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Sanctions

Dual Resolutions Demonstrate Full Spectrum of Sanctions-Related Enforcement Against Investment Firms

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Although the change in presidential administration has unquestionably brought with it a shift in enforcement priorities, pursuing trade- and sanctions-related violations is one area of continuity. For example, in 2022, former Deputy Attorney General Lisa Monaco called sanctions enforcement the "new [Foreign Corrupt Practices Act]," while, this spring, Commerce Secretary Howard Lutnick signaled "a dramatic increase" in export controls enforcement.

Meanwhile, DOJ officials have explicitly prioritized investigation of "trade and customs" violations. Signaling greater scrutiny of non-bank financial institutions, the DOJ's Criminal Division has promised to focus on "conduct that threatens the country's national security, including threats to the U.S. financial system by gatekeepers." And it has noted that "[f]inancial institutions, shadow bankers, and other intermediaries aid U.S. adversaries by processing transactions that evade sanctions."

Two recent enforcement actions highlight those priorities, as well as the government's increasing focus on non-bank financial institutions as financial "gatekeepers." These actions illustrate that, more than ever, the government stands ready to impose penalties on investment fund managers and private equity (PE) firms that engage in criminal and regulatory violations, viewing them as responsible for the downstream effects of their investments and the conduct of their portfolio companies. But government agencies have simultaneously amplified the benefit of cooperation and voluntary self-reporting. This article discusses the two actions and the differing fates of the firms involved, highlighting the government's dual-track approach.

For more insights from Nitz, see "Agency Power and Adjudication: The Government Seeks Supreme Court Review of *Jarkesy v. SEC*" (Jun. 8, 2023).

GVA Capital Highlights Risks of Non-Cooperation and Underscores Focus on Non-Bank Financial Entities

In the first action, the U.S. Treasury's Office of Foreign Assets Control (OFAC) announced a $216-million penalty – the maximum available – against GVA Capital, Ltd, a venture capital firm operating out of San Francisco. In 2016, GVA Capital approached Suleiman Kerimov, a Russian oligarch, about an investment in a U.S. company. Kerimov agreed to invest, effectuating the investment through Prosperity Investments, L.P. (Prosperity), an entity in which Kerimov held an interest.

In 2018, OFAC designated Kerimov as a sanctioned individual for being an official of the Russian government. That designation froze Kerimov's property in the U.S. and prohibited those property interests from being transferred, paid, exported, withdrawn or otherwise dealt with unless authorized by OFAC. After that designation, however, Kerimov continued to retain an interest in Prosperity.

Kerimov's designation prompted GVA Capital to seek a legal opinion, which concluded – incorrectly – that GVA Capital's transactions with Prosperity were not prohibited by Kerimov's designation because a non-designated party nominally owned 50 percent or more of Prosperity. Nonetheless, the opinion warned GVA Capital that Kerimov could not be directly or indirectly involved in any transactions.

Notwithstanding that warning, between 2018 and 2021, on several occasions, GVA Capital attempted to sell or assign certain holdings in which Kerimov had an interest via transactions involving Prosperity and related entities. In doing so, GVA Capital coordinated with Kerimov's nephew, who the firm knew was acting as a proxy for his uncle in connection with the transactions.

OFAC opened an investigation into GVA Capital, issuing a subpoena to the firm in June 2021. In response, GVA Capital initially produced 173 documents and indicated that its response to the subpoena was complete. However, after OFAC issued a pre-penalty notice in September 2023, the firm subsequently produced an additional 1,300 responsive records and recertified its response as complete – more than two years after the initial production and certification.

OFAC concluded GVA Capital had willfully violated the sanctions regime and imposed the maximum possible statutory penalty, finding several aggravating factors that, it argued, justified the stiff penalty:

- GVA Capital acted willfully, working through Kerimov's known intermediaries, despite a legal opinion warning against his participation in transactions.
- The firm's conduct "undermined broader U.S. policy objectives."
- It "acted contrary to U.S. foreign policy interests" because of Kerimov's status as a Russian national.
- It did not voluntarily self-disclose the violations.

In announcing the penalty, OFAC sent a clear message to financial "gatekeepers," such as "investment professionals, accountants, attorneys, and providers of trust and corporate formation services." Those professionals, OFAC said, "occupy crucial financial and legal positions that place them at particular risk of knowingly or unwittingly furnishing access by illicit actors to the licit financial system."

OFAC also signaled to non-bank financial institutions such as venture capital firms and investment advisors that they must "have a clear understanding of their U.S. sanctions compliance obligations," particularly when, as happened to GVA Capital, an existing client is sanctioned. Risks arising from that situation are heightened when parties "rely[] on formalistic ownership arrangements that obscure the true parties in interest behind an entity or investment," OFAC observed.

For a look at sanctions basics, see this three-part series: "How Sanctions Regimes Work" (Jun. 16, 2022); "Their Impact on Private Fund Investors and Investments" (Jun. 23, 2022); and "How to Comply With Them" (Jul. 7, 2022).

Finally, OFAC emphasized the importance of compliance with its administrative subpoenas and the consequences of failing to cooperate with its investigations. GVA Capital's prolonged failure to comply with the subpoena for 28 months resulted in 28 separate violations of OFAC's reporting requirements, which led to millions of dollars in additional penalties.

White Deer Resolution Highlights Value of Voluntary Disclosure Programs

Just four days after the GVA Capital action was publicly disclosed, the DOJ announced a starkly contrasting resolution with the Texas-based PE firm White Deer Capital Management LLC (White Deer). The DOJ formally declined to prosecute sanctions and trade violations after White Deer voluntarily reported violations by one of its portfolio companies.

Specifically, the DOJ rewarded White Deer with the first declination under the M&A policy of the DOJ's National Security Division (NSD) because it voluntarily disclosed a series of sanctions- and trade-related violations committed by its recently acquired portfolio company, Unicat Catalyst Technologies LLC (Unicat). Before being acquired by White Deer, Unicat committed sanctions, export controls and tariff violations by exporting chemical catalysts used in oil refining and steel production to customers in Iran, Venezuela, Syria and Cuba. It also imported mislabeled catalysts from China. White Deer did not discover the misconduct in its pre-acquisition due diligence, partly due to Unicat's efforts to conceal the malfeasance through falsified invoices, export documents and financial records. But the violations ultimately came to light during post-acquisition integration efforts when Unicat's newly installed management team, which had been selected and overseen by White Deer, learned about a pending transaction with an Iranian customer. At the direction of new management, Unicat cancelled that transaction and retained outside counsel to investigate, revealing the full scope of misconduct.

White Deer voluntarily disclosed Unicat's violations to the NSD within a month of discovering them and even before completing its internal investigation. The DOJ concluded White Deer's disclosure warranted a declination under the NSD's M&A Policy, which states that an entity that acquires another can receive a declination when, through due diligence conducted shortly before or after the acquisition, the acquiring entity discovers potential export controls or sanctions violations. The acquiring company will receive a presumption of a declination and no criminal fine or forfeiture if it:

- timely and voluntarily reports the misconduct;
- fully cooperates; and
- undertakes timely and appropriate remediation.

In announcing the declination, the DOJ highlighted White Deer's "exceptional and proactive cooperation," stressing the agency's intent to incentivize voluntary disclosure and remediation of misconduct. Although White Deer's disclosure was not made until 10 months after the acquisition of Unicat, the DOJ nonetheless found it timely under the policy in light of:

- coronavirus-related delays in post-acquisition integration;
- the transaction structure that involved White Deer's performing a second closing with a related entity only three months before voluntarily disclosing to the DOJ; and
- White Deer's swift reporting and remedial action upon discovering the misconduct.

The DOJ also highlighted White Deer's cooperation, such as its proactive identification, collection and disclosure of relevant evidence (including evidence located abroad), as well as its timely remedial action, which was completed within a year of discovering the misconduct.

White Deer also reached a joint resolution with the DOJ, OFAC and the Bureau of Industry and Security (BIS), under which Unicat entered a non-prosecution agreement (NPA) and agreed to pay a combined $3,882,797 to resolve the allegations. Unicat also agreed to pay $1,655,189.57 in a separate administrative resolution with U.S. Customs and Border Protection, and its former CEO pleaded guilty to conspiring to violate U.S. sanctions laws and engaging in anti-money laundering activities.

See this two-part series on the DOJ"s revisions to its corporate enforcement policy: "A More Amenable DOJ Looks to Negotiate" (Nov. 9, 2023); and "Parsing the Policy for the Path to a Declination" (Dec. 7, 2023).

Key Takeaways

The White Deer and GVA Capital resolutions demonstrate the government's focus on sanctions- and trade-related violations, particularly with respect to financial institutions and other gatekeepers, which OFAC believes are in a better position than others to identify whether sanctioned individuals retain an interest in property in violation of OFAC regulations.

Continued Sanctions- and Trade-Related Enforcement

The DOJ has promised to make "trade and customs fraud," including "tariff evasion," a criminal enforcement priority, including scrutinizing "gatekeepers," such as "financial institutions and their insiders that commit sanctions violations." The government's resolutions with GVA Capital and White Deer are concrete manifestations of those priorities. Moreover, the involvement of OFAC and BIS shows the government intends to coordinate across agencies and may bring both civil and criminal enforcement mechanisms to bear.

More enforcement in this area is likely to come. Indeed, the DOJ recently added "corporate sanctions offenses" and "trade, tariff, and customs fraud by corporations" to the list of subjects covered under the DOJ's corporate whistleblower awards program, which will incentivize additional tips in those areas. Investment firms should take the DOJ at its word and expect heightened scrutiny. Adjusting compliance programs appropriately to address sanctions and export-control risks will be critical, both for firms operating multinationally and for entities that make significant investments in those companies.

See "Measures Against Russia Pose Serious Compliance Challenges" (Jun. 6, 2024); "Compliance Measures to Mitigate Sanctions Risk for U.S. Hedge Funds Investing on the HKEX" (Aug. 3, 2023); "U.K. FCA: Retail Funds May Use Side Pockets to Hold Assets Affected By Russia-Related Sanctions" (Sep. 29, 2022); "Scope of Global Sanctions From the Ukraine/Russia War and How Designated Person Standards Affect Fund Managers (Part One of Two)" (Jul. 21, 2022); as well as this two-part series on navigating sanctions regimes: "U.S. and U.K." (Feb. 11, 2021); and "The E.U. and Hot Sanctions Arenas" (Feb. 18, 2021).

Voluntary Disclosure Programs Enhanced

The contrasting White Deer and GVA Capital resolutions also highlight the continued importance of voluntary disclosure. The DOJ has repeatedly emphasized the value of self-disclosure, cooperation and remediation, and it has formalized incentives for firms to self-report. In May 2025, it sweetened those incentives by formally amending the DOJ's Corporate Enforcement and Voluntary Self-Disclosure Policy to provide for the presumption of a declination, rather than merely a non-prosecution agreement, when the disclosure, cooperation and remediation prerequisites are met. As the White Deer resolution and other recent declinations show, the NSD is similarly incentivizing companies with complete declinations for sanctions and export controls violations that are proactively reported and remediated.

Of course, voluntary disclosure still carries risks. It can embroil a firm in a costly investigation, or the DOJ might conclude that the requirements for a declination are not met. But firms confronted with allegations of wrongdoing should consider both the carrot and the stick when deciding whether to voluntarily disclose.

See this two-part series "Why, When and How Fund Managers Should Self-Report Violations to the SEC": Part One (Jan. 10, 2019); and Part Two (Jan. 17, 2019).

Rewards of Genuine Cooperation

The government's recent enforcement actions highlight the value of cooperating with regulatory inquiries – and the potential consequences for failing to do so. Cooperation efforts by White Deer and Unicat were specifically recognized by enforcement authorities as a factor in reaching a declination and NPA with those entities. Conversely, the GVA Capital penalty sheds light on how eschewing cooperation and failing to adequately respond to investigative efforts risk increased penalties – or potentially more drastic outcomes – when misconduct is not reported but still comes to light.

See "Investment Adviser Avoids Civil Penalty Due to Self-Reporting, Remediation and Cooperation: True, False or Other?" (Jan. 16, 2025).

Value of Thorough Investigation and Decisive Action

Finally, firms must act when confronted with potential wrongdoing. Robust sanctions- and trade-related compliance programs are only an early warning system. To be effective, management must investigate quickly and respond appropriately when alerted to potential violations or other risks by those systems. The thoroughness of the investigation can be critical. For example, tightly confined analyses based on highly controlled parameters may miss critical context and lead to open-ended or highly caveated opinions of little value. Meanwhile, properly scoped investigations designed to account for all the relevant context and evaluate the firm's full set of risks will likely be much more effective.

GVA Capital's limited legal opinion and its failure to act in light of the warnings therein contrast with White Deer's quick decision to engage in a full investigation driven by outside counsel and to undertake remediation. When concerns arise, conducting an independent investigation like White Deer's will enable firms to assess the root cause of a problem quickly and design appropriate remedial steps. As was the case with White Deer, doing so will also position the firm to potentially take advantage of voluntary disclosure programs and lend credibility to any negotiations with regulators.

Thus, in light of the continuing focus on enforcement in this area, firms should adjust their compliance programs appropriately. And, when risks arise, they should make sure to:

- investigate quickly and thoroughly;
- act decisively; and
- fully consider the value of self-reporting and cooperating with government regulators, given the strong incentives for such voluntary disclosure in current sanctions- and trade-related enforcement policies.

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