

## Executive Order 13959: OFAC Issues Amended License 1b

By: Larry Bergmann

This Update reports on a recent development concerning Executive Order 13959 addressing transactions in the securities of companies designated as Communist Chinese military companies (“CCMC”). Specifically, the Office of Foreign Assets Control (“OFAC”) has issued General License No. 1B which is effective on May 18, 2021.<sup>1</sup> General License 1B extends the time period provided in General License No. 1A (issued on January 26, 2021) to permit “all transactions and activities otherwise prohibited by section 1(a) of Executive Order (E.O.) 13959,” as amended by E.O. 13974 of January 13, 2021, related to publicly traded securities of an entity “whose name closely matches, but does not exactly match” the name of a CCMC covered by the E.O. The relief is extended to June 11, 2021. Because General License 1A was effective until May 27, 2021, General License 1B extends the relief for covered entities only for two weeks.

General License 1B clarifies that the relief does not extend to publicly traded securities or related securities of entities that appear by name on lists published by OFAC as a subsidiary of a person determined to be a CCMC, including entities added to such list on January 8, 2021.

### Comment:

As we have noted before, the application of the E.O. to companies that have names that “closely match, but do not exactly match” the name of a listed CCMC is one of the most perplexing features of the E.O. because it requires every market participant to determine whether the name of an entity is similar enough to be covered. If the name closely matches, then, absent the relief provided by an OFAC license, transactions and other activities are prohibited in that entity’s publicly traded securities and any securities that are derivative of, or are designed to provide investment exposure to, such securities. Identifying the universe of affected instruments is therefore a daunting challenge. Although we had hoped that OFAC would limit the scope of the E.O. to entities that are expressly named on its list (or designated by the Department of Defense) as a CCMC or a subsidiary, it appears that OFAC remains of the view that entities with closely matching names but are not listed are nevertheless covered by the E.O.

The brevity of the two-week extension provided by General License 1B may indicate that OFAC is reconsidering its approach to companies with closely matching names and needs a little more time to define its position.<sup>2</sup>



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<sup>1</sup> [https://home.treasury.gov/system/files/126/ccmc\\_gl1b.pdf](https://home.treasury.gov/system/files/126/ccmc_gl1b.pdf).

<sup>2</sup> It is worth noting that the application of the E.O. to companies with “closely matching” names originated in OFAC FAQ 858 (originally published on December 28, 2020, but currently dated April 21, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/858>.



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