

ALERT MEMORANDUM

# DOJ National Security Division Issues First Declination Under Merger-Related Safe Harbor Provisions

June 18, 2025

On June 16, 2025, the Department of Justice’s National Security Division (“NSD”) and the U.S. Attorney’s Office for the Southern District of Texas announced a landmark declination to prosecute private equity firm White Deer Management LLC following its voluntary self-disclosure of sanctions violations committed by an acquired company.<sup>1</sup> This marks the first application of the safe harbor provisions for voluntary self-disclosure in connection with mergers and acquisitions—a policy put in place during the previous administration—and demonstrates the benefits of NSD’s enforcement policies while highlighting continued enforcement priorities across administrations.

The White Deer declination, coupled with the non-prosecution agreement entered into with the acquired entity Unicat Catalyst Technologies LLC, provides critical guidance for companies navigating potential sanctions and export control violations discovered during post-acquisition integration. It underscores that the voluntary self-disclosure framework established under the previous administration remains fully operational and continues to offer substantial benefits to companies that act swiftly and responsibly upon discovering misconduct.

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<sup>1</sup> Department of Justice, Press Release (June 16, 2025), available at <https://www.justice.gov/opa/pr/justice-department-declines-prosecution-private-equity-firm-following-voluntary-disclosure>.

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## A Model for Post-Acquisition Compliance

The case involves White Deer Management LLC, a private equity firm that acquired Texas-based Unicat Catalyst Technologies LLC in 2021.

In June 2021, Unicat's new CEO traveled to the United States to begin integrating operations. During this visit, the new CEO discovered that Unicat had a pending transaction with an Iranian customer and immediately cancelled the deal. Over the following month, White Deer retained counsel to investigate further and discovered a broader pattern of sanctions violations. Namely, from 2014 to 2021, Unicat's former CEO had sold chemical catalysts to customers in Iran, Venezuela, Syria, and Cuba, violating U.S. sanctions. Unicat earned about \$3.33 million in revenue from the 23 unlawful sales.

Critically, White Deer voluntarily self-disclosed to NSD before the internal investigation was complete, but after determining that Unicat employees had engaged in potentially criminal violations of U.S. sanctions laws. This prompt disclosure proved decisive in securing favorable treatment from the government.

## First Application of NSD's Merger and Acquisition Policy

This declination represents the very first application of NSD's Voluntary Self-Disclosures in Connection with Acquisitions policy (the "NSD M&A Policy") since its creation in March 2024.<sup>2</sup> The policy provides that when a company: (1) completes a lawful bona fide acquisition, (2) voluntarily and timely self-discloses potentially criminal violations 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 acquirer, and there is a

presumption that NSD will decline to prosecute the acquirer.<sup>3</sup>

NSD determined that White Deer's acquisition was lawful and bona fide and that the self-disclosure was timely under all relevant circumstances, including the COVID-19 pandemic and White Deer's efforts to integrate Unicat's operations. The government credited White Deer's swift cooperation, which included proactively identifying and disclosing relevant evidence, including foreign language materials and evidence located overseas, and providing detailed responses to government requests.

As Assistant Attorney General for National Security John A. Eisenberg noted, "After acquiring a company with a hidden history of sanctions violations, this private equity firm uncovered the misconduct, stopped it, and quickly reported it to the government, leading to the successful prosecution of a senior executive. Our decision to decline prosecution of the acquirer and extend a non-prosecution agreement to the acquired entity in this case reflects the National Security Division's strong commitment to rewarding responsible corporate leadership."<sup>4</sup>

## Key Considerations in the NSD Declination

The White Deer declination and Unicat non-prosecution agreement highlight several critical considerations that could apply across cases:

- Prompt voluntary self-disclosure: White Deer's decision to self-disclose before completing its internal investigation proved significant. The company retained counsel and made its disclosure within approximately one month of discovering the violations, demonstrating the type of prompt action NSD rewards under its policies.
- Exceptional cooperation: Both White Deer and Unicat provided exceptional cooperation that materially assisted the government's investigation and led to the successful prosecution of Unicat's

<sup>2</sup> Department of Justice, National Security Division, *Enforcement Policy for Business Organizations*, available at <https://www.justice.gov/nsd/media/1285121/dl?inline=>.

<sup>3</sup> *Id.*

<sup>4</sup> Department of Justice, Press Release (June 16, 2025), available at <https://www.justice.gov/opa/pr/justice-department-declines-prosecution-private-equity-firm-following-voluntary-disclosure>.

former CEO. This included proactively collecting and disclosing evidence, including materials in foreign languages and located overseas, and providing comprehensive responses to government requests.

- Effective remediation: Unicat implemented comprehensive remediation measures within less than one year of discovering the misconduct. These measures included terminating culpable employees, disciplining others involved in the misconduct, seeking reimbursement from Unicat’s sellers, and implementing a robust compliance program.
- Nature of the violations: While the violations were serious—involving 23 unlawful sales generating about \$3.33 million in revenue—NSD considered that the misconduct was orchestrated by the former CEO and other employees without the knowledge or involvement of White Deer or Unicat’s new management.

## A Pattern Emerges

The factors underlying NSD’s decision in the White Deer case align closely with those in the MilliporeSigma and USRA declinations from May 2024 and April 2025, respectively, which marked the first and second declinations issued by NSD under its Enforcement Policy for Business Organizations following voluntary self-disclosure.<sup>5</sup> NSD continues to reward companies that make early disclosures prior to completing internal investigations, provide proactive and comprehensive cooperation, and implement effective remediation measures. The

agency also considers the nature and scope of the underlying violations when determining appropriate resolutions. This pattern of decision-making provides valuable guidance for companies navigating potential sanctions and export control violations.

## Policy Continuity Across Administrations

The White Deer declination demonstrates continuity in enforcement priorities and policies across the transition from the Biden to Trump administrations. The NSD M&A Policy, established in March 2024 under the previous administration, has been implemented by the current administration, providing predictability and consistency for companies navigating national security enforcement matters.

The consistent application of these policies across administrations reflects the bipartisan recognition that voluntary self-disclosure serves critical national security interests by encouraging companies to identify, stop, and report violations that might otherwise remain hidden. As NSD’s framework explains, export control and sanctions violations “harm our national security” and this threat “informs how NSD arrives at an appropriate resolution.”<sup>6</sup> This resolution also demonstrates that NSD’s approach to corporate enforcement appears to align with the Criminal Division’s stated commitment to streamline resolutions for companies that disclose early and cooperate.<sup>7</sup> DOJ’s Criminal Division also has a similar policy related to mergers and acquisitions, and we expect that these policies will be applied consistently across the Department of Justice.<sup>8</sup>

<sup>5</sup> DOJ National Security Division Issues Second Declination Under Corporate Enforcement Policy, Cleary Gottlieb Steen & Hamilton (May 2, 2025), available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-national-security-division-issues-second-declination-under-corporate-enforcement-policy>.

<sup>6</sup> Department of Justice, National Security Division, *Enforcement Policy for Business Organizations*, available at <https://www.justice.gov/nsd/media/1285121/dl?inline=>.

<sup>7</sup> DOJ Criminal Division Announces White Collar Enforcement Plan and Revisions to Three Key Policies,

Cleary Gottlieb Steen & Hamilton (May 15, 2025), available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-criminal-division-announces-white-collar-enforcement-plan-and-revisions-to-three-key-policies>.

<sup>8</sup> Department of Justice, Speech (October 4, 2023), available at <https://www.justice.gov/archives/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

## **Extended Statute of Limitations**

While voluntary self-disclosure policies remain consistent across administrations, companies should also keep under consideration the recent extension of the statute of limitations for sanctions violations from five to ten years.<sup>9</sup> This expanded enforcement window, applicable to violations after April 25, 2019, may necessitate more comprehensive historical reviews during due diligence and robust compliance programs capable of detecting violations across longer timeframes.<sup>10</sup> The change reflects the government's recognition that sanctions and export control violations can have lasting national security implications that warrant extended enforcement timeframes.

## **Conclusion**

The White Deer declination marks the first application of NSD's merger-related safe harbor provisions, demonstrating that voluntary self-disclosure policies continue to animate decision-making at the Department of Justice, providing predictability and substantial benefits for companies that act rapidly and proactively upon discovering potential violations. The case, combined with the extended ten-year statute of limitations for sanctions violations, underscores the critical importance of robust compliance programs and thorough due diligence in mergers and acquisitions. Companies must be prepared to conduct comprehensive historical reviews, implement effective post-acquisition integration processes, and respond swiftly and transparently when potential violations are discovered.

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<sup>9</sup> 21st Century Peace through Strength Act, Pub. L. No. 118-50, div. D (April 24, 2024).

<sup>10</sup> Office of Foreign Assets Control, Press Release (July 22, 2024), available at <https://ofac.treasury.gov/recent-actions/20240722>.