

Supreme Court Holds that SEC Administrative Law Judges Have Been Unconstitutionally Appointed in Decision that is Likely to Have Far-Reaching Impact

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The Supreme Court's opinion in *Lucia v. SEC*, holding that SEC ALJs qualify as Officers of the United States under the Constitution and are therefore subject to the Appointments Clause of the Constitution, is likely to have far-reaching consequences for other federal agencies that rely on ALJs. Any federal agency that appoints ALJs in a manner similar to the SEC is now vulnerable to similar constitutional challenges under the Appointments Clause. Further, while *Lucia* resolved one constitutional challenge to ALJs, a concurrence by Justice Breyer highlights another significant constitutional question: whether the statutory removal protections afforded to SEC ALJs are also unconstitutional. Accordingly, *Lucia* presents a number of open questions, including whether the decision can be used to reopen past ALJ adjudications at the SEC or elsewhere, how it will impact existing ALJs and the ALJ appointment process at other federal agencies, and whether ALJs can survive a separate constitutional challenge to their removal protections.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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