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New Year, New Development: Fewer Industries May be Affected by Proposed Outbound Investment Controls (Reverse CFIUS)

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Key Takeaways

- New outbound investment controls likely to focus on semiconductors, AI, and quantum computing.
- Biotechnology and battery technology investments overseas may not be subject to the upcoming proposed controls.

Occasionally, on our blog, we allow ourselves to indulge in prognostication. Similarly, and also occasionally, we are wrong. Nevertheless, we hope to distinguish ourselves by our candor and admit our misses.[1]

Last year, we speculated that we might ring in the new year with outbound investment restrictions. Now, it appears that the Biden administration has had other plans. As you all will have seen, the Biden administration still has not issued the anticipated executive order that would impose restrictions on outbound investments. Moreover, the latest whispers are to expect further delay and to expect restrictions that will likely be much more targeted than the expansive controls that had been anticipated (with no small amount of concern).

As detailed in our last blog on the potential outbound investment controls, proposed legislation before Congress would target outbound investments in a variety of industries, including energy, medical, communications, defense, transportation, aerospace, robotics, artificial intelligence, semiconductors, shipbuilding, and water. At that time, we understood the Biden administration was racing to issue an executive order before any legislation could get passed. In addition, that executive order would target high-priority technologies among other items.

We now understand that while the final executive order has not been approved, the executive order will focus on quantum computing, artificial intelligence (AI), and semiconductors. Moreover, the executive order is reported to **not** include biotechnology or battery technology.

What does this mean and when might you need to give it more attention than an occasional blog-scan? Well, it means that private equity firms, U.S. companies, and other investors seeking to make outbound investments in quantum computing, AI, and semiconductors should stay tuned because those parties could face restrictions and administrative burdens on those activities in the coming months. The Biden administration will be consulting allies and continue to solicit feedback from think tanks and other partners before fine-tuning the executive order.

But those looking at outbound investments in biotechnology or battery technology may be able to put down the news clippings and hop off the rollercoaster of outbound investment predictions, at least for the next little while.

FOOTNOTES

[1] Though, of course, we have explanations!

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