



Morgan Lewis

**EXECUTIVE ORDER 13959
SANCTIONS AGAINST**

**CHINESE MILITARY
COMPANIES**

Investment Management Association of Singapore

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BACKGROUND



- Section 1237 of the National Defense Authorization Act (NDAA) of FY 1999 required the US Department of Defense (DOD) to
 - Identify “Communist Chinese military companies” (CCMCs) operating directly or indirectly in the United States and publish a list of CCMCs
 - Make additions or deletions to the CCMC list “on an ongoing basis”
 - Statute amended/supplemented twice
- June 2020 – first time companies identified – 20 companies
 - August 2020 – 11 additional companies added
 - December 2020 – 4 additional companies added
- Section 1237 authorizes the President to impose sanctions on CCMCs under the International Emergency Economic Powers Act (IEEPA)



E.O. 13959

- Issued on November 12, 2020; amended on January 14, 2021
- Bases for action
 - China's Military-Civil Fusion development strategy
 - To stem the availability of US capital to such companies
- Initial Effective date January 11, 2021

E.O. 13959 - Prohibitions

- Prohibits any transaction in publicly traded
 1. securities of CCMCs,
 2. securities derivative of CCMC securities
 3. securities designed to provide “investment exposure” to CCMC securities
- Prohibitions apply to “US persons”
 - First effective January 11, 2021
- For CCMCs designated after November 12, 2020, prohibitions begin 60 days after date of designation
- Prohibits transactions that cause violations, are designed to evade or avoid violations or that attempt to violate the E.O.
- Also prohibits conspiracy to violate



E.O. 13959 – Key Definitions

- ***Communist Chinese military company***
 - Section 1237 companies
 - Can be designated by DOD and/or Treasury
- ***List(s) to be published by OFAC Security***
 - Coordinate with “security” in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10)
 - Includes currency, note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance not exceeding 9 months, exclusive of days of grace
 - Any renewal of the maturity that is likewise limited
- ***Transaction***
 - Initially, a “purchase for value,” but now includes “purchase for value, or sale”
- ***U.S. Person***
 - United States citizen or permanent resident alien, or any person in the U.S.
 - An entity organized under U.S. law (including foreign branches)



E.O. 13959 – Key Missing Definitions

- *Purchase for Value*
- *Designed to provide investment exposure*
- *Derivative securities*
- *Held by a US person*



E.O. 13959 – Wind Down Period for Divestment Transactions Only

- Authorizes “purchases for value” or sales
 - Completed on or before November 11, 2021
 - Or 365 days after a future designation
 - So long as these transactions are “solely to divest from” covered CCMC securities

Currently Identified CCMCs



- DOD's Section 1237 Lists
 - June 2020 https://media.defense.gov/2020/Aug/28/2002486659/-1/-1/1/LINK_2_1237_TRANCHE_1_QUALIFIYING_ENTITIES.PDF
 - August 2020 https://media.defense.gov/2020/Aug/28/2002486689/-1/-1/1/LINK_1_1237_TRANCHE-23_QUALIFYING_ENTITIES.PDF
 - December 2020 [Tranche 4 Qualifying Entities \(defense.gov\)](#)
 - January 2021 [DOD Releases List of Additional Companies, In Accordance With Section 1237 of FY99 NDAA \(defense.gov\)](#)
- OFAC's Restated List of Non-SDN CCMCs
https://www.treasury.gov/ofac/downloads/ccmc/ns-ccmc_list.pdf

E.O. 13959 - Implementation



- Implementation by the Department of Treasury's Office of Foreign Assets Control ("OFAC")
 - Issue regulations
 - Allow exemptions and licenses
 - Enforcement
 - OFAC issues Frequently Asked Questions ("FAQs") as *non-binding* guidance
- OFAC has not issued regulations yet
- OFAC has promulgated several FAQs
 - FAQs 857 – 861 issued December 28, 2020
 - FAQs 862 – 864 issued January 4-6, 2021
 - FAQs 871 – 874 issued January 14, 2021



FAQ #857

- The prohibitions apply to subsidiaries of listed CCMCs 60 days after publicly listing by OFAC or DoD
- OFAC's will apply its 50% rule in naming subsidiaries, but will also look to "control" by such companies (undefined)
 - Later contradicted/amended



FAQ #858

- E.O. 13959 prohibitions apply to securities of a company with a name that exactly or closely matches the name of an identified CCMC
- May not rely on only an exact name match to identify CCMC securities
 - Look at AKAs, equity tickers

FAQ #859

- “Publicly traded securities” include securities denominated in any currency that trades on a securities exchange or OTC-traded securities in any jurisdiction



FAQ #860

- Covered financial instruments include (but are not limited to):
 - Derivatives (*e.g.*, futures, options, swaps)
 - Warrants
 - American depository receipts (ADRs)
 - Global depository receipts (GDRs)
 - Exchange-traded funds (ETFs)
 - Index funds, and
 - Mutual funds

FAQ #861

- The prohibition against purchasing CCMC securities applies to US or foreign funds regardless of the CCMC securities' share of the index fund, ETF, or derivative



FAQ #862

- Confirmed that U.S. persons (and U.S. person interests) in covered CCMCs do not need to be divested by January 11, 2021
- January 11, 2021 deadline prohibits new acquisitions of CCMC securities by or on behalf of U.S. persons by that date



FAQ #863

- U.S. persons can engage in the following services (so long as they do not provide services to U.S. persons for prohibited transactions)
 - Clearing
 - Execution
 - Settlement
 - Custody
 - Transfer agency
 - Back-end services
 - Other “support” services
- FAQs do not define most of these terms
- Many have OFAC “history” but not all



FAQ #864

- U.S. persons are prohibited from transactions in securities of a CCMC subsidiary with a name that exactly or closely matches the name of a CCMC identified in the E.O. (*i.e.*, on the 1237 list)
- OFAC will update its list with “Also Known As” (“AKAs”) to help companies identify close matches
- Identified 3 examples of names that closely match named CCMCs
- Reaffirmed application to derivative securities, including ADRs

General License 1

- Extends to January 28, 2021, the date when US persons may no longer acquire securities with names similar to named CCMCs
- Does not extend implementation for CCMCs named



FAQ #865

- Market intermediaries and other “participants” may engage in “ancillary or intermediary activities necessary to effect *divestiture*” (emphasis added) during the wind down period (until Nov. 11, 2021)
- Reiterated FAQ 861 prohibition against transactions in CCMC securities “regardless of such securities’ share of the underlying fund, ETF, or derivative thereof.”
- Reaffirmed that divestment deadline is November 11, 2021



General License 2

FAQ #871

- GL 2 authorizes US exchanges to transact in CCMC securities through Jan. 13, 2022
 - Does not, by its terms, apply to other parties
 - Risk of being read too broadly
 - Does not authorize US persons to purchase securities otherwise prohibited, i.e., those subject to FAQ 864 and GL 1
-
- FAQ 871 adds nothing beyond GL 2 language



FAQ #872

- Confirms that EO 13959 requires US persons to fully divest CCMC securities on or before 365 days after the date of designation

FAQ #873

- Confirms that the term transaction includes both purchase for value and sales
- EO only includes purchase for value
- Sale was added to confirm that authorized transactions include sales (likely in response to calls by third parties who facilitate such transactions)



FAQ #874

- Confirms that activities in support of divestment (“solely to divest”) within the 365 day time period is an authorized
- Clarifies that the transaction must be “entered into” on or before day 365, thus indicating settlement may occur after day 365

Informal OFAC Guidance Provided to Industry Groups



- Industry groups (ICI and MFA) report obtaining verbal “guidance” from OFAC with respect to certain points
 - Contrary to the language in the E.O. and FAQs 857 and 865, U.S. persons may contribute to funds with existing holdings in CCMCs and not thereby violate the “investment exposure” prohibition
 - Due diligence required regarding CCMCs and their subsidiaries is that previously enunciated by OFAC
 - Due diligence is expected on one’s “customers”
 - Totality of the circumstances considered in other circumstances
- OFAC still considering whether a non-U.S. fund with a U.S. advisor is a U.S. person for purposes of the E.O.

Short and Long-term Expectations



What to expect from the Biden administration?

- Immediate changes are not expected to the E.O. or the list of CCMCs
 - Biden identified appointees expected to be less confrontational toward China and Chinese engagement
- Certain restrictions on Chinese companies' access have received bipartisan support, but that may change if the Biden administration pushes Congress for a different approach
- Even if E.O. 13959 is left in place, Biden may limit its scope
 - Narrow definition of "investment exposure"
 - Not naming subsidiaries/additional entities
 - OFAC general licenses

Significant Interpretive Matters and Issues



- Impact on indexes and exchanges
- Responses from registered funds and private funds
- Timing for first 50% subsidiaries to be publicly listed by OFAC
- Impact on affiliates of US advisers
- Foreign fund compliance expectations

Non-SDN CCMC and DOD CCMC



Company Name	A.K.A.	Issuer Name	Equity Ticker	OFAC Date Identified	OFAC 60-Day US Person Purchase Window	OFAC 365-Day US Person Divestment Window	DoD Date Effective	DoD 60-Day US Person Purchase Window	DoD 365-Day US Person Divestment Window
Aero Engine Corporation of China	Aero Engine Corp of China	Aero Engine Corp of China	1546063D CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Aviation Industry Corporation of China (AVIC)	Aviation Industry Corporation of China, Ltd. (AVIC)	Aviation Industry Corp of China Ltd	CAICPZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Academy of Launch Vehicle Technology (CALT)		China Academy of Launch Vehicle Technology	1268213D CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Aerospace Science and Industry Corporation (CASIC)	China Aerospace Science & Technology Corporation (CASIC)	China Aerospace Science & Industry Corp Ltd	CASZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Aerospace Science and Technology Corporation (CASC)	China Aerospace Science & Technology Corporation (CASC)	China Aerospace Science & Technology Corp	CASTCZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Communications Construction Company (CCCC)	China Communication Construction Group Company, Ltd.	China Communications Construction Co Ltd	601800 CN/1800 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Construction Technology Co. Ltd. (CCTC)		China Construction Technology Co Ltd	AABZDZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	3-Dec-20	1-Feb-21	3-Dec-21
China Electronics Corporation (CEC)		China Electronics Corp	CHELEZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Electronics Technology Group Corporation (CETC)		China Electronics Technology Group Corp	CETCGZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China General Nuclear Power Corp.	China General Nuclear Power	China General Nuclear Power Corp	CGNPCZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21

Non-SDN CCMC and DOD CCMC



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China International Engineering Consulting Corp. (CIECC)		China International Engineering Consulting Corp	ENGINZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	3-Dec-20	1-Feb-21	3-Dec-21
China Mobile Communications Group	China Mobile Communications	China Mobile Communications Group Co Ltd	CHMOBZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
		China Mobile Limited	CHL US/941 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China National Chemical Corporation (ChemChina)		China National Chemical Corp Ltd	CHNCCZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China National Chemical Engineering Group Co., Ltd. (CNCEC)		China National Chemical Engineering Group Corp Ltd	ZHJTZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China National Nuclear Corp.	China National Nuclear	China National Nuclear Corp	CNNZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China National Offshore Oil Corp. (CNOOC)		China National Offshore Oil Corp	CNOZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	3-Dec-20	1-Feb-21	3-Dec-21
		CNOOC Limited	CEO US/883 HK CNU CA	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	3-Dec-20	1-Feb-21	3-Dec-21
China North Industries Group Corporation (Norinco Group)	Norinco	China North Industries Group Corp Ltd	CNIZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Nuclear Engineering & Construction Corporation (CNECC)		China Nuclear Engineering & Construction Corp Ltd	601611 CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Railway Construction Corporation (CRCC)		China Railway Construction Corp Ltd	601186 CN/ 1186 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Shipbuilding Industry Corporation (CSIC)		China Shipbuilding Industry Corp	CSIZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China South Industries Group Corporation (CSGC)		China South Industries Group Co Ltd	CSIGCZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21

Non-SDN CCMC and DOD CCMC



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China Spacesat		China Spacesat Co Ltd	600118 CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China State Construction Group Co., Ltd.		China State Construction Group Co Ltd	CSECCZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China State Shipbuilding Corporation (CSSC)		China State Shipbuilding Corp Ltd	0763828D CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Telecommunications Corp.	China Telecommunications	China Telecommunications Corp	CNTELZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
		China Telecom Corporation Limited	CHA US/728 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China Three Gorges Corporation Limited		China Three Gorges Corp	CJSXGZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
China United Network Communications Group Co Ltd		China United Network Communications Ltd	600050 CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
		China Unicom (Hong Kong) Limited	CHU US/762 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
CRRC Corp.	CRRC Corporation	CRRC Corp Ltd	601766 CN/1766 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Dawning Information Industry Co (Sugon)		Dawning Information Industry Co Ltd	603019 CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision)	Hikvision	Hangzhou Hikvision Digital Technology Co Ltd	002415 CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Huawei		Huawei Investment & Holding Co Ltd	KMCACZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Inspur Group		Inspur Group Co Ltd	LANZ CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Panda Electronics Group	Panda Electronics	Nanjing Panda Electronics Co Ltd	600775 CN/553 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21
Semiconductor Manufacturing International Corp. (SMIC)		Semiconductor Manufacturing International Corp	688981 CN/981 HK	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	3-Dec-20	1-Feb-21	3-Dec-21
Sinochem Group Co Ltd		Sinochem Group Co Ltd	1001Z CN	8-Jan-21	9-Mar-21	8-Jan-22 (Saturday)	12-Nov-20	11-Jan-21	11-Nov-21

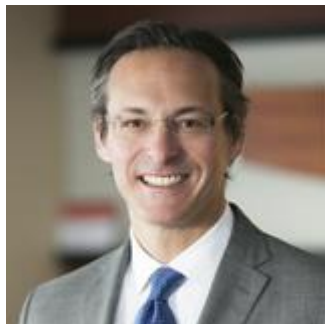
Non-SDN CCMC and DOD CCMC

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Advanced Micro-Fabrication Equipment Inc. (AMEC)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	15-Mar-21	14-Jan-22
Luokong Technology Corporation (LKCO)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	16-Mar-21	14-Jan-22
XiaoMi Corporation	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	17-Mar-21	14-Jan-22
Beijing Zhongguancun Development Investment Center	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	18-Mar-21	14-Jan-22
GOWIN Semiconductor Corp	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	19-Mar-21	14-Jan-22
Grand China Air Co. Ltd. (GCAC)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	20-Mar-21	14-Jan-22
Global Tone Communication Technology Co. Ltd. (GTCOM)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	21-Mar-21	14-Jan-22
China National Aviation Holding Co. Ltd. (CNAH)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	22-Mar-21	14-Jan-22
Commercial Aircraft Corporation of China. Ltd. (COMAC)	N/A	N/A	N/A	N/A	N/A	N/A	14-Jan-21	23-Mar-21	14-Jan-22

Attorney Biographies

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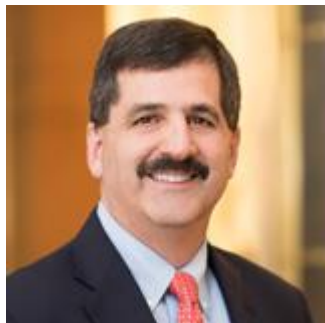
Timothy W. Levin, leader of the firm's investment management practice, counsels investment advisers and other financial services firms on the design, development, and management of pooled investment vehicles and investment advisory programs. He also advises fund managers in connection with organization, registration, and ongoing regulatory compliance. Additionally, he represents managers and sponsors of unregistered pooled investment vehicles.

Timothy's clients include many types of registered investment companies, such as mutual funds and registered funds of hedge funds, and funds focused on alternative investment strategies, including business development companies (BDCs). His unregistered pooled investment vehicle clients include private funds, bank collective investment trusts (CITs), and companies seeking exemption from investment company status.

Since 2008, *Chambers USA: America's Leading Lawyers for Business* has recognized Timothy for his work.

He speaks frequently at conferences and moderates panels. He also co-chairs the annual Hedge Fund Conference. Timothy is the editor of *Morgan Lewis Hedge Fund Deskbook: Legal and Practical Guide for a New Era* and the *Mutual Fund Regulation and Compliance Handbook*.

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Ken Nunnenkamp represents clients in international trade and national security matters before United States federal courts and government agencies, including the US departments of State, Commerce, Homeland Security, Defense, and Treasury. His practice involves internal investigations and disclosures, including voluntary disclosures and responding to government demands, as well as federal court defense against government actions. He also advises on compliance counseling and training, transactional due diligence—including both domestic and cross-border transactions—and statutory submissions to US government agencies.

With more than 30 years of litigation and investigation experience, including time as a JAG Officer in the US Marine Corps, Ken routinely conducts internal investigations for clients, including investigations into actual or potential compliance issues arising under the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Controls Regulations, US Customs Regulations, and Foreign Trade Regulations. Additionally, Ken works with clients to understand each business's scope and needs in establishing and improving trade and sanctions compliance programs, including the creation and auditing of company export management systems of all sizes.

Ken provides comprehensive investigation management and execution, from the preparation of an investigation plan, to the preparation, filing, and resolution of voluntary and directed disclosures of US government investigations and subpoenas related to export and import matters. His investigations work regularly involve fact gathering, witness interviews, board of directors counseling, preparation of reports for submission to US government agencies, and settlement of enforcement actions.

Ken also assists clients facing trade and national security enforcement actions from agencies including the US departments of Justice, Homeland Security, Federal Aviation Administration, and Customs, representing them in civil enforcement matters and working with criminal counsel when necessary. He has litigated such matters before the International Trade Commission, US district courts, and other US administrative agencies.

On the transactions side, Ken works with counsel in handling trade due diligence and preparing transactions for review by the Committee on Foreign Investments in the United States (CFIUS), and performing due diligence, assessment, and examination of often latent issues. He also works with both buyers and sellers on public and private transactions in the million- and billion-dollar range. Ken's experience with CFIUS includes almost every industry and transactions from more than 15 countries, including China, Germany, Japan, the United Kingdom, Canada, and Indonesia.

Ken also has aided companies with responses to various Executive and Congressional information requests and filings, including those under section 332(g) of the Tariff Act, BE-13 filings with the US Department of Commerce, or ITAR registrations and 122.4 notices with the US Department of State.

Ken has written numerous articles and chapters, and lectures regularly on CFIUS, export investigations, and export control and compliance issues. He serves as a resource for multiple publications on export, economics, and national security issues. Ken maintains an active pro bono practice, representing veterans before the Board of Veterans Appeals, the US Court of Appeals for Veterans Claims, the US Court of Appeals for the Federal Circuit, and various military discharge review boards. He previously served in the US Marine Corps as a JAG officer.

Ken is the leader of the Morgan Lewis CFIUS working group.