

U.S. Supreme Court Confirms that Limitations Period for Certain Federal Enforcement Actions Begins When Fraud Occurs; Application In FCPA Matters Remains Unclear

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In *Gabelli v. Securities and Exchange Commission*, No. 11-1274, the United States Supreme Court unanimously concluded that the five-year statute of limitations applicable to actions brought by the Securities and Exchange Commission (SEC) seeking civil penalties begins to run when the alleged fraudulent conduct occurs rather than when it is discovered. In doing so, the Court declined to apply the “discovery rule” that is available in private actions—which delays accrual of certain fraud-based claims until they are discovered—to federal enforcement actions governed by 28 U.S.C. § 2462. The *Gabelli* case, one of the last “market timing” cases brought by the SEC, did not involve the Foreign Corrupt Practices Act (FCPA), but its application in that context will be of particular importance given the prevalence and time-consuming nature of those actions, which often challenge alleged conduct from many years prior. A recent decision in an FCPA case from the Southern District of New York, decided less than three weeks before *Gabelli*, reflects a more expansive view of the statute of limitations. In *SEC v. Straub*, No. 11 Civ. 9645 (RJS)—which interpreted a part of 28 U.S.C. § 2462 that was not at issue in *Gabelli*—the district judge concluded that a defendant must be physically present in the United States in order for the statute of limitations in Section 2462 to run. The *Straub* decision ultimately may be limited to its facts, however, and may be reconsidered by the District Court itself or reviewed by the U.S. Court of Appeals for the Second Circuit. The decision nonetheless demonstrates the SEC’s expansive view of its authority to bring FCPA claims more than five years after alleged fraudulent conduct occurs.

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