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## Second Circuit Clarifies SEC Disgorgement Following NDAA Exchange Act Amendments

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The United States Supreme Court has, in recent years, decided two cases concerning the authority of the Securities and Exchange Commission ("SEC") to seek disgorgement. In 2017, the Court held in *Kokesh v. SEC* that disgorgement is subject to the same five-year statute of limitations as other civil penalties under 28 U.S.C. § 2462. Three years later, the Court held in *Liu v. SEC* that the SEC may seek disgorgement even though it is not explicitly authorized by the Securities Exchange Act of 1934 ("Exchange Act") and that, because disgorgement is an equitable remedy, disgorgement awards may not exceed a wrongdoer's net profits and generally must be paid to the wrongdoer's victims rather than to the U.S. Treasury. Our firm memoranda discussing these two cases can be found [here](#) and [here](#).

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