



Department of Justice Declines to Prosecute Private Equity Firm Under M&A Safe Harbor Policy

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The U.S. Department of Justice (DOJ) announced its first-ever declination under its 2023 Mergers and Acquisitions Safe Harbor Policy, which aims to incentivize acquiring companies to proactively identify, disclose, and remediate regulatory violations and potential criminal conduct discovered during the mergers and acquisitions due diligence process. See [DOJ Announces New Policy on Voluntary Self-Disclosures in M&A Transactions](#) | Van Ness Feldman LLP.

The declination cleared a private equity firm, White Deer Management LLC and its affiliates (White Deer) from prosecution for a number of sanctions-related violations alleged against Unicat Catalyst Technologies, LLC (Unicat), an entity White Deer had purchased. As part of the resolution, Unicat agreed to forfeit \$3.33 million from unlawful sales and pay \$1.66 million to the U.S. Customs and Border Protection and \$391,183 to the U.S. Department of Commerce's Bureau of Industry and Security Office of Export Enforcement.

DOJ found that Unicat's chief executive officer (who was also a co-founder of the company) had conspired with others to cause Unicat to make 23 unlawful sales of chemical catalysts used in oil refining and steel production to customers in Iran, Venezuela, Syria, and Cuba. DOJ alleged that these sales violated economic sanctions imposed by both the International Emergency Economic Powers Act and the Trading with the Enemy Act. Those same transactions, according to DOJ, violated the Export Control Reform Act and related regulations. DOJ also alleged that the conspirators falsified export documents, financial records, and sales invoices.

According to [DOJ's declination letter](#), a number of factors led to the conclusion that White Deer satisfied the M&A Safe Harbor Policy. Notably, the declination was granted despite the fact that White Deer made its disclosure to DOJ 10 months after acquiring Unicat.

In explaining its decision to consider why 10 months after closing was "timely," DOJ observed that (1) evidence of potential misconduct was missed by counsel during the initial deal due diligence; (2) the COVID-19 pandemic had slowed integration efforts; (3) after discovery of the misconduct White Deer acted to mitigate any threat of further harm by canceling a pending transaction with Iran; and (4) White Deer made its disclosure just one month after discovery and before it knew all the relevant facts.

DOJ also cited White Deer's "exceptional and proactive cooperation," which included: (1) disclosing all known relevant facts about the misconduct and the individuals involved; (2) proactively identifying relevant records employees/agents

had retained on personal electronic devices and messaging accounts; (3) disclosing relevant foreign-located records; and (4) agreeing to cooperate with government investigations and any resulting prosecutions.

Finally, DOJ credited White Deer's timely remediation of the misconduct. In the year following its discovery, the company: (1) terminated culpable employees; (2) disciplined other employees involved in the misconduct; and (3) designed and implemented internal controls and an effective compliance program.

The factors DOJ considered in this first application of its 2023 Safe Harbor M&A Policy are generally consistent with factors the agency had previously considered in declination decisions made before adoption of the new policy. What is notable, however, is that this declination decision was made in an area that is currently a federal enforcement priority. This reinforces that acquiring companies should continue to benefit from rigorous regulatory due diligence, particularly in areas federal enforcement authorities have flagged as priorities (such as sanctions and related offenses). Failure to perform detailed regulatory due diligence, on the other hand, could result in successor criminal liability.

For More Information

Van Ness Feldman's Litigation and Investigations team has extensive experience with designing and implementing compliance programs, conducting regulatory due diligence, leading internal investigations, and handling government investigations. For more information on how our team can help with regulatory and compliance due diligence in transactions, or any other compliance-related analyses, please contact [Mike Farber](#), [Charlene Koski](#), [Justin Panitchpakdi](#), or any other member of our [Litigation and Investigations](#) team.

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