

DOJ National Security Division Issues First-Ever Declination Under Enforcement Policy

May 29, 2024

KEY TAKEAWAYS

- Even in criminal national security matters, early self-reporting, remediation and cooperation can enable companies to avoid prosecution and penalties.
- Federal enforcement agencies are continuing to collaborate in investigating and prosecuting criminal cases at the intersection of national security and corporate crime.
- Multinational corporations and academic institutions should be aware of the risk of outsiders fraudulently affiliating themselves with legitimate institutions to skirt export control laws.

MilliporeSigma Declination. On May 21, 2024, the Department of Justice (“DOJ”) [announced](#) its first [declination](#) under the National Security Division’s (“NSD”) recently issued [voluntary self-disclosure policy](#). In this precedent-setting action, MilliporeSigma, a subsidiary of Merck KGaA, Darmstadt, Germany, timely self-reported and remediated export control violations—and provided “exceptional cooperation” with the subsequent investigation—relating to an employee’s fraudulent diversion of biochemical products to China.

The employee and a co-conspirator each pled guilty to one count of conspiracy to commit wire fraud. The MilliporeSigma declination serves as an example of a successful self-disclosure, and illustrates the focus by the U.S. enforcement agencies and regulators on corporate crime that implicates U.S. national security interests.

An Example of Successful Self-Disclosure. In the wake of a record-breaking year for sanctions and export controls enforcement, DOJ’s MilliporeSigma declination provides an example of a successful self-disclosure to the NSD and a potential path to a declination under its self-disclosure policy.

Here, a MilliporeSigma employee, with the help of an associate, engaged in the fraudulent procurement of company products and the export of those products to China. The associate allegedly faked an affiliation with an academic research lab in Florida, and worked in concert with the employee to purchase pharmaceutical products at a discount and illegally export them to China. The individuals allegedly fabricated export documents and made significant profits on the scheme over a seven-year period. The scheme exploited a vulnerability in export controls, allowing the misuse of academic institutions to obscure the actual customer of controlled items.

The scheme continued until MilliporeSigma compliance personnel identified the orders as suspicious. The company disclosed these transactions to NSD one week later, well before counsel had completed an internal investigation. MilliporeSigma was credited for fully cooperating with NSD, including by proactively producing documents and identifying wrongdoers, which enabled NSD to secure felony guilty pleas for conspiracy to commit wire fraud. Prosecutors stated that MilliporeSigma was “essential in obtaining this result.”

NSD found that MilliporeSigma satisfied all the requisite criteria to merit a declination under the self-disclosure policy. It (1) voluntarily self-disclosed the potentially criminal violations, (2) fully cooperated, and (3) timely and appropriately remediated the potential violations. In addition, NSD found that the violations did not present a significant threat to national security, and may not have required a license for export in some instances. NSD also found significant that MilliporeSigma was victimized by the enterprise and did not profit “from the offenses for which it is potentially liable.” As a result, the company did not have to pay disgorgement, forfeiture or restitution.

Conclusion. The MilliporeSigma declination demonstrates how NSD has joined the broader push within DOJ and other federal enforcement agencies to incentivize companies to self-report and cooperate. In the area of sanctions and export controls, DOJ has been increasingly aggressive, as have the Department of Commerce’s Bureau of Industry and Security (“BIS”) and the Department of Treasury’s Office of Foreign Assets Control (“OFAC”). But the MilliporeSigma declination shows that companies can obtain significant benefits by promptly self-reporting violations and cooperating in any ensuing investigation.

This resolution is the first time that NSD has used its self-disclosure policy to issue a declination. Time will tell if it is a one-off aberration or the beginning of a trend. DOJ is clearly hoping for the latter. As Deputy Attorney General Lisa Monaco said in announcing the resolution: “[a]s 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.”

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Please do not hesitate to contact us with any questions.



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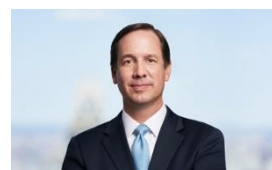
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