Paul, Weiss

Client Memorandum

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DOJ Announces First Ever Declination of Prosecution of an Acquiring Company for Sanctions Violations Under DOJ's M&A Safe Harbor Policy

On June 16, 2025, the National Security Division of the United States Department of Justice ("DOJ") announced that it was declining to prosecute a Houston-based private equity firm, White Deer Management, LLC ("White Deer"), for criminal violations of U.S. sanctions and export control laws committed by a portfolio company that White Deer had acquired, Unicat Catalyst Technologies, LLC ("Unicat"). According to the DOJ, the resolution with White Deer "marks the first time since the creation of the Justice Department's Mergers and Acquisitions Policy in March 2024 that the Department has declined the prosecution of an acquiror for self-disclosing criminal conduct discovered at an acquired entity."[1]

Unicat entered into a non-prosecution agreement with the DOJ, pursuant to which it agreed to pay forfeiture totaling $3,325,052.10, representing the proceeds of its violations of U.S. sanctions and export control laws. This payment was credited to parallel settlements with the Office of Foreign Assets Control ("OFAC") and the Department of Commerce's Bureau of Industry and Security, Office of Export Enforcement ("BIS"). In addition, Unicat's former CEO pleaded guilty to one count of conspiracy to violate sanctions and one count of conspiracy to commit money laundering.

Key Takeaways

- The announcement shows that the DOJ will follow through on its announced efforts to incentivize companies to voluntarily disclose misconduct, particularly misconduct that touches on national security concerns including sanctions and export control laws.

- Companies, including private equity firms, that identify potential criminal misconduct as part of due diligence activities should consider prompt, voluntary disclosure to the DOJ in order to take advantage of DOJ policies regarding declinations of prosecution.

[1] DOJ, *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 here.

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The DOJ's and NSD's Mergers & Acquisitions Safe Harbor Policy

The DOJ announced a Mergers & Acquisitions Safe Harbor Policy in October 2023.[2] In March 2024, the Policy was incorporated into the DOJ's Justice Manual. The Policy provides a safe harbor from criminal prosecution to companies that make a voluntary self-disclosure ("VSD") of misconduct uncovered at an acquired company. The Policy is notable because it applies Department-wide and to the full range of corporate criminal offenses, including antitrust violations, FCPA violations, environmental crimes, and sanctions and export control violations.

As a general matter, the DOJ's Policy established a "presumption in favor of declining prosecution of a corporation" that voluntarily self-disclosed misconduct, fully cooperated, and timely and appropriately remediated the misconduct. Self-disclosure by an acquiring company was expected to occur within six months of the closing date of the acquisition, and remediation was expected to have taken place generally within one year of the closing date.[3] In March 2024, DOJ's National Security Division ("NSD") announced a policy consistent with these general DOJ guidelines.[4]

Application of the Safe Harbor to White Deer Management LLC and Unicat Catalyst Technologies

According to the DOJ, White Deer, a Houston-based private equity firm, acquired Unicat, a Texas-based petrochemical company, in September 2020 and then merged Unicat with a subsequently acquired British manufacturing company in April 2021.[5]

After closing, Unicat's new UK-based CEO went to the company's Texas offices for the first time, where he learned of a pending transaction with an Iranian customer. The CEO cancelled the transaction. Over the next month, White Deer and Unicat's new CEO retained counsel to investigate, and learned that Unicat had for years been selling, sourcing, exporting and reexporting catalyst products and services to customers in Iran, Venezuela, Syria, and Cuba.[6] According to court papers, the vast majority of Unicat's illicit activity concerned Iran and Venezuela.[7] Unicat obtained approximately $3.33 million in revenue from these illicit sales. The former CEO and other employees concealed these activities by falsifying export documents, using bank accounts located in third-party countries, and using coded language in electronic communications.[8] In one instance, the former CEO instructed his Iran-based customers to make "no mention of anything except Dubai UAE Plant, UAE destination, UAE client."[9]

Before their investigation had even been completed, White Deer and Unicat's new management submitted a voluntary self-disclosure to NSD.

Declination as to White Deer. The DOJ declined to prosecute White Deer, pointing to NSD's enforcement policy that applies to "Voluntary Self-Disclosures in Connection with Acquisitions" ("NSD M&A Policy"). Under that policy, "when a company (1) completes a lawful bona fide acquisition of another entity, (2) voluntarily and timely self-discloses to NSD potentially criminal violations of laws affecting U.S. national security committed by the acquired entity, (3) fully cooperates with NSD's investigation, and (4) timely and appropriately remediates the misconduct, NSD generally will not seek a guilty plea from the acquiror, and there is a presumption that NSD will decline to prosecute the acquiror."

In the case of White Deer, the DOJ considered a number of factors in deciding to decline prosecution. The DOJ described those considerations in detail in a December 2024 letter to White Deer's counsel:

- the Unicat acquisition was a lawful, bona fide acquisition;

[2] We discussed this announcement in a prior client memo: https://www.paulweiss.com/insights/client-memos/doj-announces-new-department-wide-mergers-acquisitions-safe-harbor-policy-and-emphasizes-expanded-focus-on-national-security-corporate-crime

[3] DOJ, *Justice Manual: 9-28.000 – Principles of Federal Prosecution of Business Organizations* (updated March 2024), available here.

[4] DOJ, *NSD Enforcement Policy for Business Organizations* (March 7, 2024), available here.

[5] DOJ, *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 here.

[6] Letter from Adam P. Barry and S. Mark McIntyre, DOJ, to Mark Stuckey, CEO of Unicat, (Dec. 19, 2024), available here, at 8–10.

[7] *United States* v. *Mani Erfan*, Plea Agreement, 4:24-cr-00401, (S.D. Tex.), available here.

[8] Letter from Adam P. Barry and S. Mark McIntyre, DOJ, to Mark Stuckey, CEO of Unicat, available here, at 7.

[9] *United States* v. *Mani Erfan*, Plea Agreement, 4:24-cr-00401, (S.D. Tex.), available here.

- no pre-existing disclosure obligation required White Deer to disclose the misconduct it discovered at Unicat;
- although White Deer made its disclosure to NSD approximately 10 months after the Unicat acquisition closed, the disclosure was timely under all of the circumstances, including:
  - the acquisition was the first stage of White Deer's two-stage investment strategy to merge Unicat's operations with those of a later-acquired business, and the disclosure was made to NSD just three months after the acquisition of the second business closed and efforts to integrate the two businesses had begun;
  - post-acquisition integration efforts were significantly delayed by the COVID-19 pandemic;
  - White Deer acted to mitigate the imminent threat of any further national security harm by immediately canceling a pending transaction with Iran upon learning of the misconduct; and
  - White Deer acted promptly to disclose the misconduct to NSD just one month after discovering the misconduct during post-acquisition integration activity, and before obtaining a complete understanding of the nature and full extent of the misconduct;
- White Deer provided and caused Unicat to provide exceptional and proactive cooperation, including by
  - disclosing all known relevant facts about the misconduct and the individuals involved in the misconduct;
  - proactively identifying relevant records retained by Unicat employees and agents on personal electronic devices and messaging accounts both inside and outside the United States;
  - proactively and lawfully disclosing relevant foreign-located records in accordance with disclosure restrictions imposed by foreign data privacy laws;
  - agreeing to continue to cooperate with ongoing government investigations and any resulting prosecutions; and
- White Deer timely and appropriately remediated the misconduct in less than one year from the date of its discovery, including by terminating culpable employees, disciplining other employees involved in the misconduct, and designing and implementing a comprehensive and robust internal controls and compliance program that has proven effective in practice at identifying and preventing similar potential misconduct.[10]

Resolution as to Unicat. The DOJ entered into a non-prosecution agreement ("NPA") with Unicat. Pursuant to the NPA, Unicat agreed to pay forfeiture totaling $3,325,052.10, representing the proceeds of its violations of U.S. sanctions and export control laws.

In explaining the resolution, DOJ noted that aggravating factors were present, "including the involvement of upper management in the criminal conduct and concealment, and [Unicat's] repeated violations of national security laws over a period of eight years," and Unicat was not "entitled to a presumption that will receive a non-prosecution agreement." However, DOJ "nonetheless determined that a non-prosecution agreement is appropriate," even after accounting for "aggravating circumstances and the level and degree of [Unicat's] cooperation." Among other things, DOJ considered that the revenue obtained from these violations "represented only 1% of [Unicat's] total revenues" during the relevant period, that "culpable upper management actively deceived more junior employees about the legality" of said actions, and Unicat's "exceptional cooperation and extensive remediation."[11]

In parallel resolutions, Unicat agreed: (1) with DOJ, to pay a forfeiture judgment of $3,325,052.10 representing the proceeds of its violations of U.S. sanctions and export control laws; (2) with OFAC, to pay a penalty of $3,882,797 for its violation of U.S. sanctions laws; and (3) with BIS, to pay a penalty of $391,183 for its violation of U.S. export control laws. OFAC agreed to credit $3,325,052.10 of its penalty as satisfied by Unicat's forfeiture payment under the DOJ resolution. BIS agreed to credit Unicat's payments to OFAC under its OFAC resolution toward satisfaction of the BIS penalty. Separately, Unicat entered into

[10] Letter from Adam P. Barry and S. Mark McIntyre, DOJ to James E. Meneely III, White Deer Management, (Dec. 19, 2024), available here, at 2.

[11] Letter from Adam P. Barry and S. Mark McIntyre, DOJ, to Mark Stuckey, CEO of Unicat, available here, at 3.

an agreement with the U.S. Department of Homeland Security, Customs and Border Protection ("CBP"), related to the understatement of the value of its imported catalysts. Unicat paid CBP duties, taxes and fees, plus compounded interest, totaling $1,655,189.57.

In its resolution with Unicat, OFAC cited as aggravating factors: (1) the willfulness of Unicat's violations; (2) Unicat senior management's actual knowledge of the violations; (3) Unicat employees' attempts to conceal the violations; and (4) the harm to U.S. foreign policy resulting from these violations. OFAC cited as mitigating factors: (1) Unicat's lack of previous penalty notices; (2) Unicat's cooperation; and (3) the new management's prompt action in stopping, investigating, and reporting the violations.

CEO Plea Agreement: The former Unicat CEO, who led the company before its sale to White Deer, pleaded guilty to one count of conspiring to violate the International Economic Powers Act and one count of conspiracy to commit concealment money laundering and international promotional money laundering. According to the plea agreement, the former CEO signed a multi-year sales agent agreement with one company to be its exclusive sales agent for Iran, and he submitted dozens of proposals and bids to customers in Iran. The former CEO also submitted multiple proposals to sell Unicat products to customers in Venezuela, Syria, and Cuba. In one transaction, he and his co-conspirators sold $1,370,231.37 of chemicals to Venezuela.[12]

[12] *United States* v. *Mani Erfan*, Plea Agreement, 4:24-cr-00401, (S.D. Tex.).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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