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DOJ Issues FCPA Enforcement Guidelines, Focusing on Conduct Harming U.S. Economic and National Security Interests

On June 9, 2025, the U.S. Department of Justice issued new guidelines to federal prosecutors for investigations and enforcement of the Foreign Corrupt Practices Act (the "Guidelines").[1] This announcement has been widely anticipated since February when, pursuant to an executive order, DOJ suspended much FCPA enforcement activity, undertook to review existing matters, and began preparing new guidance.[2]

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1. The Deputy Attorney General, "Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)" (June 9, 2025), https://www.justice.gov/dag/media/1403031/dl.
2. Executive Order, "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security" (Feb. 10, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security; *see also* Office of the Attorney General, "Total Elimination of Cartels and Transnational Criminal Organizations" (Feb. 5, 2025), https://www.justice.gov/ag/media/1388546/dl?inline.

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The new Guidelines indicate that DOJ will continue to investigate and prosecute violations of the FCPA but with noteworthy changes to its priorities and approach. According to the Guidelines, and consistent with the earlier executive order, DOJ must focus on "limiting undue burdens on American companies that operate abroad" and "targeting enforcement actions against conduct that directly undermines U.S. national interests."

To apply those overarching principles, the Guidelines instruct prosecutors to consider the following four non-exhaustive factors in determining whether to commence an FCPA-related investigation or enforcement action:

- DOJ must prioritize matters in which the alleged bribery or corruption involves **drug cartels or transnational criminal organizations** ("TCOs"), which have been a key target of Trump Administration policies and enforcement activity. Relevant misconduct may involve the use of money laundering or shell companies on behalf of cartels or TCOs or implicate foreign officials who receive bribes from cartels or TCOs.
- Consistent with the Trump Administration's focus on **promoting U.S. economic interests**, prosecutors should assess whether the potential wrongdoing "deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals." Signaling an increased focus on prosecuting FCPA violations by foreign companies, the Guidelines assert that "[t]he most blatant bribery schemes have historically been committed by foreign companies." The Guidelines also state, however, that DOJ will pursue U.S. interests "not by focusing on particular individuals or companies on the basis of their nationality, but by identifying and prioritizing the investigation and prosecution of conduct that most undermines these principles."
- FCPA enforcement should advance **U.S. national security**, focusing on "bribery of corrupt foreign officials involving key infrastructure or assets." The Guidelines note a strong national security interest "in sectors like defense, intelligence, [and] critical infrastructure."
- DOJ will prioritize investigations of the **most serious misconduct**, particularly "alleged misconduct that bears strong indicia of corrupt intent tied to particular individuals, such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribe scheme, and efforts to obstruct justice." Enforcement should not focus on potential FCPA violations "involving routine business practices or the type of corporate conduct that involves de minimis or low-dollar, generally accepted

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business courtesies." As a corollary to this principle of allocating prosecutorial resources, prosecutors should consider whether foreign enforcement authorities are likely to investigate and prosecute the alleged wrongdoing.

Under the Guidelines, new FCPA investigations and enforcement actions must be authorized by the Assistant Attorney General for the Criminal Division or a more senior DOJ official. Unsurprisingly, the Guidelines signal that DOJ's interests in pursuing FCPA cases that already have been charged may be stronger than in cases that have not reached that stage. The Guidelines also urge prosecutors to pursue cases involving misconduct by individuals rather than "attribute nonspecific malfeasance to corporate structures."

As with prior DOJ policies and guidance, the impact of the Guidelines will become clearer as DOJ applies them to actual cases. Companies operating internationally—and in particular non-U.S. companies—should nevertheless expect that enforcement of the FCPA will continue under this administration. In determining how best

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to deploy limited compliance resources and to mitigate corruption-related risks, companies should take account of the priorities detailed in the Guidelines, including the importance of assessing any risk of exposure, however attenuated, to the activities of cartels and TCOs.

Non-U.S. companies, especially those that operate in a sector alongside numerous U.S. competitors or in areas of strategic importance, such as defense, intelligence, and critical infrastructure (as noted above), may face particularly close scrutiny. Given the Guidelines' clear prioritization of U.S. interests, it is possible that U.S. companies might be emboldened to file complaints against their foreign competitors, alleging that they were deprived of business opportunities due to their foreign competitors' corrupt conduct. Notably, this focus on U.S. national interests and non-U.S. companies is in considerable tension with Article 5 of the OECD's Anti-Bribery Convention, to which the United States is a signatory.[3] That Article

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provides: "Investigation and prosecution of the bribery of a foreign public official . . . shall not be influenced by considerations of national economic interest." It remains to be seen whether and how DOJ may seek to reconcile that tension and how, if at all, other signatories to the Convention will respond.

At the same time, companies can have some confidence that DOJ will not focus on investigating and charging minor or technical breaches of the FCPA, such as gifts and entertainment-related expenses or other payments that the Guidelines describe as "generally accepted business courtesies" (though it remains unclear how broad DOJ considers this category to be). As always, however, companies should bear in mind that what can appear at first to be a minimal or isolated issue may be indicative of a more widespread or systemic problem, and that what may be a minor issue in isolation could attract greater attention, especially if it implicates any of DOJ's new priorities. Also, importantly, a future administration could swiftly revoke or revise these Guidelines and pursue any prohibited conduct that remains within the statute of limitations.

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3. OECD, "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0293.

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DOJ's National Security Division Issues First Declination Under its M&A Policy

On June 16, 2025, the U.S. Department of Justice announced that it declined to prosecute White Deer Management LLC ("White Deer"), a U.S. private equity firm, and certain of its affiliates for violations of U.S. sanctions, export controls, and customs laws. DOJ specified that it declined this prosecution notwithstanding criminal acts committed by employees of Unicat Catalyst Technologies LLC ("Unicat"), a portfolio company White Deer had recently acquired.[1] DOJ's National Security Division ("NSD") and the U.S. Attorney's Office for the Southern District of Texas ("SDTX") cited White Deer's prompt voluntary disclosure of misconduct at Unicat, "exceptional and proactive cooperation," and timely and appropriate remediation efforts—each a core element of NSD's Enforcement Policy for Business Organizations ("NSD Enforcement Policy").[2] NSD and SDTX also entered into a non-prosecution agreement with Unicat.[3]

The declination reflects DOJ's emphasis on affording relief to companies that promptly investigate red flags indicative of sanctions or export controls violations, promptly report such potential violations to the government, fully cooperate, and timely and appropriately remediate.

Background

White Deer acquired Texas-based Unicat in September 2020. In April 2021, White Deer acquired a British catalyst manufacturing company, merged Unicat's operations into it, and transitioned Unicat's former CEO into the role of chief technology officer of the new combined entity.[4]

According to the declination letter and the NPA, from approximately May 2014 until August 2021, Unicat's former CEO conspired with at least one Unicat employee and others to violate U.S. sanctions and export controls by completing 23 sales of chemical catalysts used in oil refining and steel production to Cuban, Iranian, Syrian, and

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1. Declination Letter from U.S. Dep't of Justice, National Security Division to Jeffery B. Vaden and Jamie Joiner, Re: White Deer Management LLC, et al. (Dec. 19, 2024), https://www.justice.gov/opa/media/1403771/dl?inline ("White Deer Declination Letter"); U.S. Dep't of Justice Press Release No. 25-620, *Justice Department Declines Prosecution of Private Equity Firm Following Voluntary Disclosure of Sanctions Violations and Related Offenses Committed by Acquired Company* (June 16, 2025), https://www.justice.gov/opa/pr/justice-department-declines-prosecution-private-equity-firm-following-voluntary-disclosure ("NSD Press Release").
2. U.S. Dep't of Justice, National Security Division, *NSD Enforcement Policy For Business Organizations* (Mar. 7, 2024), https://www.justice.gov/nsd/media/1285121/dl?inline=.
3. Non-Prosecution Agreement, In re: Unicat Catalyst Technologies, LLC (Dec. 19, 2024), https://www.justice.gov/opa/media/1403781/dl?inline ("Unicat NPA").
4. *Id.* ¶¶ 1-2.

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Venezuelan counterparties without required approvals. The government alleged that Unicat's former CEO directed employees in sales, logistics, and accounting functions to facilitate and conceal the transactions, including by shipping catalysts from foreign countries, using bank accounts and logistics companies in foreign countries, falsifying export documents, and communicating in coded language.[5]

The sales activity in contravention of U.S. sanctions and export controls laws generated approximately $3.3 million in revenue for Unicat. Unicat also allegedly falsified invoices to avoid approximately $1.6 million in tariffs on catalysts imported from China.[6]

White Deer worked with outside counsel to conduct pre-acquisition due diligence of Unicat's operations and received representations and warranties from Unicat's sellers concerning Unicat's compliance with relevant laws. In June 2021, White Deer learned of a pending Iran-related transaction during its efforts to integrate Unicat with the British portfolio company. White Deer promptly canceled the pending transaction, retained counsel to conduct an internal investigation, and—prior to completing that investigation and only one month after determining that Unicat employees may have willfully violated U.S. sanctions and export controls—submitted a voluntary self-disclosure to NSD.[7]

DOJ's Declination

The government credited White Deer's voluntary disclosure and timely and appropriate remediation, and also credited the firm and its affiliates with providing, and causing Unicat to provide, "exceptional and proactive cooperation" to NSD.[8] The government highlighted that White Deer's and Unicat's cooperation included disclosure of information about the individuals involved in the violations, production of records held inside and outside of the United States, including on personal devices and from messaging apps, and "without being asked," making a limited privilege waiver to produce documents that were "especially relevant to the state of mind of certain individuals."[9]

White Deer and Unicat remediated the misconduct "less than one year from the date of its discovery" and spent more than $4 million on the investigation and remediation. Relevant steps included implementing a comprehensive compliance

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5. Unicat NPA, Attachment A, ¶¶ 17-20.
6. White Deer Declination Letter at 2.
7. Unicat NPA, Attachment A, ¶¶ 31-33.
8. White Deer Declination Letter at 2.
9. Unicat NPA ¶ 2(b); White Deer Declination Letter at 2.

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program that was "proven effective in practice," terminating culpable employees, clawing back funds from the most culpable individuals, including a compliance requirement in compensation metrics, and terminating sales agents that sold or knew of sales to sanctioned countries.[10]

Related Enforcement

Although White Deer received a declination, other parties faced meaningful liability. Unicat's former CEO pled guilty to related charges and agreed to pay a $1.6 million money judgment.[11]

Unicat entered into: (i) an NPA with NSD and SDTX, agreeing to forfeit approximately $3.3 million; (ii) a settlement agreement with the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), which assessed approximately $3.9 million in penalties for sanctions violations; and (iii) a settlement with the Office of Export Enforcement at the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), which assessed $391,183 in penalties for export controls violations. The OFAC and BIS settlements involved civil monetary penalties assessed against Unicat, with OFAC's penalty discounted in recognition of Unicat's cooperation and remediation efforts. OFAC agreed to credit the forfeiture Unicat paid in connection with its NPA against its penalty, and BIS agreed to credit the amount paid to OFAC. Unicat separately paid approximately $1.6 million to U.S. Customs and Border Protection in connection with its avoidance of tariffs.

"Companies that identify sanctions or trade compliance red flags should promptly investigate, assess the seriousness of any potential misconduct, and consider whether a voluntary self-disclosure may be warranted. The same is true when encountering other compliance red flags, such as potential bribery or corruption."

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10. Unicat NPA ¶ 2(c); White Deer Declination Letter at 2.
11. Plea Agreement, *U.S. v. Mani Erfan*, 4:24-cr-00401 (S.D. Tex. Aug. 19, 2024), https://www.justice.gov/opa/media/1403776/dl?inline.
12. NSD Enforcement Policy at 9-12.
13. *See* Debevoise & Plimpton LLP, *DOJ National Security Division Issues First-Ever Declination Under Enforcement Policy* (May 29, 2024), https://www.debevoise.com/insights/publications/2024/05/doj-national-security-division-issues-first-ever.
14. *See* Debevoise & Plimpton LLP, *DOJ Reaffirms NSD's Enforcement Policy in a Second Declination* (May 9, 2025), https://www.debevoise.com/insights/publications/2025/05/doj-reaffirms-nsds-enforcement-policy-in-a-second.

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NSD's Declinations in Context

This declination is the third that NSD issued pursuant to its Enforcement Policy and the first one pursuant to its Voluntary Self-Disclosures in Connection with Acquisitions (the "NSD M&A Policy").[12] The first declination under NSD Enforcement Policy was in 2024, when MilliporeSigma received a declination following its self-disclosure of export violations involving diversion of pharmaceutical products to China.[13] MilliporeSigma reported the misconduct to NSD within a week of detection, prior to completing its internal investigation, and cooperated fully with the authorities. The second declination, involving a nonprofit academic institution, was issued in April 2025.[14] Each of the declinations rewarded prompt self-disclosure and meaningful and effective remediation to address the misconduct and its root causes—and each of them involved a successful prosecution of former employees.

This first declination under NSD's M&A Policy reflects DOJ's continued willingness to decline to prosecute an acquirer that promptly investigates red flags and self-reports potential violations. The emphasis on rewarding voluntary self-disclosure in the context of M&A activity with a declination is consistent with prior M&A-related declinations in the context of FCPA enforcement[15] and with the announcement in October 2023 that presumptions of declinations triggered by voluntary disclosures would apply in the M&A context across all of DOJ's components.[16]

Recent statements by U.S. officials across the government underscore that voluntary self-disclosure provides a path to leniency, perhaps especially so when tied to potential violations of law that implicate U.S. national security or foreign policy.[17] In fact, DOJ's Criminal Division recently revised its Corporate Enforcement Policy to provide for certain declinations (rather than merely presumptive declinations) for voluntary self-disclosures—absent aggravating factors—in order to further incentivize companies to come forward and report misconduct.[18] Time will tell whether NSD or even DOJ as a whole will adopt this approach.

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15. *See, e.g.*, U.S. Dep't of Justice, Criminal Division, Fraud Section to Manuel A. Abascal, Re: Lifecore Biomedical, Inc. (Nov. 16, 2023), https://www.justice.gov/media/1325521/dl?inline.

16. *See* U.S. Dep't of Justice, Justice Manual 9-28.600 and 9-28.900, https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.900; *see also* U.S. Dep't of Justice, *Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions* (Oct. 4, 2023), https://www.justice.gov/archives/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self ("[T]oday, for the first time, we are announcing a Department-wide Safe Harbor Policy for voluntary self-disclosures made in the context of the mergers and acquisition process.").

17. *See, e.g.*, NSD Press Release; U.S. Dep't of Justice, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime* (May 12, 2025), https://www.justice.gov/criminal/media/1400046/dl?inline; see also Debevoise & Plimpton LLP Debrief, *DOJ's Criminal Division Announces New White-Collar Enforcement Plan* (May 14, 2025), https://www.debevoise.com/insights/publications/2025/05/dojs-criminal-division-announces-new-white-collar.

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At the same time, this case also demonstrates that acquiring companies may still face federal criminal investigations based on very limited, if any, involvement in alleged misconduct. The declination letter and the NPA contain no evidence of White Deer's involvement in Unicat's violations, most of which appear to have occurred before White Deer acquired Unicat.

Key Takeaways

- This case highlights the significance of both risk-based due diligence and integration, which are critical to helping identify potential compliance issues. Companies that identify sanctions or trade compliance red flags should promptly investigate, assess the seriousness of any potential misconduct, and consider whether a voluntary self-disclosure may be warranted. The same is true when encountering other compliance red flags, such as potential bribery or corruption. Experienced counsel can help assess the appropriateness of a self-report, as well as mitigate enforcement risks, navigate interactions with authorities, and implement remediation measures consistent with DOJ's expectations. By taking proactive steps to strengthen compliance and respond swiftly to potential violations, businesses can reduce legal and reputational exposure and position themselves for a more favorable resolution, such as a declination, in the event of future DOJ or other enforcement scrutiny.
- DOJ declined to prosecute White Deer "despite the presence of aggravating factors" at Unicat, including the involvement of Unicat's former senior management, "because the causes of those aggravating factors [were] no longer present" at White Deer or Unicat.[19] Similarly, despite the "involvement of upper management in the criminal conduct and its concealment, and [Unicat's] repeated violations of national security laws over a period of eight years," the government deemed an NPA with Unicat to be appropriate. That determination was based in part on Unicat's "exceptional cooperation and extensive remediation,"[20] highlighting the critical importance of thorough remediation in mitigating the effects of aggravating circumstances.

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18. *See, e.g.*, Debevoise & Plimpton LLP, *DOJ's Criminal Division Announces New White-Collar Enforcement Plan* (May 14, 2025), https://www.debevoise.com/insights/publications/2025/05/dojs-criminal-division-announces-new-white-collar.
19. White Deer Declination Letter at 2.
20. Unicat NPA ¶ 2(e).

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- NSD's M&A Policy states that voluntary self-disclosure generally will be considered timely if made within six months after completing the relevant acquisition. But it provides that an acquirer can persuade NSD that a disclosure outside that window is still timely under the circumstances.[21] The White Deer declination letter stated that, although White Deer's disclosure was made approximately 10 months after Unicat's acquisition, it was "timely under all of the circumstances," including delays in post-acquisition integration efforts caused by the COVID-19 pandemic, the fact that White Deer "immediately cancel[led]" the problematic transaction upon identifying it, and the fact of the disclosure to NSD within one month of discovery of the wrongdoing. The White Deer case thus offers an example of how a company can show reasonable timeliness outside of the periods set out in the NSD M&A Policy.

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21. NSD Enforcement Policy at 11-12.

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