

# FINN DIXON & HERLING

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## DOJ Declines Prosecution of Private Equity Firm Under M&A Safe Harbor Policy

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In a first-of-its-kind decision, the Department of Justice (DOJ) recently declined to prosecute a private equity (PE) firm for violations of U.S. sanctions and export laws committed by a newly acquired company – marking the DOJ’s first use of its M&A Safe Harbor Policy.

### Why It Matters:

- DOJ is signaling that PE firms that self-report newly-discovered portfolio company misconduct and remediate quickly can avoid prosecution — even for serious violations like sanctions evasion.
- This case shows how DOJ’s Safe Harbor Policy works in practice and offers a roadmap for managing post-acquisition risks.

### Key Points:

- A newly-acquired portfolio company had violated U.S. sanctions and export control laws
- PE firm was covered by DOJ’s M&A Safe Harbor Policy because:
  - It made a voluntary self-disclosure to the DOJ shortly after it discovered the misconduct.
  - It cooperated fully with the government’s investigation.
  - The portfolio company promptly took effective remediation steps.
  - The portfolio company agreed to pay significant penalties and forfeiture.

### Background

In years prior to the acquisition, the CEO of the acquired company, Unicat Catalyst Technologies LLC (Unicat), conducted numerous prohibited sales to customers subject to U.S. sanctions. The CEO also falsified export documents to evade tariffs, generating millions in illegal revenue. According to the DOJ release, Unicat’s history of violations were “hidden” from the PE firm (White Deer Management LLC) when it made the acquisition.

In June 2021, shortly after the acquisition, Unicat’s new CEO discovered a pending transaction with an Iranian customer and promptly retained outside counsel to investigate. Before the investigation was complete, but after confirming that Unicat had committed violations of U.S. sanctions laws, the PE firm and Unicat’s new management voluntarily disclosed the misconduct to DOJ’s National Security Division (NSD). The PE firm and Unicat then fully cooperated with the government’s investigation, including

identifying, collecting, and producing relevant evidence, which materially contributed to the successful prosecution of the former CEO of Unicat.

## DOJ's Declination

On June 16, 2025, DOJ announced that it had declined prosecution of the PE firm and entered into a non-prosecution agreement with Unicat, under which the company agreed to pay a forfeiture of \$3,325,052.10. In addition, as part of parallel resolutions with the DOJ, Department of the Treasury, Department of Commerce and U.S. Customs and Border Protection, Unicat agreed to pay monetary penalties totaling \$5,929,169.57. The full DOJ press release can be found [here](#).

## DOJ's M&A Safe Harbor Policy

DOJ's declination represents the first application of NSD's M&A Safe Harbor Policy since it was issued in early 2024.

Under this policy, NSD generally will not seek a guilty plea from an acquiring company and will presumptively decline prosecution when:

- the company voluntarily and timely self-discloses the violations;
- the violations were not previously known to DOJ or being investigated;
- the company fully cooperates with DOJ's investigation; and
- the company timely and appropriately remediates the misconduct.<sup>1</sup>

NSD's M&A Safe Harbor Policy is an outgrowth of DOJ's department-wide policy for voluntary self-disclosures in the M&A context, announced in October 2023. In that announcement, DOJ emphasized that it was implementing a safe harbor policy across all divisions of the Department, under which acquiring companies that promptly disclose misconduct uncovered within six months of closing, and fully remediate the misconduct within one year, will be afforded a presumption of declination.<sup>2</sup>

DOJ officials in the current Trump administration have continued to stress the importance of voluntary self-disclosures by corporations. Therefore, it is reasonable to believe that the same framework that was used by DOJ in deciding whether to grant favorable treatment to the PE firm for Unicat's violations in the national security context will also be applied by DOJ to voluntary disclosures involving other business sectors and industries.

## Takeaways for PE firms

The resolution in this case offers several practical takeaways for PE firms navigating potential criminal violations discovered post-acquisition.

**Act Fast:** When a potential criminal violation is discovered, promptly engage with outside counsel to conduct an investigation and determine appropriate next steps. In this case, Unicat retained counsel to investigate and, as soon as the sanctions violations were apparent, it reported them to the government.

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<sup>1</sup> Department of Justice, National Security Division, *Enforcement Policy for Business Organizations*, available at <https://www.justice.gov/nsd/media/1285121/dl?inline=>.

<sup>2</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>.

**Remediate:** Take immediate steps to address and effectively remediate the misconduct and the root causes of it. Unicat did so in less than one year from the date of its discovery by terminating responsible employees, disciplining other employees involved in the misconduct, and implementing new internal controls.

**Be Mindful of Deadlines:** In order to advocate for a presumption that DOJ should decline prosecution, make every effort to comply with the deadlines announced by DOJ in 2023: self-disclose the misconduct within six months of closing and fully remediate within one year. These deadlines are subject to a “reasonableness” standard and can be extended by DOJ depending on the facts and circumstances. Therefore, even if the misconduct is discovered more than six months after closing, the safe harbor may still be available and the option of a voluntary self-disclosure should not be rejected out of hand.

**Be Prepared to Provide Full Cooperation:** When a company does make a voluntary disclosure to the DOJ, it should be prepared to cooperate fully and provide all relevant information and evidence to the government in a timely fashion. Here, Unicat proactively collected and disclosed evidence to the government, including materials located overseas, and provided comprehensive responses to government requests.

## Conclusion

Despite the change in administrations and DOJ leadership, this case demonstrates once again the importance that DOJ places on voluntary self-disclosures and cooperation by corporations. It shows that the incentives announced by the Biden administration will continue to play a crucial role in how DOJ officials in the Trump administration exercise their prosecutorial discretion. Given that the new DOJ leadership has limited the discretion of line prosecutors and directed that they must charge the most serious, readily provable offenses in every case, the risks in not spotting issues early and taking prompt and decisive action can be severe.

For further guidance, please contact:

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