September 27, 2023

U.S. Department of the Treasury
Office of Investment Security
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Attention: Meena Sharma, Acting Director

RE: Advance Notice of Proposed Rulemaking "Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern" [Docket ID TREAS-DO-2023-0009] RIN 1505-AC82

Dear Ms. Sharma:

The National Foreign Trade Council (NFTC) appreciates this opportunity to respond to the Treasury Department's Advance Notice of Proposed Rulemaking (ANPRPM) seeking comments on the Biden Administration's plan to establish an outbound investment review program. We recognize that the Executive Order (E.O.) that directs the creation of this program came after extensive consultation with stakeholders, including industry representatives, and we look forward to continued robust engagement on implementation measures. To this end, NFTC is pleased to provide general observations regarding outbound investment review as envisaged in the E.O. and ANPRM, followed by responses to some of the questions posed in the ANPRM.

General comments

Given the novelty of the program the Administration is proposing to establish and the breadth of transactions it may impact, it is critically important that Treasury and other agencies involved in planning and implementation of the program gain real world

experience and understanding of the resource commitments required to implement, administer, and enforce an outbound investment review process and gather real-time data on business impacts. We are concerned that this program does not expand the substantive jurisdiction described in the E.O., particularly without first obtaining substantial and robust implementation experience. Consistent with this approach, we would oppose any efforts, including legislation, that would broaden the outbound investment review process beyond the parameters set forth in the E.O. and the ANPRM as currently contemplated. We further note that the ANPRM contemplates imposing reporting requirements, and we would expect the government to be able to articulate how this information will be used going forward. In addition, as part of the implementation process, NFTC urges close coordination with key allies and trading partners to ensure that such parties also move toward adoption and implementation of similar and complementary measures. For the United States to stand alone in banning investments in technology areas or by requiring notification of certain investments will not help achieve national security goals; such actions will only disadvantage U.S. companies against foreign competitors. We therefore encourage Treasury to undertake an impact study of how the measure is affecting investment (including the extent to which U.S. investments in sectors that require notification are being supplanted by investments from the E.U., Japan, and other countries). in sectors that require notification are being supplanted by investments from the EU, Japan, and other countries).

Responses to ANPRM questions

We respectfully offer the following responses to some of the 83 questions posed the ANPRM.

Q1 and Q2: ***In what ways, if any, should the Treasury Department elaborate or amend the definition of "U.S. person" to enhance clarity or close any loopholes? What, if any, unintended consequences could result from the definition under consideration? Are there additional factors that the Treasury Department should consider when determining whether an individual or entity is a "U.S. person"?***

We suggest that the Treasury Department set forth examples of situations where a U.S. person's involvement in investment activities are not covered by this outbound investment review program. For example, the activities of U.S. persons employed abroad by intermediate entities or foreign-owned companies should not be covered if the U.S. person(s) act at the direction of their employer and if the activities are otherwise lawful.

Q3: ***Should the Treasury Department further elaborate in any way on the definitions of "covered foreign person" and "person of a country of concern" to enhance clarity or close any loopholes?***

We suggest that the Treasury Department set forth criteria for how an entity will be determined to be a "person of a country of concern". Specifically, what factors will be

used to determine whether someone should be added or removed from this list? It would be particularly helpful to clarify whether a U.S. person will be considered a "covered foreign person" or a "person of a country of concern" on the basis of ownership of an entity in a "country of concern" that is engaged in "covered national security technologies and products."

Does the Treasury Department envision applying the "50% rule" described in Section C of the ANPRM to this analysis?

How will the "50% rule" be applied to entities that are owned 50% but located outside of the "Countries of Concern"?

Q4: What additional information would be helpful for U.S. persons to ascertain whether a transaction involves a "covered foreign person" as defined in section III.C?

Ascertaining whether an entity is "engaged in activities involving" certain technologies and products is a significantly challenging task. This task will be made even more challenging by an unclear or loosely crafted definition of "covered foreign person," which will result in an overwhelming compliance burden, marketplace confusion, and/or a general chilling of bilateral investment activity. Treasury can, however, include certain elements in a final rule that would help mitigate undesirable consequences, reduce burdens on both U.S. persons and the U.S. Government, and facilitate compliance. These include:

- Crafting clear definitions that reduce uncertainty. For example, the ANPRM proposes no definition for the term "engaged in activity involving," which can be read very expansively, to cover any engagement in activity (direct or indirect) that even minimally touches, incorporates, or interacts with any of the technologies or products identified in the ANPRM. To define the scope of "covered foreign person" more clearly, Treasury should define such persons as those "engaged in the development / production / design / fabrication / packaging / assembly / installation / etc. of [relevant technology or product]," rather than as those "engaged in *activities involving* the development / production / etc." (as currently suggested in the ANPRM). This will avoid unnecessary uncertainty and confusion about what is meant by (in essence) "activities involving activities."
- Elaborating on the nature of "engagement" required to satisfy the definition of "covered foreign person." Such elaboration should address (and ideally exclude) instances in which engagement in the covered activity is minimal, incidental, or peripheral to the primary business of the enterprise.
    - Consider a situation in which an enterprise from a country of concern engages in the manufacture of appliances that incorporate microelectronics (as nearly all contemporary appliances do). That enterprise may employ a single engineer engaged in generic research on integrated circuit design. As more industries and enterprises incorporate computing, chips, and A.I. into their core business, the likelihood of enterprises employing some staff or resources engaged in these

technologies increases significantly, such that this kind of activity may soon become ubiquitous.

- Publishing a list of entities that the U.S. Government has determined are "covered foreign persons" for purposes of any final rule, and that U.S. persons can use as a primary reference for due diligence efforts. While existence of such a list need not excuse U.S. persons from engaging in reasonable due diligence for transactions with other potentially covered foreign persons, a list would provide clear guidance for businesses, significantly ease compliance burdens, provide greater market clarity, and allow the organization with the most ample resources and capability to investigate foreign person activity (the U.S. Government) to bring those resources to bear in facilitating implementation of a future rule. (We note that Treasury has posed a question about the utility of such a list being used only in the context of AI-related activity (Question 46 in the ANPRM), but we believe such a list should be established for "covered foreign persons" writ large.)

Q.5: What, if any, unintended consequences could result from the definitions under consideration? What is the likely impact on U.S. persons and U.S. investment flows? What is the likely impact on persons and investment flows from third countries or economies? If you believe there will be impacts on U.S. persons, U.S. investment flows, third-country persons, or third-country investment flows, please provide specific examples or data.

Unclear or overly expansive definition of the term "covered foreign person" is likely to trigger an avalanche of notifications that will consume an inordinate amount of U.S. business or Government resources to resolve. Treasury should establish a *de minimis* threshold that excludes from the definition of "covered foreign person" entities that engage in very limited covered technologies or products. Qualification to the definition of "covered foreign person" that provides that definition will only apply to entities "primarily" or "substantially" engaged in a covered activity. This could be further refined, as needed, for example by providing that entities will satisfy the threshold if their engagement in the covered activity is, or is intended to become, a meaningful independent line of business. Such criteria could also incorporate revenue or other quantitative thresholds connected to the covered activity. For example, an exception to the definition could be made by providing that an entity will not be considered a "covered foreign person" if its engagement in the covered national security activity falls below a particular threshold, stated qualitatively or quantitatively (or both).

Q6: What could be the specific impact of item (2) of the definition of "covered foreign person"? What could be the consequences of setting a specific threshold of 50% in the categories of consolidated revenue, net income, capital expenditures and operating expenses?

The proposed definition of a "Covered Foreign Person" reference that the person is engaged in or should know the person will be engaged in an identified activity, as well as "individually or in the aggregate, comprise more than 50 percent of that person's

consolidated revenue, net income, capital expenditure, or operating expenses. " This language borrows from the concept of the existing 50% rule, but the existing 50% rule focuses on ownership and control, not revenue, income, expenditure, or operating expense.

This could lead to three challenges with the proposed focus on revenue, income, expenditure, or operating expense:

- U.S. Persons will need to be able determine revenue, income, expenditure, and operating expense of both the parent and "child" company to comply with this rule, as it is currently written. This information may not be readily available in public sources where a U.S. Person can access it to conduct the analysis. U.S. Persons already have tools in place to comply with the existing 50% rule which looks at ownership and control.
- Unintended loophole where a large company that has a small subsidiary that is entirely owned by the large company, but only comprises 5% of the large company's overall revenue. The subsidiary would not be captured by the "Covered Foreign Person" rule, but the risk of diversion would be high as they are 100% owned by the Parent.
- Revenue, income, expenditures, and expenses fluctuate over time. The current 50% rule applies immediately but that does not fit well in an investment situation where a company will need time to unwind the business relationship.

The rule then intends to define the "person of a country of concern" by using the traditional definition of the 50% rule that uses "an ownership interest equal to or greater than 50 percent." Here, the rule is using ownership for a "person of country of concern," but uses consolidated revenue, net income, capital expenditure, and operating expenses for a "covered foreign person." NFTC recommends aligning the requirement with the current 50% rule that focuses on ownership and control.

Q7: What analysis or due diligence would a U.S. person anticipate undertaking to ascertain whether they are investing in a covered foreign person? What challenges could arise in this process for the investor and what clarification in the regulations would be helpful? How would U.S. persons anticipate handling instances where they attempt to ascertain needed information but are unable to, or receive information that they have doubts about? What contractual or other methods might a U.S. person employ to enhance certainty that a transaction they are undertaking is not a covered transaction?

NFTC supports the harmonization of definitions across regulatory regimes as described in Section J of the ANPRM. However, we caution that this disregards good faith due diligence efforts by proposing a "should have known" knowledge standard that can only be applied retrospectively. This ignores the reality that companies do undergo organic and organizational change and that such changes are not constrained by timing.

Q8: What other recommendations do you have on how to enhance clarity or refine the definitions, given the overall objectives of the program?

Implementing rules should make clear that this outbound investment review program is not intended to supplant regulations already in place governing the export, re-export, or transfer, including sales, of items or technology including those subject to the Export Administration Regulations and the International Traffic in Arms Regulations. Specifically, "U.S. investments" do not include payments to a manufacturing partner, transfer of technology to a manufacturing partner or sales of items to end-users, foreign purchasers or distributor.

Q9: What modifications, if any should be made to the definition of "covered transaction" under consideration to enhance clarity or close any loopholes?

Q13: The Treasury Department is considering how to treat follow-on transactions into a covered foreign person and a covered national security technology or product when the original transaction elates to an investment that occurred prior to the effective date of the implementing regulations. What would be the consequences of covering such follow-on transactions? `

Q14: How could the Treasury Department provide clarity on the definition of an "indirect" covered transaction? What are particular categories that should or should not be covered as "indirect" covered transactions, and why?

The Treasury Department should clearly define and limit the scope of "follow-on transactions". For example, if there was an existing joint venture between a U.S. person and a "covered foreign person", what types of "follow-on transactions" would trigger notification or reporting requirements – would it be additional equity investments only or would transfers of equipment and materials be included?

The definition and scope of "indirect" "covered transactions" is also unclear and thus potentially over-broad. For example, a U.S. person may have many minority-owned investments around the world, including shares in overseas-based investment funds. What is the responsibility of the U.S. person for the investment activities of its minority-owned investments? Would such non-U.S.-based entities be subject to a notification requirement and, if so, when would a notification or reporting requirement be triggered? The challenges presented by this scenario are similar to those articulated in our response to Q7 regarding knowledge standard.

NFTC understands the intention to prevent evasion however this is more effectively accomplished through other provisions proposed in the ANPRM, including prohibitions on actions that evade the regulations and on knowingly directing a prohibited transaction. Expanding "covered transactions' to include "indirect" activities will create significant uncertainty and discourage permissible investments, to the potential detriment of U.S. companies.

The Treasury Department provided examples of activities that are not intended to be included in the proposed definition of "covered transaction" including university-to-university research collaborations, contractual arrangements for procurement of

materials inputs for covered technologies and products, and I.P. licensing arrangements. We understand that this is intended to be an illustrative, rather than exclusive list. It will be important that Treasury clarify this point in any final rule, lest it give the impression that non-equity transactions not mentioned in the list are presumptively covered by the definition. It will also be useful (for U.S. industry and the U.S. Government both) for any final rule to expand the list of "non-covered transactions" to include additional transactions that are common in the marketplace but that do not entail equity participation of the kind envisioned in the "covered transaction" definition (and thus presumably not intended to be included). These include:

- Revenue- or profit-sharing arrangements, or commission-based relationships, for example where a U.S. person acts as a distributor or marketing agent for products of a covered foreign person (or vice versa), and where such products are not themselves covered national security technologies and products.
- Research engagements by U.S. persons with universities (sponsorships, scholarships, competitions, and similar activities), where results of such research will be published or transferred to U.S. entities or their subsidiaries.
- Payments under "bounty" programs wherein U.S. persons offer payment to entities that investigate and report (to the U.S. person) vulnerabilities in software code or security systems developed or employed by the U.S. person.
- Payments made by U.S. persons for the use of, or the reservation of access to, a covered entity's production capacity (e.g., chipmaking or other manufacturing capacity).

NFTC also recommends that Treasury make explicit in implementing regulations that indirect investments are only covered where the U.S. person is making an investment with knowledge that it will be used to undertake or further a "covered transaction".

***Q11: What, if any, unintended consequence could result from the definition of "covered transaction" under consideration? What is the likely impact on U.S. persons and U.S. investment flows? What is the likely impact* on persons and investment flows from third countries or economies? If you believe there will be impacts on U.S. persons, U.S. investment flows, third-country persons, or third-country investment flows, please provide specific examples or data.**

Prong 4 of the "covered transaction" definition appears to cover a U.S. person entering into a joint venture with a covered foreign person, even if that joint venture is unrelated to covered national security technologies and products. For example, a joint venture with a Chinese company to develop a consumer electronics manufacturing facility would be covered if the Chinese company is separately engaged in developing an A.I. system to control robotic systems. Capturing these types of joint ventures would go beyond the national security risks targeted by the Executive Order. This would also discourage U.S. companies from pursuing joint ventures that could benefit the U.S. due to the risk of entering into a potentially covered transaction; additionally, the burden of conducting due diligence on potential J.V. partners would be significantly increased as many

companies across industries are engaged in A.I. separate from other primary business activities. NFTC recommends limited Prong 4 to the "establishment of a joint venture, wherever located, that is formed with a covered foreign person and *directly related to covered national security technologies and products* or will result in the establishment of a covered foreign person."

Q12: How, if at all, should the inclusion of "debt financing to a covered foreign person where such debt financing is convertible to an equity interest" be further refined? What would be the consequences of including additional debt financing transactions in the definition of "covered transaction"?

The inclusion of debt financing to a covered foreign person where such debt financing is convertible to an equity interest" should only become effective once the convertible equity interest is triggered. Without such a limitation, this provision could limit U.S. persons' ability to enter into supplier relationships with convertible equity interests.

NFTC further recommends that leases offered to finance the purchase of an item are excluded from this definition of "debt financing".

Q17: Please specify whether and how any of the following could fall within the considered definition of "covered transaction" such that additional clarity would be beneficial given the policy intent of this program is not to implicate these activities unless undertaken as part of an effort to evade these rules:

- ***University to university research collaborations;***
- ***Contractual arrangements or the procurement of material inputs for any of the covered national security technologies or products;***
- ***Intellectual property licensing arrangements;***
- ***Bank lending;***
- ***Processing, clearing or sending of payments by a bank;***
- ***Underwriting services;***
- ***Debt rating services;***
- ***Prime brokerage;***
- ***Global custody; and***
- ***Equity research or analysis***

As noted above, it will be important for Treasury to specify in its final rule that this list of activities is not exhaustive as regards activities that do **not** fall within the scope of the "covered transaction" definition. It will likewise be important to expand the list of illustrative activities, as noted above. Further to the comments above, the exception for university-to-university research collaborations should be expanded to include university to industry research collaborations. There are a number of fundamental technical challenges in the identified sectors that would benefit from research collaboration across academia and industry, and thus should not be discouraged through regulatory overreach. For example, clinical trials, research into disease prevalence in certain

patient populations, or other health related projects ordinarily sponsored by industry in partnership with academia should not be considered "covered transactions" within scope of the definition.

This list of activities not covered should also include the sale of intellectual property and regulatory text should thus state "intellectual property licensing *and sale* activities".

The ANPRM states that excepted activities are not covered transactions if they are not undertaken as part of an effort to evade these rules but does not provide guidance nor criteria on what constitutes evasion.

Q18-25: Implementation implications around "excepted transactions".

Intracompany transactions between a U.S. parent and covered foreign person subsidiary are common and an important element of U.S. businesses' global competitiveness. Such transactions commonly entail capital infusions or equity assignment, features that could appear to make the transactions fall within the scope of the definition of a "covered transaction". However, rules that inhibit or dissuade such transactions by making them more burdensome threaten harm to U.S. economic interests as the primary purpose and beneficiary of these transactions are U.S. persons.

Given the expectation that companies will bear the burden of determining whether a transaction is prohibited, notifiable, or permissible without notification, definitions of "excepted transactions" must be as clear and comprehensive as possible. For example, the exception for intracompany transfer of funds should expressly encompass capital expenditures for equipment ramp-up and tool upgrades for existing semiconductor facilities. The exception for intracompany transactions should include any transaction needed for the ongoing operation of an existing U.S. subsidiary in a country of concern, including but not limited to equipment and tool maintenance or upgrades. Such transactions do not serve national security interests since technology transfer between related entities is already subject to export controls. Moreover, capital transactions between parent and subsidiary would not entail any additional "intangible benefit" to the receiving entity since any such benefit would already exist by virtue of the foreign entity's affiliation with and ownership by a U.S. parent. These clarifications and specific provisions are needed to "avoid unintended interference with the ongoing operation of a U.S. subsidiary in a country of concern."

Finally, it is important that the exception for intracompany transactions apply to all such transactions, whether the subsidiary is established before or after the date of the Executive Order. No national security interest would be advanced by limiting this exclusion to subsidiaries established prior to the order; instead, this would only create an uneven competitive playing field among U.S. persons by unfairly advantaging those with existing subsidiaries in countries of concern.

Q29: With respect to the definition of "Electronic Design Automation Software," would incorporation of a definition, including one found in the EAR, be

beneficial? If so, How/ Practically speaking, how would a focus on software for the design of particular integrated circuits – e.g., fin field- effect transistors (FinFET) or gate-all-around field effect transistors (GAAFET) – be beneficial? If so, how could such as focus be incorporated into the definition?

NFTC supports harmonizing definitions to the greatest extent practical across regulations, including the EAR. In fact, NFTC notes that E.O. 13563 of January 18, 2011, calls for coordination, simplification and harmonization across agencies and regulations. The EDA definition should be multilateral and consistent with the Bureau of Industry and Security's (BIS) implementation as adopted by the Wassenaar Arrangement (W.A.) in its dual use list where BIS has adopted a control under its Export Control Classification Number 3D006. Multi-lateral controls are more effective than unilateral controls and consistency between outbound investment and export controls helps achieve harmonization. Further, controls should focus only on EDA tools for integrated circuits, rather than tools used for printed circuit boards or packaging design.. Further, controls should focus only on EDA tools for integrated circuits, rather than tools used for printed circuit board or packaging design.

Q32: In what ways could the definition of "Supercomputer" be clarified? Are there any alternative ways to focus this definition on a threshold of computing power without using the volume metric, such that it would distinguish supercomputers from data centers, including how to distinguish between low latency high-performance computers and large data centers with disparate computing clusters? Are there any other activities relevant to such supercomputers other than the installation or sale of systems that should be captured?

NFTC supports the harmonization of definitions across regulations however the cubic or square footage definition of a "supercomputer" in the EAR is not an effective technical parameter because it can be easily circumvented by adding racks in the supercomputer cluster with fewer nodes.

A "supercomputer" is defined in Part 772 of the EAR as "a computing "system" having a collective maximum theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops within a 41,600 ft3 or smaller envelope". Note 1 states: "The 41,600 ft3 envelope corresponds, for example, to a 4x4x6.5ft rack size and therefore 6,400 ft2of floor space. The envelope may include empty floor space between racks as well as adjacent floors for multi-floor systems." Note 2 states: "Typically, a 'supercomputer' is a high-performance multi-rack system having thousands of closely coupled computer cores connected in parallel with networking technology and having a high peak power capacity requiring cooling elements. They are used for computationally intensive tasks including scientific and engineering work. Supercomputers may include shared memory, distributed memory, or a combination of both."

NFTC notes that this definition may change particularly with regard to performance parameters. Similarly, an "advanced integrated circuit" is described in ECCN 3A090 of the Commerce Control List and is also subject to modification. We propose that

Treasury cross-references and harmonizes definitions with the EAR such that updates to the Commerce Control List would also apply to relevant outbound investment provisions. We further suggest that rulemaking to implement the E.O. not prohibit U.S. persons from engaging in any design or production activities relating to "supercomputer" or "advanced integrated circuit", specifically activities commonly associated with manufacturing partners, and further suggest publication of FAQs to clarify scope and exclusions from consideration as "covered transactions".

Q42-46: Definitions and scope around A.I.

NFTC finds Treasury's use of "A.I. systems" to be overly broad and potentially captures all software and other engineered products capable of generating outputs to support real world decisions. We propose the use of "Artificial Intelligence" ("A.I."), defined *as "the use of machine learning and related technologies that use data to train statistical models for the purpose of enabling computer systems to perform tasks normally associated with human intelligence or perception, such as computer vision, speech or natural language processing, and content generation."* This tailors scope to the unique attributes of A.I. including the use of machine learning and related technologies to perform tasks without human intervention and aligns the definition to the specific national security concerns articulated in the E.O.

Some of the end-uses targeted in the ANPRM including cybersecurity applications, digital forensic tools and control of robotic systems are broad and include civilian end-uses. NFTC recommends clarifying end-uses of specific national security concern, including distinguishing between defense vs offenses uses, and limiting the jurisdictional scope of any implementing regulation accordingly. We urge further precision through the inclusion of "designed to be exclusively used" to ensure that covered development of software that incorporates an A.I. system is sufficiently and appropriately tied to an end-use of national security concern.

To further clarify scope and applicability of regulations, and facilitate compliance efforts, NFTC proposes that the Treasury Department target transactions involving parties that are **both** engaged in covered A.I. activities and also identified on relevant U.S. government lists, specifically Treasury's Chinese Military Industrial Complex Companies List, the Defense Department's PRC Military Companies List, and the Commerce Department's Military End-User List. Given that the ANPRM proposes a knowledge standard, publishing names ensure that all U.S. companies have equal access to information and are treated the same. Establishing a mechanism for U.S. companies to submit a company name to the Treasury Department for review and publication on a list would further ensure a level playing field for all U.S. companies.

Finally, we encourage Treasury to consider excluding certain A.I. applications from the definition in particular those designed to improve human health.

Q50: How could this [knowledge] standard be clarified for the purposes of this program? What, if any, alternatives should be considered?

The Treasury Department should provide clear standards and guidelines on the elements of due diligence that are required and provide right and left bounds of the knowledge standard. In addition, the Department should develop and maintain a repository identifying entities that are subject to/identified as a "covered foreign person" or "person of a country of concern." The Department should also make publicly available determinations or advisory opinions that have general applicability and can guide U.S. persons with respect to the types of entities that are considered a "covered foreign person" or "person of a country of concern," (but consistent with the protection of confidential or business sensitive information specific to a particular transaction). FAQs and anecdotal guidance can play a very important role in assisting companies with complying with the proposed "knowledge standard." Treasury should work to develop a robust set of such guidance that is based on its practice under the program and that is updated frequently, but that is careful to protect proprietary and confidential information or the identity of transacting parties.

We also request that the Treasury Department make clear that its proposed prohibitions or notification requirements (see below) would only apply to "covered transactions" as defined in the regulations. Currently, the language in the ANPRM just refers to "undertaking a transaction.". The scope of these requirements should be made clear. Specifically, the Treasury Department is considering a prohibition on U.S. persons undertaking a transaction with a covered foreign person engaged in activities involving Technologies that Enable Advanced Integrated Circuits, Advanced Integrated Circuit Design and Production, Supercomputers. In addition, the Treasury Department is considering a requirement for U.S. persons to notify the Treasury Department if undertaking a transaction with a covered foreign person engaged in activities involving any of the below: Integrated Circuit Design, Integrated Circuit Fabrication, Integrated Circuit Packaging.

Q52-61: Notification requirements

Treasury's ANPRM does not pose a question about whether the list of information the Department is proposing to require U.S. persons to furnish is reasonable. In general, information requested pursuant to a final rule should be only that which is directly relevant to the stated objective of the rule, namely to "increase the U.S. Government's visibility into U.S. person transactions involving the defined technologies and products that may contribute to the threat to the national security of the United States." In keeping with general principles of rulemaking and applicable law, the Department should limit its collection of information to that which is strictly necessary to achieve this objective, without placing undue burden on U.S. persons.Treasury’s ANPRM does not pose a question about whether the list of information the Department is proposing to require US persons to furnish is reasonable. In general, information requested pursuant to a final rule should be only that which is directly relevant to the stated objective of the rule, namely to “increase the US Government’s visibility into US person transactions involving the defined technologies and products that may contribute to the threat to the national security of the United States.” In keeping with general principles of rulemaking and applicable law, the Department should limit its collection of information to that which

is strictly necessary to achieve this objective, without placing undue burden on US persons.

The ANPRM proposes several data collection elements that seem beyond the scope of the immediate objective for which a future rule may be promulgated. These include information about the "business rationale" for the transaction; "transaction documents;" detailed information about the foreign person, including "business plans" and "commercial and government relationships" (effectively deputizing U.S. companies to perform intelligence activity on the U.S. Government's behalf); and information about the U.S. person's "primary business activities and plans for growth" (which appears to have no nexus to the notification requirement's primary purpose). Beyond the unnecessary burden these data elements would place on U.S. persons, requiring them in every notification is likely to cause covered foreign persons to shy away from transacting with U.S. persons, or to refuse to furnish information, either of which would result in a broader diminution of outbound investment flows, which the Department has stated is not its intention.. persons, or to refuse to furnish information, either of which would result in a broader diminution of outbound investment flows, which the Department has stated is not its intention.

In addition, in line with the comments above, Treasury should exclude from the notification requirement any investment transaction that entails a transfer of technology or other items for which a U.S. person has obtained an export license from the Department of Commerce, and where information about an investment relationship is disclosed as part of the license application. Information about such transactions is already available to the U.S. Government, and the stated objective of the notification requirement can thus be served without creating an unnecessary additional burden for U.S. persons who must already provide ample information to the Commerce Department in support of a license application. persons who must already provide ample information to the Commerce Department in support of a license application.

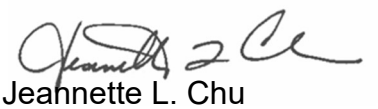
About NFTC

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. The NFTC supports open, rules-based trade including a level and competitive playing field. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the Treasury Department and other agencies in implementing the E.O. establishing outbound investment review mechanisms. Our goal is to always strengthen U.S. industries, global supply chains and protect national security and economic security interests. Robust trade relationships are central to economic and national security. NFTC's National Security Policy Initiative brings the voice of business to policy makers on global security issues affecting international trade. Companies play a vital role in promoting American values including human rights and democracy. Our data-driven recommendations support American competitiveness and technology leadership that is central to our national security. Robust trade relationships are central to

economic and national security. NFTC's National Security Policy Initiative brings the voice of business to policy makers on global security issues affecting international trade. Companies play a vital role in promoting American values including human rights and democracy. Our data-driven recommendations support American competitiveness and technology leadership that is central to our national security.

We welcome the opportunity to discuss this important matter and to answer any questions that you may have regarding these comments or recommendations. I can be reached at (202) 887-0278 or via email to jchu@nftc.org.

Sincerely,



Jeannette L. Chu
Vice President for National Security Policy