

## Second Circuit Holds That PSLRA Section 107 Bars RICO Claims Alleging Any Acts of Securities Fraud Even Where Plaintiff Cannot Itself Pursue a Securities Fraud Action Against the Defendant

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On July 7, 2011, the Second Circuit in *MLSMK Investment Company v. JP Morgan Chase & Company*, ruled that a plaintiff's RICO claim against two financial firms for aiding and abetting a company's securities fraud was barred by Section 107 (referred to as the "RICO Amendment") of the Private Securities Litigation Reform Act ("PSLRA").

In affirming the District Court for the Southern District of New York's dismissal of the complaint as a whole, the panel elaborated on the dismissal of the RICO claim by explaining the scope of the exception under Section 107:

"[S]ection 107 of the PSLRA bars civil RICO claims alleging predicate acts of securities fraud, even where a plaintiff cannot itself pursue a securities fraud action against the defendant."

The decision has broad implications in the Second Circuit for underwriters, lawyers, trading partners and others as to whom claims of aiding and abetting securities fraud are barred by *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 177 (1994).

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