

Magnachip May Have Alternative Deal Partners Should Regulatory Approvals Prove Problematic

By: [Matt Tracy](#)

Magnachip's board has been made aware of potential alternative deal partners it could consider, apart from the publicly announced bids that carry with them a certain level of regulatory risk, according to a source familiar with the matter.

"Semiconductors are hot right now," the source familiar said. "The company knows that [and] they understand that they have other options if [the Committee on Foreign Investment in the United States] proves too high an obstacle," the source said in reference to both the Wise Road deal and the indicated offer from Cornucopia.

CTFN could not independently identify the names of the potentially interested parties nor any indication as to how serious their efforts may be, beyond the comments provided by the source.

On June 11, Magnachip said that it received an unsolicited competing offer from Cornucopia Investment Partners, which may also elicit foreign direct investment review scrutiny.

Magnachip's current thinking with regard to the Cornucopia offer is unclear as of publication. However, the company was said by the source to be giving careful consideration to Cornucopia's offer and possible indicated interest from other parties.

Complicating the situation, on May 26, CFIUS [requested](#) that Wise Road and Magnachip file a notice and undergo a formal CFIUS review of [the transaction](#), wherein the Beijing-

based private equity firm plans to acquire Magnachip in an approximately \$1.4 billion take-private transaction.

On June 16, Magnachip [disclosed](#) that CFIUS followed up with an interim order requiring a halt to all deal activity as it investigates the matter.

After receiving the order from US authorities, Wise Road and Magnachip are contemplating how the transaction could raise concerns with the US government over Magnachip's intellectual property, and are now working to evaluate potential mitigation, according to the source familiar with the matter.

According to the same source, CFIUS' request was "very surprising" to the parties, who previously decided against filing with the committee, stating they believed reviews with US regulators would not be necessary given the company had "no tangible assets or IT systems" located in the country.

However, the source familiar said Wise Road and Magnachip have since receiving the CFIUS request begun working with their counsel to determine if certain Magnachip IP — including its US-patented semiconductor products — could pose concerns to CFIUS, and if so, how the parties could mitigate those concerns.

"With regard to semiconductors, you're seeing a lot of issues out there right now," the source said. "[The companies are] really looking at: where is the IP developed, where is the manufacturing actually taking place, what is the supply chain? If the manufacturing is outside the States, what is the control over the IP? Is the IP leaving the US to be brought outside the country?"

While Magnachip is based in South Korea, where it also conducts most of its operations, the company [acknowledges](#) that it holds IP rights in the US which may not receive "the same degree of protection" in other countries.

Although almost all of Magnachip's IP is patented in South Korea, much is also patented in the US. A review of the US Patent and Trademark Office's [database](#) shows that the company holds 450 US patents. This includes OLED display driver integrated circuits, a technology which CTFN [recently reported](#) has been classified as "national core technology" by the South Korean government, which is also conducting a foreign investment review of the transaction.

As recently as June 8, Magnachip [received](#) USPTO approval for a patent on OLED technology.

According to Francesca Guerrero, partner at Thompson Hine who regularly counsels clients on CFIUS matters, the committee's request for a formal review likely came after an informal look into the parties and the transaction.

"They typically reach out with questions leading up to the request to better understand the situation," Guerrero said. "They're certainly not idly requesting reviews of non-notified transactions."

For example, a year after Huawei closed its 2010 [acquisition](#) of certain cloud computing-related technologies from 3Leaf Systems, CFIUS requested filings from the parties and subsequently required Huawei to divest itself of all the 3Leaf assets.

Although patent transfers in and of themselves do not typically raise CFIUS concerns, coupled with other issues, they have resulted in obstacles for parties. In 2016, for example, President Barack Obama signed an [executive order](#) blocking the Germany-based and Chinese-backed Grand Chip Investment GmbH's acquisition of the semiconductor company Aixtron, including "any patents issued by, and any interest in any patent applications pending with, the United States Patent and Trademark Office..."

More recently, in May 2020, Ekso Bionics Holdings and Zhejiang Youchuang Venture Capital Investment [received notice](#) that CFIUS' concerns with their exoskeleton manufacturing joint venture could not be mitigated, and abandoned their partnership. CFIUS' block came after the parties' initial failure to notify the committee, which in 2019 inquired about the JV, including the transfers of certain technologies involved.

While based in Beijing, Wise Road has successfully completed several acquisitions of non-Chinese technology companies in the past, including the Netherlands-based chipmakers Nexperia and Sciosense. In addition, although most of its management has lived, worked, or studied in China, several of them also serve on the boards or have worked at non-Chinese technology companies.

It is worth noting, however, that the Magnachip/Wise Road deal also faces an antitrust review by China's SAMR. While Wise Road's management may not have direct Chinese government ties, CFIUS may have concerns that the Chinese government could leverage

SAMR approval to gain access to IP, a practice previously employed by the country, CFIUS practitioners have noted.

Both Guerrero and the source familiar acknowledged that CFIUS has ramped up its retrospective scrutiny of closed and pending non-notified transactions, given a recent bolstering of agency staffing and other resources.

The source familiar agreed that closed and pending deals involving firms such as Wise Road are getting much closer scrutiny from CFIUS now than in previous years.

“With budget allocations and staff getting in place, they’re focusing on companies that basically haven’t filed and have done deals over the past few years,” the source said. “Deals involving semiconductors and the semiconductor industry are certainly getting heavy scrutiny relative to others.”

Neither Wise Road Capital nor Magnachip could be reached for comment in time for publication.

©2021 CTFN. All rights reserved. No reprints, forwarding, sharing, or redistribution permitted. Use of this article is subject to the [CTFN Terms of Service](#).

Bringing the marketplace leading coverage of major corporate developments, CTFN's investigative reporters pursue news that matters to event-driven investors and deal professionals.

For inquiries, email info@ctfn.news or call +1 203 635 6555 or +44 (0) 203 514 5314