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DOJ Declination of Private Equity Firm Underscores Need for Robust M&A Due Diligence

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On June 16, 2025, the U.S. Department of Justice ("DOJ"), including its National Security Division ("NSD") and the U.S. Attorney's Office for the Southern District of Texas, announced that they would not prosecute White Deer Management LLC ("White Deer"), a Texas-based private equity firm, in connection with sanctions and export control violations committed by Unicat Catalyst Technologies LLC ("Unicat"), a portfolio company it had acquired in 2020. This declination marks the first application of the DOJ's M&A Safe Harbor policy, which encourages acquiring companies to voluntarily self-disclose misconduct identified post-acquisition.[1]

Background

Between 2014 and 2021, Unicat, a Texas-based company, was found to have engaged in 23 unlawful sales of chemical catalysts used in oil refining and steel production to customers in U.S.-sanctioned countries, including Iran, Venezuela, Syria, and Cuba. These transactions violated U.S. sanctions laws and involved falsified export documents and financial records. Some of the sales were exported from the United States, resulting in violations of U.S. export control laws as well.

Due Diligence and Discovery of Misconduct

White Deer had conducted pre-acquisition due diligence on Unicat's international operations during the acquisition process but did not identify the illegal sales. This was in part due to inaccurate representations made by Unicat representatives to White Deer regarding Unicat's compliance with U.S. sanctions and export control laws, and also because White Deer's counsel failed to detect a historical sales agent agreement involving transactions into Iran (as it was later discovered). The misconduct was eventually discovered in June 2021, when Unicat's new CEO visited the company's offices as part of the post-acquisition integration efforts and was informed about a pending transaction with an Iranian customer. White Deer and Unicat's new CEO immediately canceled the transaction, informed the board and retained counsel to conduct an internal investigation, which identified a broader pattern of transactions with counterparties in apparent contravention of various U.S. sanctions programs.

Voluntary Disclosure and DOJ Assessment

Within a month of uncovering the misconduct, White Deer voluntarily disclosed the violations to the NSD, even prior to completing its internal review. The DOJ found that White Deer's voluntary self-disclosure met NSD's M&A Policy requirements despite the disclosure occurring 10 months post-acquisition. The DOJ deemed it timely due to several mitigating factors: (i) the acquisition being part of a two-stage investment strategy, with disclosure made three months after the final closing, (ii) COVID-19-related delays in post-acquisition integration, (iii) swift and comprehensive remedial actions, including canceling a pending Iran-related transaction and (iv) disclosure to DOJ occurring one month after discovery, prior to full understanding of the violations.[2]

Resolution and Non-Prosecution Agreement

In December 2024, the DOJ entered into a non-prosecution agreement ("NPA") with Unicat. The company's former CEO, Mani Erfan, pleaded guilty to conspiracy to violate the International Emergency Economic Powers Act and to commit money laundering, and agreed to forfeit $1.6 million in laundered funds.

As part of the NPA, Unicat agreed to forfeit over $3.3 million in revenue derived from the illegal sales. Additionally, the company agreed to pay over $3.8 million in administrative penalties to the U.S. Treasury's Office of Foreign Assets Control ("OFAC") and over $391,000 to the Department of Commerce's Bureau of Industry and Security ("BIS") Office of Export Enforcement ("OEE"). OFAC credited the forfeiture amount against its penalty and OEE credited Unicat's OFAC payment against its own penalty.

DOJ's Rationale for Declination

The DOJ's decision not to prosecute the acquiror was grounded in several key considerations:

- **Timely Self-Disclosure:** White Deer reported the violations promptly upon discovery, even before completing its internal investigation, demonstrating good faith and transparency.
- **Full Cooperation:** White Deer and Unicat cooperated extensively with the DOJ, facilitating the investigation and prosecution of the responsible individuals. Among other things, this included, in the context of their "extensive, thorough and robust internal investigation" (i) identifying relevant records on employee and agent personal electronic devices and ephemeral messaging accounts inside and outside of the U.S. and (ii) proactively providing foreign-located records in line with foreign data privacy laws.
- **Effective Remediation:** Unicat remediated the root causes of the misconduct in less than one year from the date of the discovery by: (i) terminating and disciplining employees involved in the misconduct, (ii) clawing back funds through civil remedies targeting the responsible individuals, and (iii) implementing a robust compliance and internal controls program.
- **Absence of Ongoing Risk:** The DOJ noted that although there were aggravating factors present, such as the involvement of members of senior management and the length of the conduct, these were no longer present or applicable to either Unicat or White Deer, reducing the risk of future violations.

Key Takeaways

First. The declination reflects the DOJ's continued effort to incentivize acquirers to identify and report in good faith any inherited misconduct, thereby promoting post-acquisition corporate accountability without discouraging M&A activity. Under the NSD's M&A Safe Harbor Policy (which is replicated in other DOJ divisions), there is a presumption for a declination when a company (1) completes a lawful *bona fide* acquisition of another entity, (2) voluntarily and promptly discloses potential national security-related criminal violations by the acquired entity discovered post-closing, (3) fully cooperates with the DOJ's investigation, and (4) remediates the misconduct in a timely and appropriate manner. While this presumption does not extend to the acquired entity, the NSD may credit the acquiror's disclosure to the acquired entity and consider whether the acquired entity meets the broader enforcement policy's standards to receive similar benefits.

Second. The DOJ's decision underscores the importance of robust, risk-based pre-acquisition due diligence and effective post-acquisition due diligence, including in the integration process. While contractual representations and warranties from a seller are critical, they are not a substitute for a properly tailored, risk-based review of the target's business, customer base and geographic footprint. This could include a careful review of historical sales into high-risk jurisdictions. Even if pre-acquisition diligence does not uncover specific misconduct (as it can be time-pressured, especially in a competitive bid situation), timely and robust post-acquisition due diligence and integration efforts play a critical role in identifying and addressing promptly any latent misconduct, which can be critical to qualifying for safe harbor treatment by the DOJ.

The DOJ's decision also carries practical implications for sellers, highlighting the value of performing risk-based, pre-sale self-examinations and assessments. By proactively identifying and remediating potential issues before initiating a sale process, sellers can: (i) reduce the likelihood of post-closing enforcement actions for acquirers; (ii) implement remedial measures prior to any acquisition; and (iii) potentially enhance the attractiveness of the business to prospective buyers, particularly in heavily regulated sectors or high-risk markets.

Third. The DOJ's resolution reflects its broader enforcement focus on individual accountability. In line with its recent white-collar enforcement guidance (issued in May 2025) and updated FCPA policy (issued in June 2025), the DOJ continues to prioritize prosecution of individuals, whether executives, officers or employees, who are directly responsible for corporate misconduct. As the DOJ has reiterated, these enforcement efforts aim to deter individual wrongdoing that often harms shareholders, employees and consumers, while recognizing and crediting companies that act in good faith to uncover and remediate inherited violations.

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[1] U.S. Department of Justice – Office of Public Affairs, Justice Department Declines Prosecution of Private Equity Firm Following Voluntary Disclosure of Sanctions Violations and Related Offenses Committed by Acquired Company (June 16, 2025), available at: https://www.justice.gov/opa/pr/justice-department-declines-prosecution-private-equity-firm-following-voluntary-disclosure.

[2] U.S. Department of Justice, White Deer declination letter (December 19, 2024), available at: https://www.justice.gov/opa/media/1403771/dl?inline.

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