

August 16, 2022

Q: If I am a semiconductor foundry, are there any special red flags that should be considered with regard to parties (e.g., integrated circuit designers) on the Entity List?

A: If you have knowledge that a customer on the Entity List is using a third party to disguise its involvement in any particular transaction subject to the EAR, then you should either refrain from the transaction or submit all the relevant information to BIS in the form of an application for a license. When engaging with clients, and especially with new clients, you should consider the “Know Your Customer” guidance in Supplement No. 3 to Part 732 of the Export Administration Regulations (EAR), which discusses how to respond to any “red flags” in your transaction. Further, an export compliance program for items and activities subject to the EAR involves screening all parties to a transaction against U.S. proscribed party lists. An export compliance program is strongly encouraged. See Element 3 of BIS’s Export Compliance Guidelines available at <https://bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/compliance>.

For semiconductor foundries, the receipt of new design files from a new customer present a red flag if similar designs have been received from a company on the Entity List in the past. Foundries should consider screening any software design files (e.g., GDSII software files) they receive against their library of previously received design files to determine if any of these software files approximate or match the designs they have on file from a party on the Entity List. For foundries located outside the United States, this is especially important if the listed Entity is located in Russia, Belarus, or if the semiconductor being manufactured, or the listed Entity in question, is subject to one of the foreign direct product rules in § 734 of the EAR. Further, for U.S. persons at a foundry located outside the United States, there are specific prohibitions on the provision of support when you know it is related to certain proliferation or military intelligence concerns, even when no items subject to the EAR are involved in that support activity. See § 744.6 of the EAR.