

May 24, 2024

DOJ National Security Division Issues First Declination Under Voluntary Self-Disclosure Program

On May 22, 2024, the Department of Justice's ("DOJ") National Security Division ("NSD") announced its first declination to prosecute a company under NSD's voluntary self-disclosure program. The declination was issued to a U.S. biochemical company, MilliporeSigma, because, according to NSD, the company promptly disclosed misconduct by one of its employees and an associate related to exports to China and provided "extraordinary cooperation" in NSD's investigation.¹ NSD also announced that the employee and associate pled guilty for these violations.

In making the announcement, Deputy Attorney General Lisa Monaco stated that the declination illustrates that, when "a business uncovers criminal wrongdoing within its ranks, the company is far better off reporting the violation than waiting for the Justice Department to discover it As national security and corporate crime increasingly intersect, companies that step up and own up under the Department's voluntary self-disclosure programs can help themselves and our nation."² The MilliporeSigma declination follows another declination by DOJ's Criminal Division in April 2024.³

Background

Over the last few years, DOJ has placed an increased focus on corporate criminal enforcement and the importance of voluntary self-disclosures ("VSDs").

In a September 2022 speech announcing changes to DOJ's enforcement policies, Deputy Attorney General Lisa Monaco underscored that "the clearest path for a company to avoid a guilty plea or an indictment is voluntary self-disclosure. The Department is committed to providing incentives to companies that voluntarily self-disclose misconduct to the government. In many cases, voluntary self-disclosure is a sign that the company has developed a compliance program and has fostered a culture to detect misconduct and bring it forward."⁴ As part of those changes, Monaco stated that "every Department component that prosecutes corporate crime will have a program that incentivizes voluntary self-disclosure."⁵

At the time, NSD had an existing policy for "Export Control and Sanctions Enforcement Policy." Notably, that policy did not refer to the possibility of a declination for a VSD. It stated that "when a company (1) voluntarily self-discloses export control or

¹ Dep't of Justice, *Ringleader and Company Insider Plead Guilty to Defrauding Biochemical Company and Diverting Products to China Using Falsified Export Documents* (May 22, 2024) (the "MilliporeSigma Press Release"), available [here](#).

² *Id.*

³ *In Re: Proterial Cable America, Inc. (f/k/a Hitachi Cable America Inc.)* (Apr. 12, 2024), available [here](#).

⁴ Dep't of Justice, *Deputy Attorney General Lisa O. Monaco Delivers Remarks on Corporate Criminal Enforcement* (Sept. 15, 2022), available [here](#).

⁵ *Id.*

sanctions violations to CES, (2) fully cooperates, and (3) timely and appropriately remediates, consistent with the definitions below, there is a presumption that the company will receive a non-prosecution agreement and will not pay a fine, absent aggravating factors.”⁶

In March 2023, NSD issued the “NSD Enforcement Policy for Business Organizations.”⁷ The Policy stated that “when a company (1) voluntarily self-discloses potentially criminal violations to NSD (2) fully cooperates, and (3) timely and appropriately remediates, absent aggravating factors and consistent with the definitions below, NSD generally will 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. . . . ***In cases where the principles of federal prosecution so warrant, NSD has the discretion to issue a declination.***”⁸

That addition suggested that NSD might issue declinations under certain circumstances. Along those lines, in an October 2023 speech, Deputy Attorney General Monaco stated: “Encouraging companies to self-report misconduct can result in a virtuous cycle: by giving a path to resolution *and declination* to companies trying to do the right thing, we are able to identify and prosecute the individuals who are not.”⁹

NSD’s March 2023 update to its VSD policy through the adoption of the “Enforcement Policy for Business Organizations” coincided with NSD’s increased focus on corporate enforcement. That same month, Deputy Attorney General Monaco announced that the “National Security Division will be elevating its attention to corporate crime through an infusion of personnel and expertise” focused on corporate enforcement.¹⁰ As discussed in our previous memorandum, DOJ created positions focused on corporate enforcement and has been increasingly focused on investigations of corporate crime that have implicated national security issues.¹¹

The MilliporeSigma Declination and Related Guilty Pleas

On May 22, 2024, DOJ announced that a MilliporeSigma salesperson, Gregory Muñoz, and an associate, Pen Yu, had pled guilty to wire fraud violations stemming from their roles in a scheme to fraudulently procure deeply discounted products from MilliporeSigma and export them to China using falsified export documents. In the same announcement, DOJ noted that it had declined to prosecute MilliporeSigma in connection with this misconduct.¹²

According to DOJ, from July 2016 through “May 2023 Yu ordered biochemical products from MilliporeSigma . . . with help from Muñoz, a MilliporeSigma salesperson, by falsely representing that Yu was affiliated with a biology research lab at a large Florida university.”¹³ This false representation caused MilliporeSigma to provide Yu with approximately \$5 million “worth of discounts and other benefits . . . not available to the public,” such as free overnight shipping and, in exchange for facilitating these

⁶ Dep’t of Justice, *Guidance Regarding Voluntary Self-Disclosures, Cooperation, and Remediation in Export Control and Sanctions Investigations Involving Business Organizations* (updated December 13, 2019), available [here](#).

⁷ Dep’t of Justice, *NSD Enforcement Policy for Business Organizations* (Mar. 1, 2023), available [here](#).

⁸ In a footnote, the Policy noted: “Justice Manual § 9-27.000. As a general matter, such circumstances include the nature and seriousness of the offense, law enforcement priorities, and the criminal history of the offender.” *Id.*

⁹ 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), available [here](#).

¹⁰ Dep’t of Justice, *Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime* (Mar. 2, 2023), available [here](#).

¹¹ Paul, Weiss, *Recent DOJ Announcement Signals Continued Surge of Resources to Combat Corporate National Security Crime* (Sept. 14, 2023), available [here](#).

¹² See MilliporeSigma Press Release.

¹³ *Id.*

fraudulent orders, Yu gave Muñoz “thousands of dollars in gift cards.”¹⁴ According to DOJ, once the products arrived at the university’s stockroom, Yu repackaged them and shipped them to China. DOJ stated that, in an effort “[t]o avoid scrutiny, Yu made false statements about the value and contents of these shipments in export documents.”¹⁵

According to DOJ, this scheme by Muñoz and Yu continued for almost seven years until “MilliporeSigma compliance personnel identified certain orders as suspicious, prompting the company to retain outside counsel who voluntarily disclosed the misconduct to the” National Security Division “only a week later.”¹⁶

In issuing the declination to MilliporeSigma, DOJ cited the following factors:¹⁷

- *Timeliness*: “MilliporeSigma’s timely and voluntary self-disclosure of the misconduct, just a week after retaining outside counsel to conduct an internal investigation and before obtaining a complete understanding of the nature and full extent of the misconduct.”
- *Cooperation*: “MilliporeSigma’s exceptional and proactive cooperation, including by disclosing of all known relevant facts about the misconduct and the individuals involved and identifying evidence establishing probable cause to search for evidence of the crimes in locations not under MilliporeSigma’s control, along with its agreement to continue to cooperate with any ongoing government investigations and any resulting prosecutions.”
- *Nature and Seriousness of the Offense*: “[T]he chemical compounds exported to China through the scheme did not present a significant threat to national security in the quantities and concentrations sold and, in most instances, did not require a license for export.”
- *Remediation*: “MilliporeSigma’s timely and appropriate remediation, including terminating the salesperson who engaged in the scheme and improving its internal controls and compliance program.”
- *Revenue*: “[A]lthough MilliporeSigma obtained some revenue from sales to the conspirators, MilliporeSigma was victimized by the conspirators’ scheme to fraudulently obtain significantly discounted products and free overnight shipping, which fraud was, under all of the circumstances, the most serious readily provable offense committed by the conspirators.”

DOJ also “determined that MilliporeSigma did not unlawfully obtain any gains from the offenses for which it is potentially liable, and thus MilliporeSigma is not required to pay any disgorgement, forfeiture, or restitution.”

Takeaways

Over a year after NSD announced in its VSD policy that it “has the discretion to issue a declination,” it has demonstrated that it is willing to use that discretion. The MilliporeSigma declination signals to companies that are aware of potential export controls and sanctions violations that VSDs and cooperation will result in a declination. This could mark the beginning of NSD adopting a more regularized pattern of issuing declinations, similar to the Criminal Division’s practice.¹⁸ Assistant Attorney General Matthew Olsen praised the company for “not sweep[ing] the misconduct under the rug” and instead making “the early decision

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Consistent with the Enforcement Policy for Business Organizations, the declination also cited to the Justice Manual’s “Principles of Federal Prosecution of Business Organizations.” *See id.*; Dep’t of Justice, Nat’l Sec. Div., Declination Letter, Re: Sigma-Aldrich, Inc., d/b/a MilliporeSigma (May 14, 2023), available [here](#).

¹⁸ Since 2022, the Criminal Division has issued six declinations against corporations. The most recent one was in April 2024. *See* Dep’t of Justice, *CEP Declinations*, available [here](#).

to cooperate with the Justice Department, resulting in the convictions of responsible individuals.”¹⁹ Given this development, companies should give serious consideration to the benefits of a VSD.

However, it remains to be seen how widely NSD will extend this practice and how it might apply the above factors in the face of more serious misconduct. Notably, the conduct here involved a single low-level employee whose conduct appears to have been largely at the expense of the company.²⁰

We will continue to monitor actions taken by DOJ relating to its VSD policies and provide further updates as appropriate.

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¹⁹ MilliporeSigma Press Release.

²⁰ According to the MilliporeSigma Press Release, the employee gave away millions in significantly discounted products and “free overnight shipping” to his associate.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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