

Securities Enforcement Update: Supreme Court to Decide Statute of Limitations for SEC Disgorgement Actions

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On January 13, 2017, the Supreme Court granted *certiorari* in *Kokesh v. SEC* to resolve a circuit split on the issue of whether the five-year statute of limitations in 28 U.S.C. § 2462—which governs SEC suits for “any civil fine, penalty, or forfeiture”—applies to SEC enforcement actions for disgorgement. The question presented turns on whether disgorgement, which requires a defendant to give up ill-gotten gains, constitutes a “forfeiture” under § 2462 and is thus within the applicable five-year statute of limitations. In *Kokesh*, the Tenth Circuit held that § 2462 does not apply to disgorgement actions, and accordingly, there appears to be no time limit on when the SEC can bring disgorgement actions. The Eleventh Circuit recently reached the opposite conclusion, holding that § 2462’s limitations period applies because there is “no meaningful difference in the definitions of disgorgement and forfeiture.” The Supreme Court’s decision will have practical consequences for a wide range of enforcement actions, including Foreign Corrupt Practices Act (“FCPA”) cases.

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