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President Trump Blocks $1.3 billion Sale of Lattice Semiconductor to China-backed Buyer

Citing national security concerns, President Donald Trump signed an Executive Order on Sept. 13, 2017, blocking the proposed $1.3 billion acquisition of Portland, Oregon-based Lattice Semiconductor by Canyon Bridge Investments, a Chinese-owned investment fund based in California. The move comes as foreign investment transactions, particularly those with a China nexus, are subject to increasingly intense scrutiny and criticism from U.S. government regulators overseeing the CFIUS process.

The CFIUS Process

President Trump's decision was the culmination of the Committee on Foreign Investment in the United States (CFIUS) review process, under which the president has the authority to investigate, restrict, prohibit, and even unwind foreign investment transactions in the United States when national security issues have been identified.

Parties to transactions involving proposed foreign ownership or control (including investment) of a U.S. entity with a national security concern may submit a pre-closing voluntary notification to CFIUS, seeking CFIUS "safe harbor" or clearance for the proposed deal. The CFIUS review process typically concludes with CFIUS "clearing" the proposed transaction or, in instances where national security concerns have been identified, requesting the imposition of mitigation measures. In rare cases, CFIUS may refer a final decision regarding a particular transaction to the president, as it did in this particular instance.

The Blocked Transaction

The president's decision, reportedly based upon CFIUS's recommendation, was the culmination of an almost year-long CFIUS review process. The proposed transaction, announced last fall, involved the acquisition of Lattice Semiconductor by a special-purpose Canyon Bridge entity based in the United States. However, Canyon Bridge's ultimate foreign parent, China Venture Capital Fund Corporation Limited, is owned by Chinese state-owned entities. Canyon Bridge's ties to Chinese government entities triggered heightened scrutiny of Lattice's technology and the perceived national security issues that would have resulted from ultimate Chinese government ownership of Lattice.

The press release announcing President Trump's decision cited unmitigated national security concerns that included:

- "the potential transfer of intellectual property to the foreign acquirer;
- the Chinese government's role in supporting this transaction;
- the importance of semiconductor supply chain integrity to the United States Government; and
- the use of Lattice products by the United States Government."

The parties were ordered to take all necessary steps to abandon the transaction within 30 days. In addition to its impact on the parties involved, President Trump's decision highlights the level of scrutiny by U.S. regulators on foreign investment in sensitive U.S. industries.

Recent CFIUS Trends

Notably, President Trump's decision is only the fourth time in history that a U.S. president has blocked or unwound a CFIUS-covered transaction. The decision reflects a growing bipartisan concern over foreign investment in the United States and increased political interest in CFIUS review of such transactions. In December 2016, a bipartisan group of 22 members of Congress wrote to then-Secretary of the Treasury Jack Lew, urging CFIUS to block the Canyon Bridge deal. More recently, several members of Congress have introduced measures that would expand CFIUS jurisdiction. These trends underscore the challenging climate for foreign investment in the United States, especially in the technology sector.

Takeaways for U.S. Companies and Potential Foreign Investors

For companies evaluating new M&A opportunities, particularly those involving foreign investment, it is critical to consult with counsel to initiate a CFIUS analysis of the proposed transaction as early in the process as possible. Key considerations include buyer and seller ownership structures and identifying whether and to what extent the U.S. target engages in any sensitive business activities that could trigger CFIUS interest in the transaction. Importantly, the Canyon Bridge decision illustrates CFIUS's disregard for corporate form when evaluating potential transactions. CFIUS's review of a transaction focuses on the ultimate foreign ownership, whether through direct or indirect ownership or investment (as through a U.S. acquisition subsidiary). Parties to a proposed transaction should understand that investment via special corporate forms will not necessarily mitigate CFIUS national security concerns when assessing potential control over a U.S. asset.

Finally, parties should anticipate increasingly extended CFIUS review timeframes. As political sensitivities surrounding foreign investment in the United States have grown, CFIUS' caseload has expanded significantly. Parties that anticipate CFIUS review of a proposed transaction should consider building in ample time for CFIUS to complete its review.

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