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BLOG

Veritas, a U.S. Genetic Sequencing Company, Suspends U.S. Operations Due to Decreased Funding; CFIUS Thought to be Leading Cause

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According to news articles published in early December, Veritas Genetics, a Massachusetts-based company that hoped to lower the cost of whole-genome sequencing, is suspending its U.S. operations because of a lack of investment. Articles theorize that the decreased funding was driven mainly by new CFIUS regulations and heightened CFIUS scrutiny.

Early in December 2019, Veritas announced that its "adverse financing situation" had forced the suspension of its U.S. business. Veritas has stated that it is assessing potential paths forward, and there are rumors that one such path is the sale of the company. Veritas will no longer sell its tests, which include genetic testing for diseases and cancers (such as the BRCA test), in the United States. Veritas will continue to operate and sell its tests outside the United States.

Veritas first launched in 2014, and since 2015 it had raised $50 million in financing. Major investors included Chinese companies, such as Lilly Asia Ventures, which invested $10 million into the company, and Simcere Pharmaceutical. However, there has been increased scrutiny in the past two years for transactions that involve Chinese investors, especially when sensitive personal information, such as genetic information, is at stake. This year, for example, CFIUS forced iCarbonX, the Chinese, majority owner of U.S. company PatientsLikeMe, to divest its stake in the U.S. company.

According to news reports, recent CFIUS activity may have scared away not only Chinese investors but also non-Chinese investors reluctant to invest in a company with Chinese ownership. Non-Chinese investors may fear that Veritas's Chinese ownership will lead to increased CFIUS scrutiny of any investment into Veritas, regardless of the investor's nationality. Investors may also worry that CFIUS scrutiny could delay their return on investment if their firms are forced to stall business to address CFIUS's concerns.

No doubt the proposed CFIUS regulations from September also concern foreign investors: the proposed regulations explicitly target U.S. companies that maintain or collect sensitive personal data of U.S. citizens. While most sensitive personal data only triggers the proposed regulations if the U.S. business maintains or collects such data on greater than one million individuals, companies with genetic data are considered to be covered businesses no matter how many individuals are involved. Thus, companies like Veritas will always fall under CFIUS jurisdiction if a foreign person would acquire certain rights in the company. These rights include:

- Access to material nonpublic technical information in the possession of the U.S. business.
- Membership or observer rights on the board of directors or equivalent governing body of the U.S. business, or the right to nominate an individual to a position on the board of directors or equivalent governing body of the business.
- Involvement, other than through voting of shares, in substantive decision making of the U.S. business about certain actions related to sensitive personal data, critical technologies or critical infrastructure.

Several genetic and biopharmaceutical companies expressed concern in public comments to the regulations that the proposed regulations, specifically including all genetic data in the definition of sensitive personal data, would stymie foreign investment in these companies. Several companies argued that the Department of the Treasury should revise the proposed CFIUS regulations to require that genetic data be identifiable. Companies often are in possession of anonymized genetic information, which these companies argued does not pose a risk to national security. We await publication of the final regulations and whether CFIUS will make any changes to the definition of sensitive personal data, particularly as it pertains to genetic information. It is to be seen whether U.S. companies in other industries will face similar funding obstacles as foreign investors grow more wary of CFIUS.

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