

Securities Enforcement Update: Supreme Court Rules that Five-Year Statute of Limitations Applies to SEC Disgorgement Actions

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On June 5, 2017, the Supreme Court decided *Kokesh v. SEC*, and unanimously held that the five-year statute of limitations in 28 U.S.C. § 2462—which governs any “action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture”—applies to SEC enforcement actions for disgorgement. As discussed in a [prior alert](#), the question turned on whether SEC disgorgement, which requires a defendant to give up ill-gotten gains, constituted a “forfeiture” or “penalty” under § 2462. In *Kokesh*, the Supreme Court held that SEC disgorgement actions are “penalt[ies]” within the meaning of § 2462 and are therefore subject to the five-year statute of limitations. As noted [previously](#), when the Supreme Court heard oral argument on this issue in April, multiple Justices expressed discomfort with the SEC’s lack of express statutory authority to seek disgorgement at all. Although the question of the SEC’s authority to seek disgorgement was not presented in *Kokesh*, the opinion includes a footnote making clear that the Supreme Court did not express any “opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context.” By including this footnote, the Supreme Court invites future challenges to the SEC’s disgorgement powers that might have consequences far beyond those accompanying the narrow decision in *Kokesh*.

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