ALM | LAW.COM

New York Law Journal

Private Equity Benefits From Post-Acquisition Compliance Disclosure

By Mauricio Escobar

August 12, 2025

Earlier this summer, the U.S. Department of Justice's (DOJ) National Security Division (NSD) and the U.S. Attorneys' Office for the Southern District of Texas issued a press release announcing that they declined the prosecution of a private equity firm (PE Firm) and certain affiliates after the PE Firm discovered and voluntarily self-disclosed criminal violations of U.S. sanctions and export laws committed by a company it acquired.

This is the first declination of prosecution of an acquiror under the NSD's new Mergers and Acquisitions (M&A) Policy, which is part of the NSD's revised Enforcement Policy for Business Organizations (Corporate Enforcement Policy) and only the third declination under the Corporate Enforcement Policy.

The M&A Policy

The Corporate Enforcement Policy provides that when a company (1) voluntarily self-discloses to NSD potentially criminal (i.e., willful) violations arising out of or relating to the enforcement of export control or sanctions laws, (2) fully cooperates, and (3) timely and appropriately remedies, absent aggravating factors (such as repeated violations, involvement of senior management), NSD will generally not seek a guilty plea and there is a presumption that the company will receive a non-prosecution agreement and will not pay a fine.

The M&A Policy provides that an acquiror will qualify for additional protections of the policy if it (1) completes a lawful bona fide acquisition of another entity, (2) voluntarily and timely self-discloses to NSD potentially criminal (i.e. willful) violations of laws affecting U.S. national security committed by the acquired entity (such as violations of sanctions and export control laws), (3) fully cooperates with NSD's investigation, and (4) timely and appropriately remedies the misconduct.

The presence of aggravating factors at the acquiror (such as a history of recidivism) will generally not prevent the acquiror from qualifying for the additional protections. Similarly, the presence of aggravating factors at the acquired company will generally not prevent the acquiror from qualifying for the additional protections, provided that those aggravating factors do not continue to affect either the acquiror or the acquired company following a qualifying voluntary self-disclosure (VSD) under the M&A Policy.

When an acquiror makes a VSD that qualifies for the additional protections of the M&A Policy, NSD generally will not seek a guilty plea from the acquiror, and there is a presumption that NSD will decline to prosecute the acquiror. Additionally, the acquiror will not be required to pay a criminal fine or forfeit assets, and the misconduct disclosed to NSD will not affect the NSD's assessment of the acquiror's history of recidivism in future matters involving the acquiror.

The Acquisition and Discovery of Potentially Criminal Violations

The acquired company was a Texas-based supplier of chemical catalyst products and also supplied related services to the refinery, chemical, steel and agricultural industries. In connection with the acquisition, the PE Firm hired outside legal counsel to perform pre-closing due diligence of the acquired company's international operations.

The PE Firm, however, did not learn of the company's sanctions violations and the company's seller's provided representations and warranties to the PE Firm about the company's compliance with U.S. sanctions and export control laws.

Unknown to the PE Firm at the time the acquisition closed, however, at least one of the historical sales agent agreements between the company and an exclusive sales representative for transactions in Iran had been provided to the PE Firm during the pre-closing due diligence process and overlooked by a junior attorney performing the due diligence review.

The sanctions and export control violations come to light after the acquired company's newly appointed CEO traveled to the U.S. from the UK to visit the company and begin to integrate the operations. During this visit, the new CEO learned that the company had a pending transaction with an Iranian customer and immediately ordered the cancellation of the transaction.

The PE Firm and the new CEO retained counsel to investigate and learned that the acquired company had engaged in a series of transactions with counterparties subject to different U.S. sanctions programs.

Before the internal investigation was complete, but after determining that the acquired company's employees had engaged in potentially criminal violations of U.S. sanctions laws, the PE Firm and the acquired company's new management self-disclosed the criminal conduct it had discovered to the NSD, and also disclosed apparent violations of U.S. sanctions and export control laws to the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement (OEE).

According to the NSD, from 2024 through 2021, the former CEO of the acquired company who co-founded the company conspired with others, including at least one other company employee, to cause the company to make a total of 23 unlawful sales of chemical catalysts used in oil refining and steel production to customers in Iran, Venezuela, Syria and Cuba in violation of sanctions regimes enforced by OFAC. The former CEO had primary responsibility for the company's sales activities and legal compliance.

The former CEO directed others at the company, including subordinate employees in the sales, logistics, and accounting departments, to facilitate the illegal transactions by arranging shipping logistics, creating false business records, and ordering catalysts from manufacturers in China.

For many of the prohibited transactions with customers in sanctioned countries, the company used its buying agent in China to ship the catalysts directly from China to the sanctioned end country. The company engaged in multiple transactions for the sale of catalyst products to end users in Iran and, on at least two occasions, the provision of on-site technical consulting services in Iran by company agents. For some of the sales, the company exported catalysts from the U.S. to a customer in Iran through the UAE without an export license and falsely identified the ultimate consignee of the shipment in export control documents.

Many of the company's Iranian customers were petrochemical refineries, petrochemical companies, and steel plants owned by the Government of Iran. Similarly, many of the company's Venezuelan customers were owned and controlled by the Government of Venezuela and subject to U.S. sanctions.

NSD's investigation also found that the company's former CEO falsified invoices to reduce the tariffs assessed on catalysts that the company imported from China. As a result of the fraudulent imports, the company avoided the payment of approximately $1.66 million in tariffs.

Resolution

NSD determined that the PE Firm's VSD satisfied the requirements of the M&A Policy and declined to prosecute the PE Firm or its affiliates.

NSD's declination letter indicates, among other things, that the PE Firm provided and caused the acquired company to "provide exceptional and proactive cooperation," which included proactively identifying relevant records retained by company 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, and designing and implementing a comprehensive and robust internal controls and compliance program "that has proven effective in practice a preventing and preventing similar potential misconduct."

NSD stated that it had reached its determination "despite the presence of aggravating factors at the acquired entity, which include the involvement of certain members of [the company's] previous upper management in the misconduct, because the cause of those aggravating factors are no longer present at either" the acquired company or the PE Firm.

NSD entered into a non-prosecution agreement with the acquired company, crediting the company's cooperation that ultimately led to the prosecution of and a guilty plea of its former CEO for conspiring to violate U.S. sanctions laws and for concealment and international promotional money laundering.

DOJ, OFAC, and OEE coordinated parallel resolutions under which the company agreed with DOJ to pay a forfeiture money judgment of approximately $3.33 million representing the proceeds of its violations of U.S. sanctions and export controls laws, agreed with OFAC to pay a penalty of approximately $3.8 million for its violations of U.S. sanctions laws, and agreed with OEE to pay a penalty of $391,183 for its violations of U.S. export control laws.

OFAC agreed that it would deem the $3.33 million of the OFAC penalty satisfied by the company's forfeiture of the proceeds of its violations of U.S. sanctions and export control laws pursuant to its resolution with DOJ. OEE agreed that it would credit the company's payments to OFAC pursuant to its resolution with OFAC to the OEE's penalty. The company also paid import duties, taxes, and fees plus compounded interest totaling approximately $1.66 million.

Takeaways

The resolution highlights the importance of conducting a thorough post-acquisition compliance review to identify and address any compliance gaps, mitigate risks, and ensure the newly integrated entity operates within legal and ethical boundaries. This is particularly important since pre-acquisition diligence is often limited and there may be difficulties obtaining full information about the target company's compliance with U.S. sanctions and export control laws.

Private equity firms face significant sanctions and export controls risks when doing business with entities involved in international transactions. Robust due diligence before acquiring a company is crucial to identify and assess potential risks.

Firms should implement a robust comprehensive compliance program that should include post-acquisition integration diligence and audits to uncover and address any hidden compliance issues.

Acquirors that identify potentially reportable conduct discovered in pre- or post-acquisition diligence may benefit from the presumption of non-prosecution in the M&A Policy if there is a qualifying VSD, notwithstanding the presence of aggravating factors at the acquired company.

Mauricio Escobar *is a senior associate at Kilpatrick whose practice focuses on issues involving the Foreign Corrupt Practices Act, U.S. international trade laws and regulations and anti-money laundering laws and regulations.*