

Veto Override Enacts Expanded SEC Disgorgement Authority

January 4, 2021

Congress overrode the President's Veto of the National Defense Authorization Act. Among other things, the new law expands to 10 years the time for the SEC to bring disgorgement claims in fraud cases.

The NDAA's Expansion of SEC Authority

On January 1, 2021, the National Defense Authorization Act for Fiscal Year 2021 became law when the Senate voted 81-13 to join the House in overriding the President's veto of the bill. As we discussed in a recent [client memorandum](#), the NDAA expands the SEC's authority to pursue scienter-based disgorgement claims by extending the applicable statute of limitations to 10 years (from the prior 5 years) and tolling the statute of limitations for all disgorgement claims while the person against whom the claim is brought is outside the United States. The statute of limitations changes are legislative responses to two recent Supreme Court decisions, *Kokesh v. Securities and Exchange Commission* and *Liu v. Securities Exchange Commission*, which created a framework for the SEC to pursue disgorgement claims in federal court subject to a five-year statute of limitations. A significant practical effect of the longer statute of limitations is that it may increase disgorgement awards in cases involving fraudulent conduct going back over extended periods of time.

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