

Judicial Authority to Order Disgorgement in SEC Action Upheld

Date: 04/28/06

The Second Circuit Court of Appeals further narrowed the scope of the Section 4(1) registration exemption under the Securities Act of 1933, and validated the federal courts' equitable authority to impose disgorgement as a remedy in a securities fraud action brought by the Securities and Exchange Commission ("SEC") in its recent holding in *SEC v. Cavanagh*. In holding that the defendants were not entitled to a Section 4(1) exemption, the *Cavanagh* Court considered the "defendants role in the orchestration and negotiation" of a series of transactions, rather than the defendants' status at the moment of any single transaction. Next, the Court addressed the question of whether the doctrine of disgorgement had survived the Supreme Court's decision in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, which limited the courts' equitable powers. The Court of Appeals held explicitly that the equitable power to order disgorgement had been vested in the federal courts by the Constitution and the Judiciary Act.

Attorney

- Charles A. Gilman

CAHILL GORDON & REINDEL LLP