

Via Electronic Submission

July 25, 2024

U.S. Department of Treasury  
Attention: Meena R. Sharma  
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 Director Sharma:

I am writing on behalf of the Council of Institutional Investors (CII). 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 approximately \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true “Main Street” investors through their pension funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$40 trillion in assets under management.<sup>1</sup>

This letter is in response to the U.S. Department of the Treasury’s (Treasury) proposed rule entitled “Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern” (Proposed Rule).<sup>2</sup> Consistent with our September 2023 views in response to the Treasury’s related Advanced Notice of Proposed Rulemaking,<sup>3</sup> CII supports the Treasury’s objectives for the Proposed Rule to: “[1)] require [U.S.] . . . persons to

<sup>1</sup> For more information about the Council of Institutional Investors (“CII”), including its board and members, please visit CII’s website at <http://www.cii.org>.

<sup>2</sup> Treas. Reg. § 850, 89 Fed. Reg. 55,846 (July 5, 2024), <https://www.federalregister.gov/documents/2024/07/05/2024-13923/provisions-pertaining-to-us-investments-in-certain-national-security-technologies-and-products-in>.

<sup>3</sup> See Letter from CII et al. to the U.S. Department of the Treasury, Attention: Meena R. Sharma, Acting Director, Office of Investment Security Policy and International Relations 2 (Sept. 28, 2023), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2023/Joint%20CII-NASRA-NCPERS-NCTR%20Letter%20on%20Outbound%20Investment%20ANPRM%209-28-23.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2023/Joint%20CII-NASRA-NCPERS-NCTR%20Letter%20on%20Outbound%20Investment%20ANPRM%209-28-23.pdf) (“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.”); see also Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, Treas. Reg., 88 Fed. Reg. 54,961 (Aug. 9, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-08-14/pdf/2023-17164.pdf>.

provide notification to the . . . Treasury regarding certain transactions involving persons of a country of concern who are engaged in activities involving certain other national security technologies and products that may contribute to the threat to the national security of the [U.S.] . . . ; and [(2)] prohibit [U.S.] . . . persons from engaging in certain other transactions involving persons of a country of concern who are engaged in activities involving certain other national security technologies and products that pose a particularly acute national security threat to the [U.S.].”<sup>4</sup>

We also agree that the Proposed Rule’s “Excepted Transaction”<sup>5</sup> provisions are generally aligned with the Treasury’s “goal of tailoring the [P]roposed [R]ule to address the national security threat . . . while minimizing disruptive effects on *U.S. persons*,”<sup>6</sup> including CII member funds. We offer two additional comments with respect to those provisions.

First, while we fully support the proposed excepted transactions including “[a]n investment by a U.S. person in a security issued by an investment company, such as an index fund,”<sup>7</sup> we would respectfully request that the Treasury consider proposing requirements for major index providers consistent with the following CII membership approved “Statement on Index Provider Consultation Processes:”

So as to maintain credible public due process that serves the interests of investors and the capital markets generally, the Council of Institutional Investors urges index providers to conduct robust public consultations when contemplating significant methodological changes to major indexes. Robust consultations are characterized by at least the following:

- Notice of the consultation should be broadly disseminated, such as through a press release, and the consultation period should be in line with the 30 to 90 day comment period provided for federal regulations.
- Each response letter should be posted in a timely manner, such as within one week of receipt, excepting responses with reasonable requests for confidentiality.
- Confidential submissions should be discouraged, and exceptions to the public posting of comments should be narrowly interpreted.<sup>8</sup>

We believe improving the public due process for index provider consultations could enhance investment decisions, public company strategies and corporate governance globally to the benefit of the U.S. capital markets. We also believe the greater transparency could provide Treasury and investors with a better understanding of the basis for index provider methodological changes that impact global capital flows, including capital flows to countries of concern.<sup>9</sup>

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<sup>4</sup> 89 Fed. Reg. at 55,846.

<sup>5</sup> *Id.* at 55,870 (proposed § 850.501 Excepted transaction).

<sup>6</sup> *Id.* at 55,859.

<sup>7</sup> *Id.*; *see id.* at 55,878 (proposed § 850.501(a)(1)(ii)).

<sup>8</sup> CII, Policies on Other Issues, Statement on Index Provider Consultation Processes (adopted Mar. 2024), [https://www.cii.org/policies\\_other\\_issues#IPCP](https://www.cii.org/policies_other_issues#IPCP).

<sup>9</sup> *See, e.g.*, Toby Nangle, The hidden power of index providers, *Fin. Times*, Apr. 9, 2024, <https://www.ft.com/content/badb4ac9-eafe-4963-8406-4ede5cfa878d> (“As arbiters of rule-books defining a market,

Second, we also fully support the proposed excepted transactions including “[a]n investment of a certain size by a U.S. person LP in a pooled investment fund.”<sup>10</sup> More specifically, we support Treasury’s “proposed Alternate 1 [whereby] a U.S. person’s investment made as an LP in a pooled investment fund would constitute an excepted transaction if (1) the LP’s rights are consistent with a passive investment and (2) the LP’s committed capital is not more than 50 percent of the total assets under management of the pooled fund.”<sup>11</sup> We believe Alternative 1 is clearly superior to proposed Alternative 2 because that approach is limited to LP’s that have committed capital of “not more than \$1,000,000”<sup>12</sup>-- an amount that effectively makes the exception unavailable to U.S. LP’s investing in private funds.

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Thank you for your consideration of CII’s views. If we can answer any questions or provide additional information regarding this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney". The signature is written in black ink and is positioned above the typed name and title.

Jeffrey P. Mahoney  
General Counsel

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index committees have become among the most powerful allocators of capital in the world [and] [t]hey deserve scrutiny in accordance with this position.”).

<sup>10</sup> 89 Fed. Reg. at 55,868; *see id.* at 55,878 (proposed § 850.501(a)(1)(iii) Alternative 1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 55,869; *see id.* at 55,878 (proposed § 850.501(a)(1)(iii) Alternative 2).