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CLIENT ALERT

Port in a Storm: DOJ Declines to Prosecute PE Firm that Self-Disclosed Criminal Violations at an Acquired Company

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For the first time since unveiling its Mergers & Acquisitions Safe Harbor Policy ("Safe Harbor Policy") last year,[1] the Department of Justice ("DOJ" or the "Department") announced its decision to decline prosecution against a private equity firm that voluntarily disclosed pre-acquisition misconduct it discovered after acquiring a company. The Safe Harbor Policy, which went into effect in March 2024, is one of the Department's many policies aimed at incentivizing voluntary disclosure. This action, which DOJ described as rewarding "responsible corporate leadership," is a concrete example of the potential benefits for acquirors who uncover, terminate, and quickly report misconduct committed by acquired entities. Of course, as we always note, the decision to self-disclose requires a fact-specific analysis, as discussed further below.

[1] For our initial take on the policy, *see* *New Policy, Same "Incentives": DOJ Unveils M&A Safe Harbor Policy* (Oct. 10, 2023).

On June 16, 2025, the Department's National Security Division and the U.S. Attorney's Office for the Southern District of Texas announced that they had declined to prosecute White Deer Management LLC, a private equity firm, after the firm voluntarily self-disclosed violations of sanctions and export control laws by a portfolio company, Unicat Catalyst Technologies LLC. At the same time, the Department announced a resolution with Unicat and its former CEO for conspiring to violate U.S. sanctions against Iran, Venezuela, Syria, and Cuba, as well as for money laundering. While Unicat was allowed to enter into a Non-Prosecution Agreement ("NPA"), the former CEO was required to plead guilty to one count of conspiring to violate the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705, and one count of conspiring to conceal and promote international money laundering in violation of 18 U.S.C. § 1956.

Under the terms of the NPA, Unicat agreed to pay forfeiture totaling over $3.3 million— representing the proceeds of its violations of U.S. sanctions and export control laws. Unicat also agreed to pay nearly $3.9 million to the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") for its violations of U.S. sanctions laws, and agreed with the Commerce Department's Bureau of Industry and Security Office of Export Enforcement ("OEE") to pay a penalty of approximately $400,000 for its violation of U.S. export control laws. However, OFAC agreed to credit Unicat's payment of forfeiture pursuant to the NPA against the OFAC penalty, and OEE has agreed to credit Unicat's payment to OFAC against the OEE penalty. In a separate administrative resolution with U.S. Customs and Border Protection ("CBP"), Unicat agreed to pay over $1.6 million in underpaid duties, taxes, and fees.[2] Unicat's former CEO agreed to pay $1.6 million in penalties.

According to the resolution documents, from around 2014 to 2021, Unicat—at the direction of its former CEO—made at least 23 unlawful sales of chemicals used in oil refining and steel production to customers in the aforementioned countries, principally Iran, without first having obtained the required approvals from the U.S. government. These sales violated economic sanctions imposed under IEEPA and the Trading with the Enemy Act, 50 U.S.C. § 4303. Further, some of the transactions involved the exports of chemicals from the United States in violation of the Expert Control Reform Act, 50 U.S.C. § 4819, and various export administration regulations. Many of Unicat's Iranian customers were refineries and steel plants owned by the Government of Iran, including refineries and plants that have themselves been designated by OFAC because the activities conducted at those sites is contrary to U.S. national security interests. To further the scheme, Unicat falsified export documents and financial records to obfuscate the true identities of its customers, and often used its buying agent in China to ship the chemicals directly to the sanctioned end country. Unicat also used bank accounts in third-party countries, relied on coded language in electronic communications, and communicated through non-Unicat email and other electronic communications channels to facilitate the transactions.

White Deer acquired Unicat in September 2020 and merged its operations with a British company in April 2021. Of note, White Deer did not learn of Unicat's sanctions violations during the pre-closing due diligence process, and received representations and warranties from Unicat regarding its compliance with the U.S. sanctions and export

[2] Unicat's CEO had also devised and implemented a tariff avoidance scheme, whereby the company provided false invoices to CBP in conjunction with its importation of chemical catalysts from China.

control laws. (The Department noted, however, that at least one sales agreement between Unicat and an Iranian entity had been provided during the diligence process, but was overlooked by a junior attorney performing the due diligence review.) White Deer learned of potential sanctions violated in June of 2021—nine (9) months after the transaction closed—when Unicat's new CEO visited Unicat's U.S. headquarters for the first time. (The delay had been due to travel restrictions imposed because of the COVID-19 pandemic.) At headquarters, the new CEO was told of a pending transaction with an Iranian customer; he immediately ordered the transactions cancellation and informed the White Deer board. The board then hired outside counsel to investigate. Only one month after learning of the sanctions violations, White Deer and Unicat self-disclosed the criminal conduct to the Department's National Security Division, as well as to OFAC and OEE.

Under the terms of the Safe Harbor Policy, White Deer was not automatically entitled to a presumptive declination: to be eligible for a declination under the new Safe Harbor Policy, the acquiring company has six (6) months from the transaction's closing date to disclose the discovered misconduct, regardless of when the misconduct is discovered. Here, White Deer did not discover Unicat's sanctions violation scheme until nine (9) months after closing—assuming that the Government did not consider the junior attorney's failure to flag the contract as part of diligence as "discovery." (Notably, DOJ referred to Unicat's misdeeds as "hidden" at the time of the acquisition. Suffice it to say, that associate can probably breathe a sigh of relief.) But, the Safe Harbor Policy noted that six-month deadline was subject to a "reasonableness analysis," essentially granting DOJ prosecutors the ability to extend it at their sole discretion. The Government applied that flexibility here, given the complications created by the COVID-19 pandemic and White Deer's efforts to integrate Unicat's operations with another entity.

The Safe Harbor Policy also requires remediation within one year, which the Department said occurred here. Unicat terminated the responsible employees, disciplined others connected to the misconduct, sought reimbursement from relevant third parties, and—according to DOJ—quickly designed and implemented a "comprehensive and robust internal controls and compliance program that has proven effective in practice at identifying and preventing similar potential misconduct." What's more, the Department touted the company's prompt reporting, which enabled DOJ to successfully prosecute the CEO. And the Department's press release also credited White Deer and Unicat's cooperation, including its proactive identification, collection, and disclosure of relevant evidence (including evidence located overseas) and its detailed and prompt responses to questions and requests for further information from the government.

This action marks DOJ's second publicly announced declination involving trade-related violations, following its April 2024 decision to decline to prosecute a MilliporeSigma employee who (unbeknownst to the company) sold millions of dollars of biochemical materials to China.[3]

OFAC, however, considered several aggravating factors in deciding to bring its enforcement action, including that Unicat's senior management team had actual knowledge of, participated in, and instructed subordinate employees to facilitate or engage in, the conduct that led to the violations of sanctions. In fact, OFAC found that since at least

[3] *See* DOJ National Security Division Issues First Declination Under New Enforcement Policy in Export Controls Case (May 28, 2024).

2018, Unicat's Board of Directors was aware that the company was conducting business with Iran, yet failed to intervene to stop the sales or take corrective action. Moreover, Unicat employees attempted to conceal their dealings with Iran by instructing each other to leave references to Iran out of email correspondence associated with Unicat sales to Iran, by electing to receive payment for onsite services with cash to avoid Iran sanctions restrictions, and by redirecting Unicat's purchase orders destined for Iran to be handled by its majority-owned Dutch affiliate. However, OFAC reduced the base civil monetary penalty amount by approximately 3 percent (or $135,000), in light of the company's cooperation and remedial response.

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As always, our advice on self-disclosure remains the same: the decision to self-disclose requires a fact-specific analysis. The decision to self-report can have consequences for individuals not covered by the self-disclosure or, in the case of an acquired business, the very business itself. Further, what happened to White Deer and Unicat is not necessarily the norm. As we have highlighted in previous alerts, companies that qualify still only presumptively receive a declination, and DOJ has sole discretion to define what terms like "fully remediate" and "fully cooperate" mean. Moreover, to receive the declination, companies are expected to disgorge profits DOJ says arose from the misconduct and/or pay restitution, penalties that are often millions of dollars. Companies should therefore continue to weigh the pros and cons of self-disclosure on a case-by-case basis.

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