
Supreme Court Holds That SEC Disgorgement Is a Form of Equitable Relief

Date: 07/27/20

The Securities Exchange Act, 15 U.S.C. §78u(d)(5), permits the Securities and Exchange Commission (the “SEC”) to seek, and federal courts to grant, “any equitable relief that may be appropriate or necessary for the benefit of investors.” Yet Congress did not specify which remedies fall within “equitable relief” under §78u(d)(5). In *Kokesh v. SEC*, decided in 2017, the Supreme Court of the United States held that disgorgement collected by the SEC is a “penalty” subject to the five-year statute of limitations on civil penalties under 28 U.S.C. §2462. In a footnote in the opinion, however, the Court noted that it was not resolving the question of “whether courts possess authority to order disgorgement in SEC enforcement proceedings” at all.

In *Liu v. SEC*, the Supreme Court took up the question of whether disgorgement constitutes equitable relief under §78u(d)(5) and, if so, whether it may encompass an amount beyond a defendant’s net profits from wrongdoing. On June 22, 2020, the Court held in an 8-1 decision that a disgorgement award not exceeding a wrongdoer’s net profits and awarded to victims is equitable relief permissible under the SEC’s investigatory authority in actions or proceedings brought or instituted by the SEC under the securities laws. The Court clarified that such disgorgement awards must be “tethered” to a wrongdoer’s net profits (defined as revenue less legitimate business expenses).

Attorneys

- Joel Kurtzberg
- Lauren Perlgut
- Jason D. Rozbruch