

SEC in the Courts: SCOTUS to Review Disgorgement Powers (Again), District Court Upholds Follow-On Administrative Proceedings

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2026 is off to a rousing start for the US Securities and Exchange Commission (SEC), with two notable developments related to the agency's civil enforcement authority. On January 8, the SEC [won a constitutional challenge](#) to its ability to seek industry bans through a follow-on administrative proceeding. This is the second time the SEC has prevailed in a challenge to follow-on administrative proceedings after the 2024 US Supreme Court decision in [SEC v. Jarkesy](#), which held that the SEC may not seek monetary penalties for securities fraud through its administrative forum. The case shows that the SEC's in-house tribunal remains available for certain enforcement actions despite *Jarkesy*.

Just one day later, on January 9, the Supreme Court agreed to review a circuit split regarding the standard the SEC must meet when seeking an award of disgorgement in a civil action. The question before the Supreme Court is whether the SEC must show that investors suffered actual financial loss (pecuniary harm) to obtain disgorgement, or whether it is enough to show that the defendant profited from alleged violations of the securities laws. This will be the third time the Supreme Court will consider SEC disgorgement in the past decade, following [Liu v. SEC](#) in 2020 (which addressed whether the SEC could seek disgorgement through its power to award equitable relief) and [Kokesh v. SEC](#) in 2017 (which addressed the applicable statute of limitations). The Supreme Court's decision should be consequential, as the SEC obtained [\\$6.1 billion](#) in disgorgement and prejudgment interest in fiscal year 2024.

Supreme Court to review circuit split on SEC disgorgement powers

Background

In [Sripetch v. SEC](#), both the petitioner – a stock trader who was ordered to disgorge more than \$3 million in profits and prejudgment interest – and the government asked the Supreme Court to grant review, recognizing a square split between the US Court of Appeals for the Second Circuit and the US Court of Appeals for the Ninth Circuit related to the scope of the SEC's remedial authority.

[As the petitioner put it](#), the question is “whether the SEC may seek equitable disgorgement in civil-enforcement suits without showing investors suffered pecuniary harm.” In the petitioner's case, the [Ninth Circuit sided with the First Circuit](#) in holding that the SEC does **not** need to show that investors suffered pecuniary harm. The Ninth Circuit acknowledged that its ruling diverged from the Second Circuit's 2023 opinion in [SEC v. Govil](#), which held that disgorgement in this context **does require** a finding that investors suffered pecuniary harm.

A key point of disagreement centers on a question left open from the Supreme Court's 2020 opinion in *Liu* – the definition of “victim” in this context. In *Govil*, the Second Circuit determined that here, a victim is “one who suffers pecuniary harm from the securities fraud.” In doing so, it relied in part on language from *Liu* referencing “return the funds to victims,” which the Second Circuit found “presupposes pecuniary harm.” Among other things, the Second Circuit found support for the “centrality of pecuniary harm to victimhood” in other “profit-stripping remedies” discussed in *Liu*, including constructive trust and accounting. The court also drew comparison with private securities fraud actions under Section 10(b) of the Securities Exchange Act of 1934, which require that an investor suffer economic loss.

While the Ninth Circuit in *Sripetch* agreed with the Second Circuit that disgorgement requires a victim (or victims), it disagreed that “victim” is “narrowly defined as an individual or entity that has suffered pecuniary harm.” The Ninth Circuit reasoned that a pecuniary harm requirement is inconsistent with disgorgement at the common law, which only required showing interference with “the claimant's legally protected interests,” not loss. The Ninth Circuit also disagreed with the Second Circuit's reading of *Liu* and its reliance on private securities actions, which the Ninth Circuit observed are different “by design” from SEC civil enforcement actions, given that “Congress imposed an economic loss requirement” in private actions specifically “to address ‘abusive litigation by private parties’” (citation omitted) – a consideration that does not apply to SEC actions.

For its part, the [government has taken the position](#) that the Ninth Circuit “correctly resolved the question presented,” and

that the applicable statutes “authorize[] a court to award disgorgement in an SEC suit without a finding of pecuniary harm to investors.”

Govil on remand: A broad reading of pecuniary harm

Just over a week after the Supreme Court granted review in *Sripetch*, the district court in *Govil* issued its opinion on remand from the Second Circuit. The district court’s [January 20 decision](#) reflected a broad reading of what can be considered “pecuniary harm” and who may be considered a “victim.” The upshot is that even if the Supreme Court ultimately determines that the SEC must demonstrate pecuniary harm to obtain disgorgement, expansive interpretations of such harm by lower courts may allow the SEC to still make that showing in many cases.

Having held that disgorgement requires a showing of pecuniary harm, the Second Circuit in *Govil* instructed the district court to determine whether, as a factual matter, the defendant’s conduct caused pecuniary harm. On remand, the district court considered testimony and expert reports offered by the SEC and found that both investors and the company itself experienced pecuniary harm due to the defendant’s fraud.

First, the court determined that investors suffered pecuniary harm on multiple fronts, including (1) artificially inflated stock prices and trading losses, and (2) capital raising activities (a secondary offering and a rights offering) that were needed due to the defendant’s misappropriation and that had a “dilutive effect” on existing shareholders. Second, the court found that the company also qualified as a victim and suffered pecuniary harm when the defendant “misappropriated proceeds reserved for corporate use,” creating “a shortfall in funds available for operating expenses, financing, and investments.”

Takeaways

The Supreme Court’s decision in *Sripetch* may have significant implications for the SEC’s ability to seek ill-gotten gains from defendants and respondents in connection with enforcement actions. The scope of the SEC’s ability to seek disgorgement is significant, to say the least: In fiscal year 2024, disgorgement and prejudgment interest accounted for nearly 75% of the financial remedies for which the SEC obtained orders (\$6.1 billion of \$8.2 billion in total) and was the highest amount on record. If the Supreme Court rules that the SEC must show that investors suffered pecuniary harm as a precondition to obtaining disgorgement, it will certainly limit the SEC’s remedial reach. It will also impact how individuals and companies assess potential exposure and navigate SEC investigations and enforcement actions. At the same time, the effect of a “pecuniary harm” requirement will turn on how that term is defined – and as seen in the district court’s opinion in *Govil* on remand, courts may be inclined to read it broadly, thus allowing the SEC to make the showing in many cases.

How the Supreme Court will decide this case remains to be seen, but we expect it will be heard this term.

District court rules that SEC can seek industry bans in administrative proceedings

Background

On January 8, the US District Court for the District of Columbia dismissed *Sztrom v. SEC*, a lawsuit brought by two investment advisors challenging the constitutionality of an SEC follow-on administrative proceeding. The advisors previously settled an SEC enforcement action brought in federal court. As part of that settlement, the advisors each paid \$25,000 in civil penalties and consented to an entry of final judgment barring them from violating certain securities laws, without admitting liabilities. After the entry of final judgment, the SEC commenced a follow-on administrative proceeding seeking to ban the pair from the securities industry. The advisors alleged that the follow-on administrative proceeding was unlawful because it:

1. Violated due process by adjudicating charges that were prosecuted by the same agency.
2. Violated Article III because only federal courts have the power to adjudicate this type of matter.
3. Violated the Fifth and Seventh Amendments because the government cannot deprive the advisors of “their rights to pursue their chosen profession” except through a jury trial.
4. Denied the advisors their rights to a hearing under the Advisers Act and Administrative Procedure Act.

The district court’s analysis

The court first addressed the plaintiffs’ jury trial and statutory hearing rights claims. The court agreed with the SEC that Congress has impliedly removed district courts of subject matter jurisdiction over these claims. The Advisers Act explicitly provides that a party may seek review of an SEC administrative order in the US courts of appeals. The court further

determined that meaningful judicial review remained available through the appellate process, and that the claims at issue were not “wholly collateral” to the statutory review scheme, nor outside the SEC’s expertise. As such, the district court lacked subject matter jurisdiction over these claims.

With respect to the due process claim, the court held that it was “squarely foreclosed by D.C. Circuit precedent” – namely, the 1988 case [Blinder, Robinson & Co. v. SEC](#). In *Blinder*, the DC Circuit held that a regulator’s combination of prosecutorial and adjudicative functions through its in-house tribunal did not violate the Constitution. The court was unpersuaded that *Jarkesy* changes the outcome, reasoning that *Jarkesy* is limited to monetary penalties.

As to the advisors’ Article III claim, the court held that the SEC’s follow-on proceeding – which seeks remedial sanctions in the public interest – falls within the “public rights” exception and does not violate Article III.

Takeaways

This is the second time that the DC District Court upheld the viability of SEC follow-on administrative proceedings. Last year, in [Lemelson v. SEC](#), another judge in the DC District Court considered similar arguments when an investment advisor – who was found liable for securities fraud by a jury – challenged the legality of a follow-on administrative proceeding that sought to ban him from the securities industry. The *Lemelson* court reached the same conclusions as the *Sztrom* court, and Lemelson appealed. While the appeal was pending, the SEC [dismissed the administrative proceeding](#) on the grounds that “further proceedings ... would not be in the public interest,” because the district court that imposed the initial injunction thought that “it would be excessive” for the SEC to impose a lifetime ban on Lemelson in any follow-on proceeding.

Taken together, *Lemelson* and *Sztrom* indicate that the DC District Court is unlikely to expand *Jarkesy* beyond monetary penalties, and SEC follow-on administrative proceedings are – at least for now – here to stay.

Under the [Investment Advisers Act of 1940](#) (Advisers Act), the SEC can censure, suspend or ban a person associated with an investment adviser if it finds, “on the record after notice and opportunity for hearing,” that such penalty is “in the public interest,” and that the person “is enjoined” by a court from “engaging in or continuing” certain securities-related activities. Such proceedings are referred to as follow-on administrative proceedings. Follow-on administrative proceedings accounted for between 16% to 25% of all SEC enforcement actions [during fiscal years 2019 to 2024](#). (The SEC has not released enforcement data for fiscal year 2025.)

It remains to be seen whether other courts will adopt this interpretation. With respect to the finding that artificially inflated stock prices constitute pecuniary harm, for example, it is worth noting that in *Sripetch*, the Ninth Circuit observed that the SEC’s argument that paying artificially inflated prices alone causes pecuniary harm is “in tension” with the Supreme Court’s decision in [Dura Pharmaceuticals v. Broudo](#). In *Dura*, the Supreme Court explained that “an initially inflated purchase price **might** mean a later loss” but “that is far from inevitably so.” (emphasis added)

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