

CFIUS: President Trump Blocks Acquisition of Lattice Semiconductor by Canyon Bridge

September 2017

Authors: [Farhad Jalinous](#), [Karalyn Mildorf](#), [Keith Schomig](#)

President Trump blocked the proposed \$1.3 billion acquisition of Lattice Semiconductor Corporation, a US chipmaker, by Canyon Bridge Capital Partners, a US-headquartered private equity firm reportedly funded by the Chinese government. This is only the fourth transaction blocked by a US president under the CFIUS statute, though it is the second in the past ten months.

Following the recommendation of the Committee on Foreign Investment in the United States (“CFIUS”), which is a committee of Executive Branch agencies tasked with assessing national security concerns associated with foreign direct investment into the United States, President Trump today [issued an order](#) blocking the proposed acquisition of Lattice Semiconductor Corporation (“Lattice”) by Canyon Bridge Capital Partners (“Canyon Bridge”). The proposed transaction went through three 75-day CFIUS review and investigation cycles, during which CFIUS apparently determined that the transaction presented national security concerns that could not be addressed through mitigation measures. The parties reportedly proposed mitigation terms to address national security concerns, which were not accepted. CFIUS referred the transaction to President Trump for a decision, which is a rare step.

Lattice is a US-based semiconductor company that makes programmable logic devices for the consumer, communications, and industrial markets. Canyon Bridge is a private equity firm headquartered in Silicon Valley with operations in Beijing, China. It has been reported that the sole identified investor in Canyon Bridge is owned and controlled by the Chinese government.

Under the CFIUS statute, only the President has the authority to prohibit transactions due to national security concerns. Although CFIUS is not authorized to block deals, it can impose broad mitigation measures where it determines such requirements can effectively address national security issues. In cases where CFIUS determines that national security concerns cannot be mitigated, it typically recommends that parties formally commit to abandoning the transaction and withdraw their filing. In most cases, the parties agree to terminate the transaction (or to divest, if the transaction has already been completed). In this case, however, the parties may have concluded that there was little downside to a presidential review and hoped that President Trump might be willing to approve the transaction despite CFIUS’s objections.

The following are some key takeaways:

- **Chinese investments, particularly in the semiconductor area, continue to get heavy scrutiny**

CFIUS, Congress, and several published reports have focused substantial attention on risks related to foreign investment in semiconductor technology, which can have sensitive military applications. The Lattice transaction is the latest in a string of failed transactions involving foreign—primarily Chinese—investment in semiconductor companies. CFIUS concerns have pertained to a variety of issues,

including the specific technology associated with the target companies, security of the defense supply chain, and the know-how and technical knowledge resident in the companies.

Given that China has reportedly committed to investing \$150 billion to advance its semiconductor industry, Chinese investors are likely to continue to look for opportunities to invest in US semiconductor companies, and political attention around these transactions will likely continue. Therefore, parties should expect substantial scrutiny of all semiconductor transactions involving Chinese investors. CFIUS looks at each transaction on a case-by-case basis, considering the specific investor and target company. In this case, the White House and the Treasury Department specified that “the national security risk posed by the transaction relates to, among other things, 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 U.S. government, and the use of Lattice products by the U.S. government.”

- **Investors are likely to continue to seek transaction structures that potentially minimize CFIUS risk**

It has been reported that the investment structure for the Lattice acquisition was intended to minimize CFIUS risk. Despite this effort, CFIUS found the transaction to be subject to its jurisdiction and ultimately determined it presented unresolvable national security concerns. CFIUS interprets its jurisdiction broadly and undoubtedly will continue to do so. In our experience, investors are becoming increasingly open to considering transaction structures that can help minimize CFIUS risk. Since CFIUS does not issue advisory opinions, including about whether a particular transaction is subject to CFIUS’s jurisdiction, only a formal notification of the transaction will solicit CFIUS’s binding feedback.

- **Presidential reviews may become more frequent**

Presidential decisions are historically quite rare. There have only been four presidential blocks since Congress gave the President the power to prohibit transactions on national security grounds when it originally passed the CFIUS statute in 1988. That said, three of the blocks have been in the past five years—and two in the past ten months alone. While parties may be more inclined to risk presidential review going forward, this strategy might well be abandoned quickly if the President consistently defers to CFIUS and blocks transactions at its recommendation. There have also been discussions about potential legislative changes that could empower CFIUS to directly prohibit transactions, which would avoid the potential political fallout of presidential decisions. Notably, under the current CFIUS statute, the President is required to publicly announce the decision whether to suspend or prohibit a transaction, whereas the entire CFIUS process is otherwise confidential.

- **The United States remains open to foreign investment, but the CFIUS atmosphere and process are evolving**

CFIUS is reviewing a record number of transactions and is currently on track to review well over 200 this year—the largest amount in the modern CFIUS era. Given the combination of the intense caseload and current vacancies in political positions in CFIUS member agencies, the CFIUS review process is taking longer, and CFIUS appears to be acting somewhat more conservatively in adjudicating transactions. CFIUS is generally taking more time to comment on draft prefilings and to accept filings and formally begin reviews, increasing the time on the front end of the CFIUS process. There have also recently been a number of reviews that have been withdrawn and resubmitted, which is an approach often taken when CFIUS needs more time to complete its review than the statutorily mandated 30- and 45-calendar-day periods (the refiling restarts the statutory review period). Particularly for complex transactions, parties should now factor in the possibility of CFIUS reviews taking longer. In addition to these issues, the Trump Administration has indicated that it is considering policy adjustments, which could impact how cases—particularly those involving more sensitive target companies and acquirers from rival countries—are reviewed and adjudicated.

Legislation aimed at updating the CFIUS process may also be introduced this year. The anticipated leading bill is being sponsored by John Cornyn, the Senate Majority Whip. Senator Cornyn has indicated that the bill will be designed to modernize (rather than overhaul) the CFIUS process, including applying special requirements for transactions involving sensitive technologies and investors from countries of concern. While Senator Cornyn has stated his bill will not change either the US policy of being open to foreign direct investment or CFIUS’s exclusive focus on national security

issues, other rumored CFIUS bills may seek to expand CFIUS's scope to consider economic factors relating to deals, including whether a transaction will present a "net benefit" to the United States. Although it is too early to know whether and how the CFIUS statute may be updated, it appears that Congress is set to start working on the first statutory updates to the CFIUS process in a decade. Such efforts are likely to target, at least in part, widespread concerns about foreign investment in sensitive technology areas, including semiconductors.

As the atmosphere around CFIUS continues to evolve, it is more critical than ever to develop a comprehensive CFIUS strategy as early as possible in a transaction.

White & Case LLP
701 Thirteenth Street, NW
Washington, District of Columbia 20005-3807
United States

T +1 202 626 3600

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.