in pooled investment funds. Neither the size of the capital commitment to a pooled investment fund nor the size of the investor will provide a passive limited partner with control, discretion, or decision-making regarding the investments of the fund. These powers rest solely with the general partner of the fund. It is therefore strongly recommended that the Treasury Department adjust the proposed and final rules to have the general partner of a pooled investment fund bear sole responsibility and liability for the "obligation[s] to determine whether a given transaction is prohibited, subject to notification, or permissible without notification" as outlined in the ANPRM. This would also have the advantage of avoiding potentially inconsistent, incomplete, burdensome, and duplicative reporting across multiple parties to federal officials.

By contrast, limited partners' discretion and decision-making is in the period leading up to their commitment to the fund, when they perform extensive due diligence on the general partner, the fund's investment objectives, and the related legal contracts. As such, there is general support of a knowledge standard whereby limited partner investors would be able to rely in good faith on the contractual covenants and disclosures provided by the fund or its general partner and/or disclosures in the fund's offering materials that the fund will comply with notification requirements and not invest in prohibited transactions.

Again, we would greatly appreciate the opportunity to meet with you to discuss these matters further. Please feel free to contact our organizations' representatives below:

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